

**APPLICATION FOR FUNDING
UNDER SECTION 70 OF THE TRANSPORT (SCOTLAND) ACT 2001**

**FOR UTILITIES DIVERSIONS AND CONTINUING DEVELOPMENT AND
PROCUREMENT OF PHASE 1A OF THE EDINBURGH TRAM NETWORK
REQUIRED BY THE CITY OF EDINBURGH COUNCIL**

SCHEDULE OF TERMS AND CONDITIONS

CONDITIONS OF GRANT

1 The offer of grant to the Council referred to in the attached letter shall be subject to the following terms and conditions.

Interpretation

2 In this Schedule -

“**the Council**” means **City of Edinburgh Council**;

“**financial year**” means 1 April in a year to 31 March in the following year;

“**grant**” means the grant offered to the Council by the Scottish Ministers under Section 70 of the Transport (Scotland) Act 2001 as specified in the foregoing letter and the provisions of this Schedule;

“**grantor**” means the Scottish Ministers; and

“**project**” means the Edinburgh Tram Network as defined in the draft Final Business Case for the Edinburgh Tram Network dated November 2006.

unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

the headings in this letter are for convenience only and shall not be read as forming part of the conditions or taken into account in their interpretation;

save as otherwise provided herein, any reference to a clause, paragraph, sub-paragraph shall be a reference to a clause, paragraph, subparagraph of this letter.

Purpose

3 The grant shall be used only for the purpose of continuing the development and procurement of Phase 1a of the Edinburgh Tram Network and for advance works and utilities diversions needed for that phase incurred between 1 April 2007 and 31 March 2008.

Payment

4 The sum awarded in the offer of grant shall not exceed £60,000,000. Where the Council is claiming the grant for costs which include VAT, the VAT shall be included in the total grant payment of £60,000,000. The grant will be paid to the Council in accordance with Appendix 1 attached to the provisions of this Schedule and shall begin as soon as reasonably practicable after the date of acceptance of the terms and conditions in this Schedule and on receipt of a valid grant claim from the Council.

5 No part of the grant shall be used to fund any activity carried out, or material published by the Council Council, which is partly political in intention, use, or presentation or appears to be designed to affect support for a political party.

6 The grantor may refuse to make any or all payments if they are not satisfied that the Council will use the grant for the purpose determined in paragraph 3. Further the grantor may refuse to make further payments if they are not satisfied that the previous instalment paid to the Council has been used for the purpose determined in paragraph 3.

7 The Scottish Ministers shall not be bound to pay to the Council any sum by way of grant in excess of the amounts specified in the offer of grant.

Audit Certificate

8.1 For payments of the grant made up to and including 31 March 2008, the Council shall by 30 June 2008 submit to the grantor an audit certificate.

8.2 The audit certificate shall be prepared by the Council's Head of Internal Audit, by the Council's Director of Finance or by external auditors in a style approved by the grantor. The audit certificate shall show actual expenditure met from the grant. Irregularities within the audit certificate shall be treated as a breach of this condition and shall be consequently subject to the provisions of paragraph 11 of this Schedule.

Inspection of the Council's Accounts and Records

9.1 If the grantor considers it necessary to gain access to and inspect the Council's accounts and records to verify the proper use of the grant in accordance with paragraph 3, the Council shall on a 7 days written notice issued by the grantor, make all his accounts and records available. Should the grantor exercise this right of inspection, the grantor shall keep the contents of the accounts and records confidential. However the duty of confidentiality shall not prejudice the grantor from using the information in the management of the grant nor from any action the grantor wishes to take in accordance with paragraph 11.

9.2 If the grantor considers it necessary to gain access to and inspect the accounts and records held by tie ltd (a company limited by guarantee and owned by City of Edinburgh Council) to verify the proper use of the grant in accordance with paragraph 3, the Council shall take all reasonable steps to ensure on a 7 days written notice issued by the grantor, that tie ltd makes all his accounts and records

available. Should the grantor exercise this right of inspection, the grantor shall keep the contents of the accounts and records confidential. However the duty of confidentiality shall not prejudice the grantor from using the information in the management of the grant nor from any action the grantor wishes to take in accordance with paragraph 11.

Alteration of the contractual relationship between tie ltd and the Council

10.1 Should an alteration of the contractual relationship between the Council and tie ltd be contemplated prior to 31 March 2008, the Council shall immediately inform the grantor in writing of the possibility of the alteration and describe the nature of the possible alteration.

