

# On Street Supplemental Agreements

**TIE LIMITED**

**POSITION PAPER**

relating to

the agreement between **tie Limited**

and

Bilfinger Berger (UK) Limited / Siemens plc / Construcciones y Auxiliar de Ferrocarriles consortium

in connection with the works authorised by the

*Edinburgh Tram (Line One) Act 2006* and the *Edinburgh Tram (Line Two) Act 2006*

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For Internal tie use only

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## **1. INTRODUCTION**

- 1.1 A part of a “mediation marathon” schedule for 29 June – 6 July, tie and BSC have agreed to explore proposals for utilising “Supplemental Agreements” to address further “On Street” locations of Infraco Works.

## **2. THE PROPOSAL**

- 2.1 tie and BSC will review the remaining on street construction works and prepare a proposal (or series of proposals) to address known or potential changes.
- 2.2 The Princes Street Supplemental Agreement may form the basis of this revised proposal.

## **3. TIE'S POSITION ON THE PROPOSAL**

- 3.1 tie will work with BSC to consider which sections from Haymarket to Newhaven may benefit from a “Supplement Agreement”
- 3.2 Our basic approach would be to identify if any section are expected to have little change, in which case, no agreement would be considered necessary.
- 3.3 If changes / compensation events are known / expected then it is anticipated that a Supplemental Agreement will be required.
- 3.4 tie are prepared to “fine tune” or “refine” the Princes St approach and liability balance (including clarification of specific items if necessary).

## **4. REQUIRED OBJECTIVES OF MEDIATION REFERRAL TO THE INTERNAL RESOLUTION PROCEDURE**

- 4.1 Agreement of scope, location and detailed drafting of any proposed in street Supplemental Agreements in addition to Princes St.

## **5. TIE'S UNDERSTANDING OF INFRACO'S POSITION ON THE DISPUTE / DISAGREEMENT**

- 5.1 tie believe BSC are not content with extending the Princes St Supplemental Agreements on the basis that they are:
- “cost plus”
  - Incorporate all Infraco Scope, not just Civils Works as described in Princes Supplemental Agreement.
  - Agreement any credit back from Milestones in advance of agreement.
  - Relate the agreement of EOT2 (Rev 2) and protect BSC re time.

## **6. LIST OF SUPPORTING DOCUMENTATION**

- 6.1 Princes Street Supplemental Agreement.

**SUPPLEMENTAL  
AGREEMENT**

between

**TIE LIMITED**

and

**BILFINGER BERGER UK LIMITED**

and

**SIEMENS PLC**


and

**CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**

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**IN RELATION TO PRINCES STREET WORKS**

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## SUPPLEMENTAL AGREEMENT

### BETWEEN

- (1) **TIE LIMITED**, a company incorporated in Scotland under number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, EH1 1YJ ("**tie**"), which expression shall include its successors, permitted assignees and transferees; and
- (2) **BILFINGER BERGER UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 150 Aldersgate Street, London, EC1A 4EJ, which expression shall include its successors, permitted assignees and transferees; and
- (3) **SIEMENS PLC**, a company incorporated in England and Wales under number 00727817 and having its registered office at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD, which expression shall include its successors, permitted assignees and transferees; and
- (4) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain in the Corporate Register of Guipuzcoa: volume 983, sheet 144, page number SS-329, entry 239 and having its registered office at J.M. Iturrioz 26, 20200 Beasain (Guipuzcoa), Spain ("**CAF**").

### BACKGROUND

- A. **tie** and Bilfinger Berger UK Limited and Siemens Plc entered into an agreement on a joint and several basis dated 14 May 2008, for the design, construction, testing, commissioning and maintenance of the Edinburgh Tram Network (the "**Infraco Contract**").
- B. Pursuant to a Minute of Variation dated 14 May 2008, CAF became a member of the Infraco (Bilfinger Berger UK Limited and Siemens Plc together with CAF being hereinafter referred to as the "**Infraco**").
- C. Certain issues have arisen between the parties in relation to the ground conditions and the progress of works on Princes Street, Edinburgh.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. Words and expressions shall have the meaning ascribed to them in the Infraco Contract.

**"Demonstrable Cost"** means the cost to the Infraco of carrying out the Princes Street Works calculated (where applicable) on the basis of the sub-contractor rates appended hereto at Appendix B and otherwise on the basis of such reasonable and necessary cost (direct and indirect) as shall be incurred by the Infraco.

**"Princes Street Works"** means that part of the Infraco Works that are to be carried out to construct and complete the civil engineering works elements of the Infraco Works in Princes Street to the formation level included in the Construction Works Price within coordinates Section 1C (Chg 1380-1980) and Section 1D (Chg 0 – 280).

