

City of Edinburgh Council ("CEC")

Scottish Water ("SW")

The Edinburgh Tram Project

Draft Heads of Terms in relation to Settlement Agreement

Background	
Parties	CEC and SW (together the "Parties").
Project	The Edinburgh Tram Project (the "Project").
Definitions	[]
General	<p>CEC and SW seek to regulate their ongoing and future relationship with specific regard to the obligations and liabilities which arise in relation to SW assets which have been, or may be, affected by the works undertaken as part of the Project (the "SW Assets").</p> <p>These Heads of Terms set out the basic principles which will form the basis of the agreement between the Parties.</p> <p>Following agreement of these Heads of Terms, CEC and SW will enter into a settlement agreement (the "Settlement Agreement") for the purposes of formally recording the terms of the consensus reached.</p> <p>The Settlement Agreement should act as a single point of reference for any future issues which arise between CEC and SW as to the existence of current and future obligations and liabilities for and relating to SW ETN assets.</p> <p><i>[CEC to advise any further input required in this respect]</i></p>
SW Position Papers	<p>SW have raised a number of issues in respect of the SW Assets, through the presentation of Position Papers.</p> <p>The title and reference number in the Position Papers, relevant to a particular issue, have been used in these Heads of Terms for the purpose of identifying the issue (for example: St Andrews Sq Drainage (24A))</p>
Commercial Settlement	
Payment	CEC will make payment to SW in the sum of £700k (the "Settlement Sum").
Full and Final Settlement	Payment of the Settlement Sum will be made in full and final settlement of all claims, past, present or future, arising from or related to any SW Assets, subject to CEC's obligations to make payment of certain extra over costs ("EOC") insofar as they are specifically defined herein.
SW Entitlement	<p>SW has no further entitlement to payment from SW, beyond the Settlement Sum and the sums paid to SW <i>[insert details of SW Final Account Payment in Autumn 2013]</i> subject to:</p> <ul style="list-style-type: none"> • CEC's obligation to make payment of certain EOC, insofar as they are

	<p>specifically defined herein; and</p> <ul style="list-style-type: none"> any outstanding TQ costs which remain payable by CEC to SW [<i>are these the same as extra over costs? CEC to provide further information in respect of TQ Costs and list of specifically what these are</i>]; In respect of Post September 11 Costs (7A) and Staff Resourcing (8A) SW is only entitled to recover TQ costs on close out actions.
EOC	CEC will make payment of certain EOC, insofar as they are specifically defined within these Heads of Terms (see below) and further defined within the Settlement Agreement.
Access to SW Assets	
Access	SW will be entitled to gain access to all SW Assets in accordance with [<i>PM to review details of relevant applicable statutes relating to SW access rights</i>]
Possession Protocol and Possession Period	<p>[<i>CEC to provide details of relevant Possession Protocol and Possession Periods – is this in accordance with HAUC Advice No. 2010/1?</i>]</p> <p>[<i>PM to review relevant regulatory provisions in respect of access and possession periods</i>]</p>
Cost of Access	SW shall not be entitled to be reimbursed by CEC for the cost of accessing any of the SW Assets, other than where these Heads of Terms, and thereafter the Settlement Agreement, specifically identify the nature of the access which SW requires as being an EOC which CEC is liable for.
Remedial Works, Defects and Payment of EOC	
Remedial Works	<p>Certain remedial works require to be undertaken in respect of and relating to the SW Assets (the "Remedial Works").</p> <p>The carrying out of these Remedial Works will be provided for under the terms of the Settlement Agreement.</p>
SW - Remedial Works	<p>The following is a non-exhaustive list of those Remedial Works which SW will be required to undertake under the Settlement Agreement.</p> <ul style="list-style-type: none"> 450 Thrust Block (17A) – SW to execute work to Thrust Block to existing 450mm diameter ductile iron water main at Bankhead Drive. This work should be carried out at market rates and charged to CEC as an EOC. <p>[<i>CEC to confirm the above works are to be carried out by SW, the time period in which these works should be carried out, and the extent of CEC's liability. CEC also to confirm in respect of any other works to be carried out by SW</i>].</p>
CEC Remedial Works	<p>The following is a non-exhaustive list of those Remedial Works which CEC will be required to undertake under the Settlement Agreement.</p> <p>These CEC Remedial Works include, but are not limited to, the following SW issues:</p> <ul style="list-style-type: none"> Leith (Picardy to Granton): Upon opening up of the apparatus at the time of executing the Leith tram line extension; or within 10 years; or

