

Proposed Settlement of SDS Provider Claim

Steve

Further to our discussions last week I set out below the principles of the agreement we reached.

1) Basis of Claim Settlement

The agreed payment in the sum of £2.5 million is to be in full and final settlement of all issues raised in your claim letters dated 31 May 2007 and 28th June 2007 (and attached materials). This addresses all delay, prolongation and disruption issues arising from the various Heads Of Claim set out in your submissions i.e. Critical Issues, Changes, Charettes, Additional Scope etc. All these claims are extinguished and there will be no further delay, prolongation or disruption claims from SDS Provider in respect of any issues arising up to and including 18 August 2007 under the Heads Of Claim detailed in your submissions or otherwise. **tie's** acceptance to make payment in this manner will not constitute any acceptance of or concurrence with your interpretation of the SDS Provider Contract and related claimed entitlements. (Andrew do we need to say this?)

2) Variation/Changes

The settlement sum of £2.5 million includes all amounts accepted by **tie** as due in respect of the Changes and Proposed Changes referred to in the Heads of Claim together with all related SDS Provider costs in respect of:-

- all SDS Provider Services and Deliverables necessary to redesign the Edinburgh Tram Network to implement the changes to the Depot resulting from the value engineering exercises undertaken by the Project and to take advantage of the removal of the EARL constraints. This includes the raising of the Depot level, rerouting of utility diversions, rearrangement of PWay, replacement of the piled wall along the A8 with soil stabilisation and all other related changes referred to in the various meetings held on the subject of Depot Works (Note:- Details to be included in legal settlement letter);
- providing all technical support on and off site required to address any utilities design issues arising from the MUDFA works and resolution by the SDS Provider of any technical queries arising from the MUDFA works contractor's use of SDS Provider design within the timescale necessary to avoid delays to the progress of the MUDFA and tram infrastructure installation works;
- all SDS Provider Services and Deliverables necessary to redesign the Edinburgh Tram Network for the omission of structure S33 (Overbridge at Ingliston), including relocation of the Ingliston tramstop, liaison and co-ordination with the Ingliston Park and Ride designer.

3) Payment Of The Settlement Sum

The Settlement Sum of £2.5 million will be paid by **tie** pursuant to the terms of the SDS contract in four tranches as follows:-

- the first tranche payment of £500k under the October 2007 payment certification issued by **tie**;

Without Prejudice

- the second tranche payment of £500k in the payment certification issued by **tie** following the satisfactory delivery to **tie** of the last completed Utilities issued for construction design package for Phase 1a to support **tie's** MUDFA contract with AMIS;
- the third tranche payment of £500k in the payment certification issued by **tie** following the satisfactory delivery to **tie** of the last completed Detailed Design package for Phase 1a as issued by SDS under a Notification Of Completion letter;
- subject to achieving the criteria for the third tranche payment the fourth and final tranche payment of £1.0 million in the payment certification issued by **tie** following the satisfactory delivery to **tie** of the last completed Design Assurance package for Phase 1a.

We confirm that SDS will be delivering all remaining Services and Deliverables to the contractual SDS Provider Version 18 programme. As we have advised in our various discussions, delivery of all the designs to the fixed programme dates is required to enable the Project to successfully close its procurement phase by 28th January 2008 and avoid additional costs which would jeopardise the affordability of the scheme.

We will prepare the draft legal settlement within the next 10 days for agreement with you by early September. We will then put the proposed settlement to the Tram Project Board in September, following whose approval the first tranche payment will be made as outlined above.

I would like to thank you for the pragmatic approach you have applied to achieve this draft settlement.