2. Notwithstanding the terms of the Infraco Contract, the Parties have agreed that the Infraco's sole entitlement to payment, extension of time or other relief in respect of the Princes Street Works and the impact of the Princes Street Works on the Infraco Works shall be governed by the terms set out in this Supplemental Agreement.

3. The Parties agree that:

- 3.1 All Princes Street Works required to achieve design (or amended design) formation level in the carriageway and tie-in to footways and all Princes Street Works required to build from design (or amended design) formation level to the formation level included in the Construction Works Price (as shown for illustrative purposes at Appendix A hereto) and including for the avoidance of doubt all circumstances which would give rise to a Notified Departure or Compensation Event or a tie Change or Relief Event will be recorded and paid on a Demonstrable Cost basis together with head office overhead and profit percentages, Consortium Preliminaries and, if appropriate, other preliminary elements as referred to in Appendix G of Schedule Part 4 as though such works were a tie Change but for all other purposes in the Infraco Contract the works described in this Clause 3.1 and the said circumstances shall not be treated as a Notified Departure, tie Change, a Compensation Event or a Relief Event.

- 3.2 To the extent that additional cost (or delay) is caused to the carrying out of the remaining Infraco Works as a consequence of events affecting and the circumstances

in which the Princes Street Works are being undertaken, the Infraco shall be entitled to payment of all reasonable additional cost, together with Head Office, overheads profit percentage and Consortium Preliminaries as referred to in Appendix G of Schedule Part 4, (and, for the avoidance of doubt, an extension of time in accordance with Clause 3.4) and tie shall ensure that the tie Representative shall certify such reasonable amounts as shall be incurred monthly in accordance with Clause 67.5.

- 3.3 Each valuation will include a credit to tie for the price already included in the Construction Works Price for all construction activity required for excavation to Infraco Proposals tender formation level (to the extent that such works are included in a valuation).
- 3.4 The Infraco shall progress the Princes Street Works with due expedition and without delay taking cognisance of the extent and nature of the Princes Street Works and the circumstances in which they are undertaken. The Infraco shall be entitled to an extension of time in respect of any delay in the progress of the Princes Street Works and any direct consequential delay to the Infraco Works howsoever caused save to the extent that any such delay is caused by the Infraco's failure to progress the Princes Street Works in accordance with this Clause 3.4, or any other material breach by the Infraco of the Infraco Contract or this Supplemental Agreement and tie shall award such extension of time as if the delay had been caused by a tie Change to which Clause 80 applied.
- 3.5 The project management panel shall monitor implementation of the Infraco Works as a model for momentum on progressing the Infraco Works.
4. The Parties agree that for the process of recording, establishing and agreeing demonstrable cost plus expenditure pursuant to Clause 3.1 shall be as set out in Appendix C to this Supplemental Agreement.
5. The Infraco shall commence construction activity for the Princes Street Works on Monday 23 March 2009 based on the activity listing in Appendix D and shall submit a construction programme to demonstrate the intended progress of the Princes Street Works within 7 days.
6. The Infraco Contract shall continue in full force and effect and shall not be amended by this Supplemental Agreement, except in so far as its application to the Princes Street Works as set out in this Supplemental Agreement and each Party preserves its rights and remedies in relation to any existing breach of the Infraco Contract (whether known or not) and

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notwithstanding breached provisions may have been amended by this Supplemental Agreement.

7. The Parties agree that any dispute, difference or unresolved claim between the Parties in connection with or arising from this Supplemental Agreement shall be dealt with in accordance with the provisions set out in Schedule Part 9 of the Infraco Contract (*Dispute Resolution Procedure*).

8. The Infracore shall undertake its obligations under this Supplemental Agreement on a joint and several basis.

IN WITNESS WHEREOF these presents consisting of this and the preceding 4 pages are executed as follows:

EXECUTED for and on behalf of TIE LIMITED at Edinburgh on

24 MAY 2009 by:

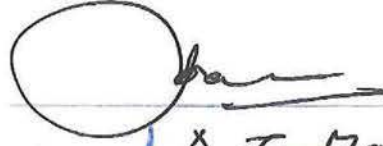
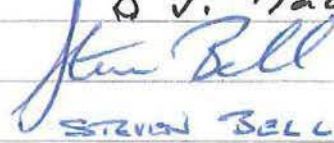
Authorised Signatory

Full Name

Witness Signature

Full Name

Address

  
D. J. Mackay  
  
STEVEN BELL  
CITYPOINT, 15 HAYMARKET TERR  
EDINBURGH.

