

Without Prejudice

**“Proposed Settlement of SDS Provider Claim
Without Prejudice**

Steve

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

1) Basis of Claim Settlement

The settlement 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 includes addresses all delay, prolongation and disruption issues arising from the various Heads Of Claim set out in your submissions i.e. critical Critical issues 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 18th [21st] August 2007 from under the Heads Of Claim referred to detailed in your submissions or otherwise. **tie's** acceptance to make payment in this manner will not constitute any binding acceptance of or concurrence with your interpretation of the SDS Provider Contract and related claimed entitlements.

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2) Variation/Charges 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 appended schedule Heads of Claim together with all related SDS Provider costs in respect of:-

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- 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 [**Geoff - can we be specific?**] held on this the subject of Depot Works;
- 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 a 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 IPR the Ingliston Park and Ride designer and all other third parties. [**Geoff - who is meant here?**]

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3) Payment Of The Settlement Sum

The Settlement Sum of £2.5 million will be paid by **tie** in four tranches as follows:-

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- the first tranche payment of £500k under the October 2007 payment certification issued by **tie**; [**Geoff - there is no condition here. Is this element of money released simply as an additional amount irrespective**

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of level of certification or against delivery of some agreed/contracted deliverable as in the case of tranches 2,3 and 4?

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

[Geoff - what happens, for example, if PB fail to achieve last completed Utilities design package for period of 3 months beyond programme but manage to hit the fourth tranche trigger date. Would they get tranche four but not tranche three? Do they ever lose tranche three?]

We confirm that SDS is proposing to will be delivering the remainder of its all remaining Services and Deliverables to the contractual SDS Provider programme in accordance with the Version 18 ***[Geoff - is this tie's or SDS Provider's?]*** programme. As we have advised in our various discussions, delivery of all the designs to the fixed programme dates is required critical to enable the Project to successfully close the its procurement phase of this project by 28th January 2008 and avoid additional costs which is likely to would seriously jeopardise the affordability of the scheme. **tie** has taken note of the positions and points made in your letter of 7 August. I do not propose to respond here in detail in the light of what we have now achieved. However, I We need to put on record that as a result of material and lengthy periods of underperformance by Parsons Brinckerhoff, **tie** management took advice on the issuing of a contractual Persistent Breach Notice on three separate occasions. In the interests of maintaining the working relationship we have now taken steps moved jointly to repair, **tie** decided not to take that step despite advice that there was more than sufficient justification.

We will prepare the draft legal settlement within the next two weeks 10 days for agreement by SDS with you by the end of August 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."

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