	<p>in the event of failure [of the apparatus] (whichever is the earlier) CEC to remediate work commenced by MUDFA and not completed to prevailing (2007 – 2009) standard. CEC shall bear the cost only to the extent of remediating the work to the prevailing 2007 – 2009 standard. The cost of any betterment beyond the 2007-2009 standard shall be borne entirely by SW. <i>[Can CEC provide a better definition of "2007-2009" standard?]</i></p> <ul style="list-style-type: none"> • Fire Hydrants (3A): 100 Hydrant caps are to be supplied. These should be supplied in accordance with BS5750. CEC will (i) ensure the stand pipe can be fitted; (ii) replace the Shandwick Place hydrant; and (iii) ensure the Broughton hydrant is operational. • Lead Replacement (9A): Lead pipe replacement in Leith is to be revisited and insofar as possible replaced in 2013. In the event of further excavations then opportunistic replacement will be executed. CEC to provide all necessary works information as is necessary to assist SW with cost recovery. • West Register Street (15A): 3 options have been proposed for resolution of this issue CEC to agree with SW which issue is suitable and thereafter progress. <p><i>[CEC to confirm the above works are to be carried out by CEC. CEC also to confirm in respect of when these works will be carried out and who will bear the cost burden of carrying out these works]</i></p>
<p>Infraco Remedial Works</p>	<p>CEC and SW acknowledge that there are certain remedial works which require to be carried out by Infraco. These include, but are not limited to:</p> <ul style="list-style-type: none"> • St Andrews Sq Drainage (24A) <i>[CEC to provide details of remedial works]</i> • SAS MH North (FIM) 71-75 (51A) <i>[CEC to provide details of remedial works]</i> <p>CEC and SW acknowledge that once complete, these works will be signed off by T&T.</p> <p><i>[CEC to confirm that the above works are to be carried out by Infraco and advise of any further relevant Infraco Works]</i></p>
<p>Cost of Remedial Works</p>	<p>Each party shall bear their own costs of carrying out any Remedial Works, except insofar as these Heads of Terms and the Settlement Agreement provide that CEC is obliged to make payment of EOC in respect of any Remedial Works.</p> <p><i>[CEC to confirm]</i></p>
<p>Defects Liability Period</p>	<p>A defects liability period of 2 years (the "Defects Liability Period") shall run in respect of the following SW issues:</p> <ul style="list-style-type: none"> • Defects - general (14A); • York Place – leaking couplers (13A) • York place – power ducts (40A) • Leaking DAV at Gogar Depot (41A) • York Place – Sections of main in concrete (42A)

	<ul style="list-style-type: none"> • York Place/St Andrews Street Junction – restricted access to 125mm watermain (43A) • Seized SV bypass at Palmerston Place (50A) • Carrick Knowe - Displaced Joint (52A) <p>The Defects Liability Period shall commence upon [handover] of the asset <i>[CEC to provide information in respect of commencement of DLP and advise whether scope of DLP should be extended]</i></p> <p>[NB: The EOC items referred to above are also referred to in other parts of these Heads of Terms. This Term listing them all is intended to act as an easy access reference point which collates all those instances where CEC is liable for EOC]</p>
<p>Defects – Transfer of Assets</p>	<p>[CEC to provide back to back defects liability per Infraco and McNicholas contract.]</p> <p><i>[Further information and explanation required from CEC in terms of what is trying to be achieved, in order to develop this Term. PM will require sight of McNicholas contract.]</i></p>
<p>CEC Obligation to make payment of EOC</p>	<p>The following is a [non-exhaustive/definitive] list of those SW Assets and related work items, and Remedial Works in respect of which CEC will have an obligation to make payment of EOC:</p> <ul style="list-style-type: none"> • SW Assets within DKE+2m Zone - Where SW Assets remain within the DKE+2m Zone, CEC shall make payment of all EOC related to [access/other]. <i>[CEC to confirm and provide further information in respect of what EOC]</i> • Haymarket Yards - pipe under kerb and in DKE (49A) – CEC shall be obliged to make payment of EOC in the event of the failure of buried infrastructure. • Dublin Street Steps (10A) - CEC shall pay all EOC in the event that of a failure of the buried infrastructure. • York Place Piling (27A) - CEC shall pay all EOC in the event that of a failure of the buried infrastructure. • Princes Street Gardens (11A) - CEC shall pay all EOC in the event that of a failure of the buried infrastructure. • Jenners (56A) - CEC shall pay all EOC in the event that of a failure of the buried infrastructure. • <i>[CEC to provide further information in respect of the extent and period of liability for EOC which CEC is willing to accept. This should be clearly defined].</i> • <i>[[Fire Hydrants] - CEC to confirm re EOC]</i> • <i>[[Lead Replacement] – CEC to confirm re EOC]</i> • Legacy Handover Packs – CEC to pay reasonable EOC for SW to carry out completion survey works, subject to SW providing CEC with a Cost Estimate.
<p>Consequential Loss</p>	<p>CEC shall not be liable for any consequential loss suffered by SW.</p>