EXECUTED for and on behalf of BILFINGER BERGER UK LIMITED at Edinburgh on



29 MAY 2009 by:

Authorised Signatory

Full Name

Authorised Signatory

Full Name

  
Richard John Warren  
  
MARTIN FÖRDERER

EXECUTED for and on behalf of SIEMENS PLC at Edinburgh on



29 MAY 2009 by:

Authorised Signatory

Full Name

Authorised Signatory

Full Name

  
Robert Brückmann  
  
Alfred Brandenburger



**EXECUTED** for and on behalf of **CAF** at  
Edinburgh on



29 MAY 2009 by:

Authorised Signatory

Full Name

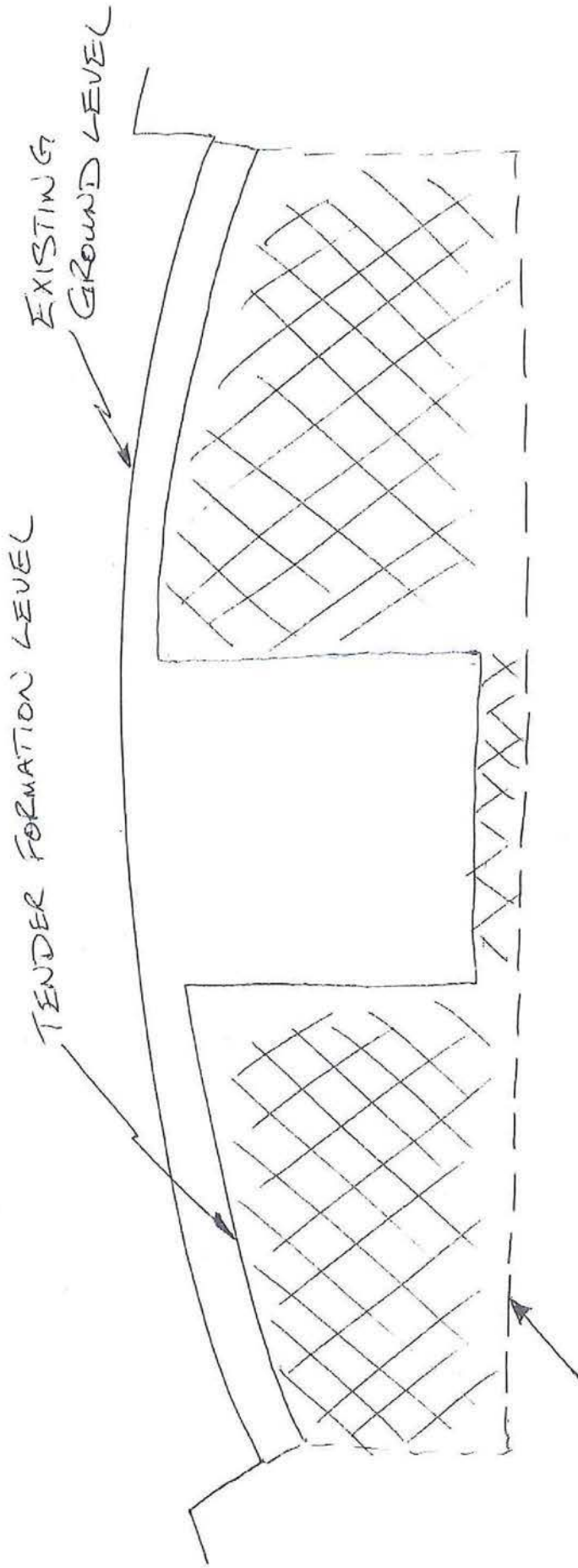
Authorised Signatory

Full Name

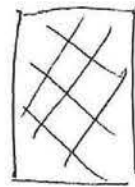
  
\_\_\_\_\_  
ANTONIO CAMPOS  
  
\_\_\_\_\_  
LUIS GARCIA

**APPENDIX A**

APPENDIX A



DESIGN (OR AMENDED DESIGN) FORMATION LEVEL



HATCHED AREA BASED ON ESTIMATE BASIS  
IN ACCORDANCE WITH THE CONTRACT

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**APPENDIX B**

## APPENDIX B



SIEMENS



Bilfinger Berger-Siemens-CAF Consortium

Edinburgh Tram Network

Item	Description	Qty	Unit	Rate	Amount
	<b>SUB-CONTRACTOR SCHEDULE OF RATES</b> for use in the carrying out of "Princes Street Works" within Section 1C (chg 1380-1980) and Section 1D (Ch 0 to 280)				
	<b>Staffing</b>				
	Contracts Manager:		hr	£52.35	
	Project Manager:		hr	£46.68	
	Quantity Surveyor:		hr	£28.28	
	Site Agent:		hr	£36.48	
	Engineer/Surveyor:		hr	£29.79	
	General Foreman:		hr	£27.22	