10.2 The Council shall not proceed with any alteration of the contractual relationship prior to 31 March 2008, without the prior approval and consent of the grantor. Such consent shall not be unreasonably withheld.

10.3 Should the contractual relationship be altered without the consent of the grantor prior to 31 March 2008, the grantor on the provision of 30 days written notice to the Council may, but shall not be bound to -

- (a) reduce the grant which it pays to the Council, or,
- (b) terminate the accepted offer of grant

Compliance with Law

11 The Council shall ensure that during the duration of its Operating Agreement with tie ltd that it and tie ltd (only when tie ltd are acting in terms of the above Operating Agreement), comply with the law in force in Scotland and in particular will not commit any act of discrimination rendered unlawful by the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 (as such legislation may be amended or re-enacted from time to time) or any other legislation relating to discrimination on any ground whatsoever.

Publicity

12.1 The Council shall where reasonably practicable acknowledge in all publicity material relating to the Edinburgh Tram Network in respect of which the grant is expended, the contribution of the grantor to the costs. The form of such acknowledgement shall be agreed between the Council and the grantor prior to its first publication.

12.2 The Council shall within 30 days of acceptance of the grant offer agree with the Scottish Ministers a communications strategy for the project. The Council shall where reasonably practicable comply with the arrangements set out within the communications strategy.

12.3 The Council shall where reasonably practicable ensure that any organisation acting on its behalf, including but not limited to tie ltd or any public relations company, shall comply with the arrangements set out within the communications strategy.

Default

13.1 The Council shall repay either the whole amount of the paid grant, or such part of the grant as the grantor may notify to the Council, if-

- (a) the Council fails to comply with any of the terms and conditions specified in this Schedule,
- (b) the Council gives at any time any false or misleading written information to the grantor in relation to the grant, and the Council does not do that because of inadvertent error or omission, or
- (c) the Council fails to spend the grant for the purpose specified in paragraph 3.

13.2 If the Council has to repay any amount of the grant to the grantor under this paragraph, the Council shall pay to the grantor the appropriate sum within 30 days of a written demand from the grantor. If the Council fails to pay within the period of 30 days, the grantor shall be entitled to interest on the due amount from the date of the written demand until payment of the full amount. The interest is made at the rate of 2% per annum above the base lending rate (or any successor to same) of the Royal Bank of Scotland plc prevailing at the time of the written demand.

13.3 Any breach of the terms and conditions (in accordance with paragraph 13.1(a)), which is capable of remedy, will not be deemed a breach until the Council has received notification about the breach from the grantor. The notification may require the Council to remedy the breach within a specified period, which must be at least 30 days. If the Council fails to remedy the breach within the specified period, the Council shall repay the appropriate sum to the grantor in accordance with the provisions of paragraphs 13.1 and 13.2.

13.4 If the grantor fails, omits or delays exercising any right or remedy under this paragraph, this shall not be construed as a waiver of the right or remedy.

13.5 If any of the events specified in clauses 13.1 to 13.2 occur within the duration of the accepted offer of grant, the grantor shall be under no obligation to pay the grant, or the remaining balance thereof, to the Council and the Council shall be deemed to have forfeited all claims and rights to, or arising out of or in connection with, the accepted offer of grant.

13.6 The provisions of this paragraph 13 shall continue to apply for a period of three years after the end of the financial year in which the final instalment of the grant was paid.

Notices

14 Any document, notice, statement or other thing under the terms and conditions of this Schedule may be given or served personally, or sent by first class recorded delivery post at or to:

- (a) if it is for the grantor, either to, Lorna Davis, Transport Scotland, 7th Floor, Buchanan House, 58a Port Dundas Road, Glasgow, G4 0HF or to an address as notified to the Council; and
- (b) if it is for the Council, at or to the address specified in the award letter or at or to another address as notified by the Council to the grantor.

15 Any document, notice, statement or other thing given or served by post in accordance with the foregoing paragraph shall be deemed to have been duly given or served on the second business day after the letter was posted. To prove that, it shall be necessary only to show that the letter was properly addressed and posted.

Project Management and Controls

16 The project governance arrangements shall be those agreed at the Tram Project Board on 25 September 2006 and shall only be amended with the agreement of the Scottish Ministers.