Buildover Agreements	
Deeds of Servitude (2A)	<p>There are in total 8 areas (12 Deeds of Servitude required) where infrastructure is within private or adopted land. The land ownership in some cases is split between CEC and other private landlords. In cases where there is split ownership, a Deed of Servitude is required for each owner.</p> <p>CEC shall obtain all private landowner's agreement in respect of Deeds of Servitude.</p> <p><i>[CEC to confirm position in respect of costs for progressing Deeds of Servitude]</i></p>
Scope Drawings (19A)	<p>CEC has provided SW with a series of drawings on 16/11/12 showing items including landscaping, tram stops, road surfacing, substations and OLE's which may affect SW assets.</p> <p>CEC to advise whether planting, kerbing and handrails proposals are compliant with Sewers for Scotland (second edition) and Water for Scotland (second edition). If not proposals should be updated to meet the specification and demonstrate to SW that they have complied.</p> <p>CEC should also ensure that all proposals are compliant with legislation including potential kerbing over water-mains.</p> <p><i>[CEC to confirm position in respect of costs for progressing Deeds of Servitude]</i></p>
Haymarket Viaduct (35A)	<p>The future SW access to the manhole has not been considered as part of the viaduct design process and therefore no access hatch has been provided. To assist CEC, Network Rail have agreed to provide the access hatch in their transition slab for their station construction currently under</p> <p>A three-way buildover agreement is required between Scottish Water, CEC and Network Rail.</p> <p>CEC shall procure the requisite access agreement from Network Rail.</p> <p><i>[CEC to provide further details, including timescales for procuring access agreement]</i></p>
Haymarket Yards Pipe under kerb and in DKE (49A)	<p>Following the SW pipe diversion at OLE 200+202, a 63mm pipe is now known to be under 1m concrete and kerb line and within DKE+2Mzone.</p> <p>CEC shall pay all EOC in the event that of a failure of the buried infrastructure.</p> <p><i>[CEC to provide further information in respect of the extent and period of liability for EOC which CEC is willing to accept. This should be clearly defined].</i></p>
Cost Neutrality	
Cost Neutrality	<p>SW shall not be entitled to be kept "cost neutral" in respect of all work and access issues relating to SW Assets.</p>
SW Assets within DKE+2m Zone	<p>Where SW Assets remain within the DKE+2m Zone, CEC shall make payment of all EOC related to [access/other].</p> <p><i>[CEC to confirm and provide further information in respect of what EOC]</i></p>

	<i>Payments for assets within DKE+2mZone relate to and extent of liability]</i>
Dublin Street Steps (10A)	<p>CEC has proposed constructing a ramp as part of the trams work on top of a 12" CI water main running along Dublin Street.</p> <p>CEC shall pay all EOC in the event that of a failure of the buried infrastructure.</p> <p><i>[CEC to provide further information in respect of the extent and period of liability for EOC which CEC is willing to accept. This should be clearly defined].</i></p>
Buried Infrastructure	<p>CEC shall make payment of all EOC where SW Assets are buried beneath Project infrastructure, in respect only of the following instances:</p> <ul style="list-style-type: none"> • York Place Piling (27A); • Princes Street Gardens (11A); and • Jenners (56A) <p><i>[CEC to provide further information in respect of the extent and period of liability for EOC which CEC is willing to accept. This should be clearly defined].</i></p>
Deliverables	
Stray Current	<p>Under the Infraco Contract, Infraco is obliged to ensure that elements of the system integration of the Infraco Works are implemented, including management of technical interfaces including system wide issues such as electromagnetic compatibility and stray current protection, noise, vibration and wheel/rail interface ensuring that each and every material issue arising is satisfactorily closed out following completion of construction, reinstallation or renewals and thereafter maintained as part of the Maintenance Services.</p> <p>CEC will share with SW, all information received from Infraco and Operator, which relates to the monitoring of stray currents which may affect or impact upon any of the SW Assets.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
MUDFA	<p>CEC to confirm and record known position of MUDFA.</p> <p>CEC to provide to SW all Health and Safety packages related to MUDFA.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
Health and Safety Files	<p>CEC to provide SW with all works Health and Safety files executed by McNicholas.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
Gogar - private supply pipe under	<p>CEC and T&T have stated that an agreement has been reached in principle which deals with the issue of how any future repairs will be carried out this</p>