	<b>Labour</b>				
	Labour skilled level 2:		hr	£18.52	
	Labour skilled level 3:		hr	£18.75	
	Ganger skilled level 2:		hr	£20.21	
	Working Foreman:		hr	£22.06	
	<b>Labour Non Productive Overtime</b>				
	<b>Saturday am and Weekdays</b>				
	Labour skilled level 2:		hr	£4.05	
	Labour skilled level 3:		hr	£4.08	
	Ganger skilled level 2:		hr	£4.23	
	Working Foreman:		hr	£4.48	
	<b>Saturday pm and Sundays all day</b>				
	Labour skilled level 2:		hr	£8.76	
	Labour skilled level 3:		hr	£8.86	
	Ganger skilled level 2:		hr	£9.21	
	Working Foreman:		hr	£9.45	
	<b>Other Resources</b>				
	Plant			Cost +12.5%	
	Materials / Consumables			Cost +12.5%	
	Subcontractors			Cost +12.5%	

**Notes:-**

- 1 Labour Rates are All inclusive Rates applicable to End of December 2009 and make allowance for the National Wage increase expected June 2009
- 2 Staff and Labour Rates include for Overheads and Profit.
- 3 Invoices for Plant, Materials and Subcontractors will be subject to an addition of 12.5% to cover Overheads and Profit
- 4 Insurance Excesses are included within the 12.5% addition for overheads and profit
- 5 Saturday AM overtime = 08:00 - 12:00hrs
- 6 Weekday Overtime = Hours worked pre 08:00hrs and post 16:30hrs
- 7 Standard Working Week Mon- Thurs 08:00-16:30hrs Fri 08:00-15:30hrs

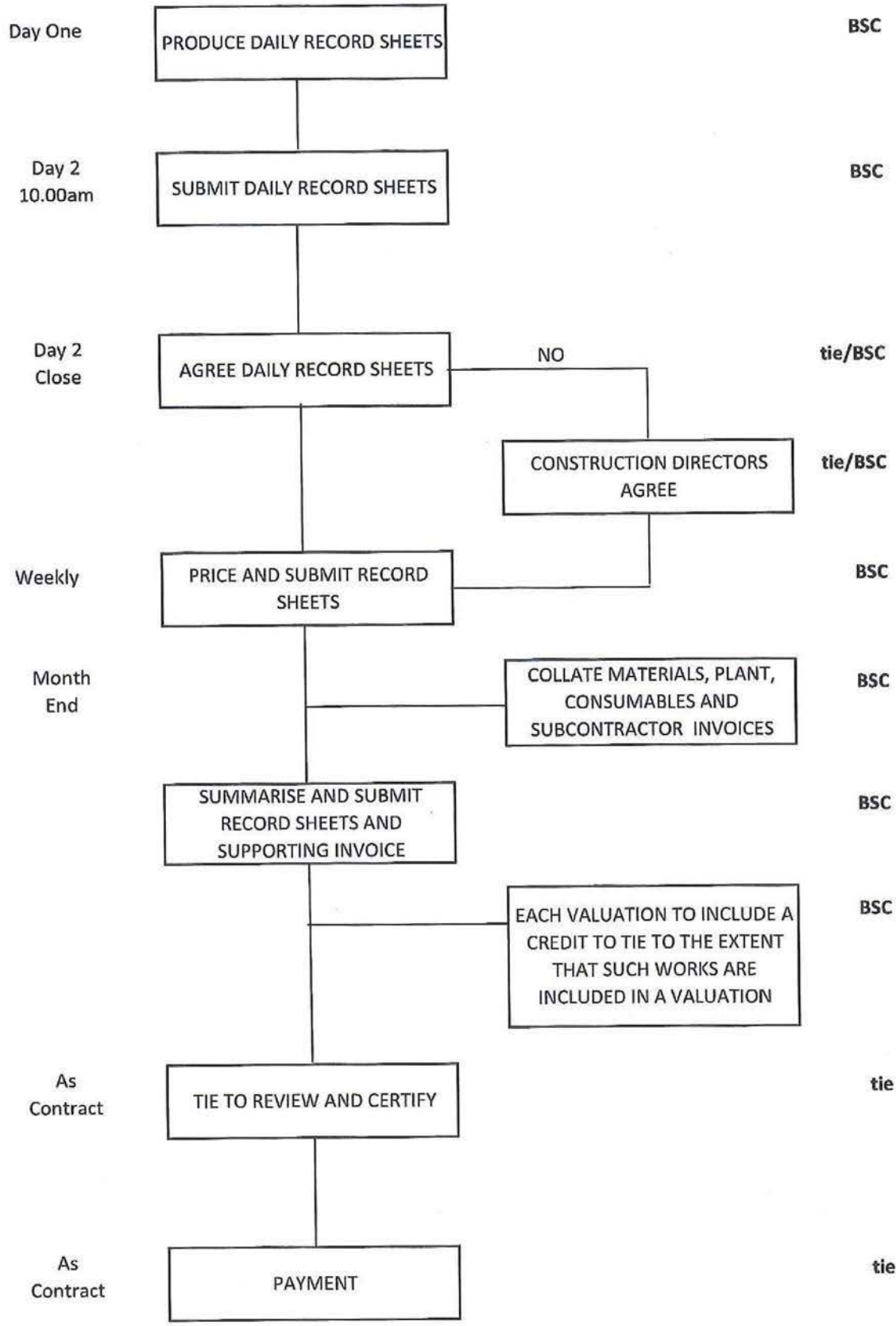
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**APPENDIX C**