17 The Council shall ensure that action plans for any recommendations arising from project reviews (including the Readiness Review and the Gateway Review) are agreed and implemented unless otherwise agreed by the Scottish Ministers. The Council shall ensure that it has and implements an action plan to ensure lessons from other projects it is involved in are applied to this project.

18 The Scottish Ministers have established the following project hold points at which the Council and the Scottish Ministers shall review whether the scheme is continuing to meet its objectives and will determine whether to continue to support scheme development and implementation. These points are based on key elements of the Final Business Case (FBC) clearly linked to the likelihood of successful implementation and viable operation of the Edinburgh Tram network.

- The Scottish Ministers shall by 31 March 2007 supply comments on the extent to which the draft Final Business Case requires to be updated before completion of the Final Business Case. The Council shall agree an action plan with the Scottish Ministers in relation to these comments within 14 days of receipt of the comments
- On receipt of best and final offers from the Infrastructure and Tram Vehicle suppliers where the review shall consider likely affordability of the scheme in the light of the funds available for implementation
- Before conclusion of negotiations with the preferred bidders for Infrastructure and Tram Vehicle supply a signed agreement shall be in place between the Scottish Ministers and the Council covering all aspects of project funding and risk allocation. A Gateway Review 3 shall also be undertaken before conclusion of those negotiations.
- Completion of the Final Business Case by 1 October 2007

19 The Council shall ensure that robust, transparent, externally verifiable project controls are in place for the project. These controls shall apply to all those involved in project delivery including but not limited to tie ltd and Transport Edinburgh Ltd as well as the Council. The Council shall work towards compliance with ISO 9000 (or equivalent standard to be agreed with the Scottish Ministers) in relation to this project and shall agree an action plan to achieve compliance.

20 The Council shall comply with Transport Scotland's project monitoring and control procedures including but not limited to the quarterly review process, 4-weekly project reporting and review, risk and opportunity reviews, Gateway Review and monitoring of action plans. The Council shall ensure that it and tie ltd take all reasonable steps to provide information comprehensively and timeously when requested by Transport Scotland on behalf of the Scottish Ministers.

Grant termination

21 Notwithstanding the provisions in paragraphs 13.1-13.3 the Scottish Ministers may but shall not be obliged to terminate grant if:

- it reasonably appears to them that the scheme will no longer have a positive Net Present Value;
- ongoing revenue subsidy for the tram operation is requested from the Scottish Ministers by City of Edinburgh Council

Project monitoring

22 The Council shall ensure that adequate internal expenditure controls are in place and that all resources are used economically, effectively and efficiently. The Council shall identify the income and expenditure relating to the project in a discrete area or cost centre of its accounting system, and a copy of the relevant accounting record shall be provided to the Scottish Ministers with the Audit Certificate referred to in paragraphs 8.1 and 8.2 above.

23 The Council shall supply to Scottish Ministers such documents and information which they may require in support of the payment of grant.

Assets and Equipment

24 The Council shall acquire prior approval from the Scottish Ministers if it or tie ltd intends to sell or otherwise dispose of any item or any series of connected or related items costing, or costing in aggregate in the case of a connected series, in excess of £10,000 which has been funded from the grant. The Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale.

Jurisdiction

25 The agreement shall be interpreted in accordance with the law of Scotland and the Council submits to the non-exclusive jurisdiction of the Scottish courts.

Assignment

26 The Council shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

Corrupt Gifts and Payments of Commission

27 The Grantee shall not offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward in relation to this Grant. The Grantee shall ensure that its employees shall not breach the terms of the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other grant.

This offer of grant is subject to the terms and conditions set out in this letter and attached annexes and remains open for acceptance for a period of 28 days following the date of this letter. If you wish to accept the offer of grant on all the conditions specified in this letter and attached annexes you should sign and date the acceptance form and the capital spending plan which will be attached as Annex C and return them to Lorna Davis, Rail Delivery Directorate, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF. Copies of the signed documentation will be sent to you for your records.

Acceptance of Conditions of Grant

On behalf of City of Edinburgh Council I accept the offer of grant set out in the Scottish Ministers' letter of 19 March 2007 and the terms and conditions contained in this Schedule.

..... Signature

..... Full Name

..... Position in Company

..... Date

..... Witness Signature

..... Full Name

..... Position in company

..... Date

Appendix 1

Payment Schedule