tram tracks (7A)	<p>water-main in the event of failure under the tracks.</p> <p>CEC should provide evidence of this Agreement, to SW.</p> <p><i>[CEC to confirm substance of Agreement to ascertain whether this issue can be included at any other part of these Heads of Terms].</i></p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
Gogar: Landfill Sewers (16A)	<p>CEC and T&T have stated that an agreement has been reached in principle which deals with the fact that these works were not constructed to an agreed IFC Drawing.</p> <p>CEC should provide evidence of this Agreement, to SW.</p> <p><i>[CEC to confirm substance of Agreement to ascertain whether this issue can be included at any other part of these Heads of Terms].</i></p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
Site Wide Drainage Connections	<p>CEC to issue A8 Adoption Documents to SW.</p> <p>CEC to procure T&T to provide SW with a list of all drainage connections.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be shared and timescales relating thereto]</i></p>
Legacy Handover Packs	<p>SW to provide CEC with cost estimate for price of carrying out completion survey works.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be obtained and timescales relating thereto]</i></p>
Post September 11 Handover Packs	<p>SW to provide CEC with confirmation that T&T have issued all information packages.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be obtained and timescales relating thereto]</i></p>
Carrick Knowe (32A)	<p>[CEC/SW] to procure report from T&T confirming that there is no remaining issue.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be obtained and timescales relating thereto]</i></p>
Carrick Knowe Joint (52A)	<p>[CEC/SW] to producer corrective action proposal from T&T, which will be given by CEC to SW.</p> <p><i>[CEC to confirm position in respect of exact nature of information to be obtained and timescales relating thereto]</i></p>
No Action Required	
No Action Required	<p>The following is a non-exhaustive list of SW Asset related issues in respect of which no further action is required, or cost liability is owed, by CEC to SW:</p> <ul style="list-style-type: none"> • CCTV (20A) • Russell Road Service (26A) • Elder Street Sewer (29A)

	<ul style="list-style-type: none"> • Water of Leith Manhole (30A) • Bankhead Drive (31A) • Bylaws (33A) • Training (37A) • Repairs to Crawley Tunnel (44A) • Steel Place between gas and water (45A) • Service Crossing to St Johns Church (46A) • Mound 315mm crossing close to gas (47A) • Manhole - St Andrews Square (51A) • Generic Water Gas Separation (55A) <p><i>[CEC to confirm the position in this respect]</i></p>
Grosvenor Street Sewer Collapse (39A)	<p>The Parties agree that</p> <ul style="list-style-type: none"> • SW will seek to recover any costs from its Insurer; and • CEC shall have no continuing liability in respect of the Grosvenor Street Sewer Collapse. <p><i>[CEC to confirm the position in this respect]</i></p>
Entire Agreement	
Entire Agreement	The Settlement Agreement will constitute the entire agreement between the parties and will supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
TEL Agreement	The Parties acknowledge that the draft "TEL Agreement" was never entered into or executed by either Party and therefore has no legal binding effect of any kind whatsoever.
Derogations Agreement	The Parties acknowledge that the draft "Derogations Agreement" was never entered into or executed by either Party and therefore has no legal binding effect of any kind whatsoever.
General Legal Provisions	
Force Majeure	<i>[CEC to discuss with PM any need for provisions in respect of force majeure]</i>
Assignment/Sub-Contracting	<i>[CEC to discuss with PM any need for provisions regulating the use of sub-contractors]</i>
Dispute Resolution	<i>[CEC to discuss with PM options for DRP clauses]</i>
Reservation of Rights	<i>CEC have stated : "Each party not to deprive rights of the other (material interference test)" Further discussions and information required to ascertain what this seeks to achieve.</i>

Privileged and Confidential

FOISA Exempt

Draft

Limitation of Liability	<i>[CEC to discuss with PM any need for provisions regarding a limitation of liability].</i>
Confidentiality	The Settlement Agreement shall contain a confidentiality clause restricting the ability to communicate the terms of the Settlement Agreement.
Law	The Settlement Agreement will be governed by the law of Scotland and the Parties shall be subject to the exclusive jurisdiction of the courts of Scotland.
Costs	The Parties shall each pay their own costs in respect of these Heads of Terms and the Settlement Agreement.