**APPENDIX C**

Process for recording, collating and agreement of resource

**ACTION**



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Appendix C

Notes;

1. Daily Record Sheets to be produced by BSC on agreed proforma and submitted daily (by 10.00am the day after the work is done). Daily Record Sheets to record actual resources employed including labour, plant, staff and other Prelim Resources.
2. tie / BSC to agree Daily Record Sheets by close of play the day after the work is done.
3. If tie/ BSC cannot agree Daily Record Sheets at site level then any such records to be escalated to respective Construction Directors for agreement. Such agreement should be reached by the Monday following the week that the work is done.
4. BSC to price and submit Daily Record Sheets for labour on a weekly basis using agreed rates by the end of the subsequent week.
5. Material, Plant, Consumables and subcontractor invoices to be submitted to tie on a monthly basis such as to be included in the Period End Application.
6. Summary of priced and submitted Daily Record Sheets together with any outstanding priced Daily Record Sheets for the period to be submitted to tie in the Period End Application.
7. BSC to calculate credit to tie for measured works for which payment is claimed in respect of relevant activity.
8. tie to review submitted information and if agreed certify in accordance with Contract.
9. tie to pay in accordance with Contract

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**APPENDIX D**

APPENDIX D

Edinburgh Tram Network

1 week Construction Programme - Princes St



ID	Task Name	Duration	Start	Finish	% Complete	Mon 23 Mar	Tue 24 Mar	Wed 25 Mar	Thu 26 Mar	Fri 27 Mar
1	ETN Princes St	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
2	Section 1D Mackenzie	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
3	Princes St	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
4	Mobilisation	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
5	Erect Welfare Units	3 days	Mon 23/03/09	Wed 25/03/09	0%	[Gantt bar]				
6	Erect Offices	2 days	Thu 26/03/09	Fri 27/03/09	0%	[Gantt bar]				
7	Site Clearance	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
8	Remove Existing Furniture	5 days	Mon 23/03/09	Fri 27/03/09	0%	[Gantt bar]				
9	Trial Pits	4 days	Mon 23/03/09	Thu 26/03/09	0%	[Gantt bar]				
10	Expose Existing Services	4 days	Mon 23/03/09	Thu 26/03/09	0%	[Gantt bar]				
11	Expose Sewer Connections	2 days	Mon 23/03/09	Tue 24/03/09	0%	[Gantt bar]				
12	Trackwork	3 days	Wed 25/03/09	Fri 27/03/09	0%	[Gantt bar]				
13	Remove Existing Blacktop	3 days	Wed 25/03/09	Fri 27/03/09	0%	[Gantt bar]				
14	Roadworks	3 days	Wed 25/03/09	Fri 27/03/09	0%	[Gantt bar]				
15	Remove Existing Blacktop	3 days	Wed 25/03/09	Fri 27/03/09	0%	[Gantt bar]				

Notes

- Task: [Blue bar]
- Milestone: [Blue diamond]
- External Tasks: [Dashed line]
- Split: [Blue bar with arrow]
- Summary: [Blue bar with arrow]
- External Milestone: [Blue diamond]
- Progress: [Black bar]
- Project Summary: [Blue bar with arrow]
- Deadline: [Blue bar with arrow]

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*[Handwritten signatures and scribbles]*