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Our Ref: ULE90130-SW-LET-02254

05 November 2010

**tie** Limited  
CityPoint, 1<sup>st</sup> Floor  
65 Haymarket Terrace  
Edinburgh  
EH12 5HD

Attention: Steven Bell

Dear Steven

#### Completion of Utility Works

We write in response to your letter Ref INF CORR 6073 and further to the recent meetings on the subject of the additional works that SDS have been undertaking in support of **tie** completing the Multi Utility Diversion Framework Agreement works.

This issue has been the subject of ongoing dialogue between **tie** and SDS and we had understood that this matter has been resolved previously. SDS has several examples of correspondence between **tie** and SDS which demonstrate this to be the case and we do not accept your attempts to reverse previous instructions and agreements to pay for services supplied at your delegate's request.

In addressing your most recent letter your presentation of the scope of the SDS services fails to recognise that **tie** are no longer the SDS client with the exception of the services specifically covered by the collateral warrantee in favour of **tie**. This is clearly stated in Clauses 2.2 and 3.1 of the Novation Agreement as follows;

*2.2 The Parties acknowledge that the SDS Provider and **tie** shall enter into a separate agreement in respect of certain design services connected to the implementation of the utility diversionary works for the Edinburgh Tram Network and that scope of work is not novated under this Agreement.*

*3.1 **tie** releases and discharges the SDS Provider from the further performance of the SDS Provider's duties and obligations under the SDS Agreement.*

It is clear from the above that SDS are not expected to produce any design of utility diversions for Infraco.

This is further Clarified by amendments made through the Novation Agreement to Clause 3.2.1 of Schedule 1 of the SDS Agreement which covers the Scope of services relating to the SDS provision of assistance to **tie** with the management of an advanced utilities diversion programme. This Clause was deleted at the point of Novation from the SDS Agreement and 3.2.2 which previously stated;

*3.2.2 The SDS Provider shall be responsible for the management for the determination and design of all the other utility diversions which are to be undertaken by the Infraco.*

was amended to include after 'prior to the date of the Novation Agreement ' after shall.



It is clear from the original SDS Agreement and modifications to the relevant clauses in the Novation Agreement that SDS provide no assistance to Infracore as the SDS Client for critical utilities design as had previously been the case solely under the SDS Agreement prior to Novation. Therefore the only mechanism for delivery of critical utilities design was in the separate agreement entered into by SDS and **tie** in respect of certain design services connected to the implementation of the utility diversionary works i.e. the Collateral Warrantee in favour of **tie**.

At the time of Novation of the SDS Agreement to Infracore a review of the status of the design was undertaken by **tie** and SDS and the work required to complete the services identified. The works for which SDS are responsible for delivery to **tie** are included in the Collateral Warrantee along with the associated fee payable to SDS as detailed in Clause 9 ONGOING SCOPE OF SERVICES TO **tie**. The particular clauses are as follows;

*9.1 The SDS provider undertaken to **tie** to perform and **tie** agrees to pay for the Services set out in the Schedule on behalf of **tie** as the Client in accordance with the terms of the SDS Agreement and as if the Novation Agreement had not been entered into and:*

*9.1.1 in respect of Schedule Part 1 a lump sum of £103,744 is payable, together with any further payment in respect of changes which will be valued in accordance with the Schedule or in accordance with the estimate for the change; or*

*9.1.2 in respect of Schedule Parts 2 and 3 at the rates set out in the Schedule.*

Schedule Part 1 referred to in 9.1 refers specifically to Appendix A for the scope of the works for the lump sum elements. Appendix A makes no reference to the provision of As-built information for the sections of works described or the previous critical design produced by SDS.

It has consistently been the SDS position that the production of as built drawings other than for areas of critical design was not in the scope of the SDS works and is classed as additional work.

SDS has offered to support **tie** in undertaking numerous works in relation to the MUDFA scope that are not part of the scope or fees identified in Appendix A of the collateral warrantee at the direct request of **tie**. These issues were reviewed and the arrangements further agreed at a meeting held on 17 December 2009 and the outcome presented in subsequent correspondence.

In order to allow **tie** to move this issue forwards, SDS and **tie** agreed a protocol for the production of the As-built drawings and other non SDS scope items in order to maintain momentum on the delivery of the MUDFA works. The discussions of 17 December are recorded in SDS letter ULE90130-SW-LET-01830 and **tie** responses in letters INF CORR 3363/DC and INF CORR 3364/DC dated 1 February. The letters detail the agreement between **tie** and SDS made at the meeting in December to progress these works.

In relation to the As Built Drawings, **tie** letter ref INF CORR 3363/DC, '**tie** agrees to pay for SDS resources necessary for the completion of as-built Documents for Utilities'. Para 2. The letter also details an associated credit for work that **tie** considered to be part of the existing SDS scope, which SDS did not agree and this was the subject of further correspondence SDS letter ULE90130-SW-LET-01917 of 10 March 2010 in which SDS presented a lump sum price to complete the works of £149k against a valuation of £174k. The agreement to pay for the SDS resources to produce as built drawings resulted from a general recognition by **tie** that even if SDS did concede that as built drawings were part of the SDS scope, the quality of the information being made available by the MUDFA teams to form the as-built drawings did not enable SDS to up revise design drawings to as-built status due to changes that had been made by the contractors on site. There were numerous



inconsistencies between the available sources of as-built information that was made available to SDS from the MUDFA teams that required Engineering analysis and resolution through discussion with the MUDFA team. For these reasons agreement was reached on both sides that SDS were to be paid for the interpretation of the as built information, modifications to the utilities design drawings and issue of the drawings. Further discussions were held on this subject between your Mr Frank McFadden and Jason Chandler and a figure of £125k was agreed and confirmed by your Mr David Carnegie by e mail on 29 April 2010. This agreement to pay for the associated resources was understood by SDS to be the resolution to this issue. SDS has incurred considerable cost during the production of as-built records and **tie** are fully aware of the problems that have occurred in the production of the drawings for which SDS were not responsible. We had understood through the agreements made between SDS and **tie**, reinforced by correspondence of clarification that these issues were agreed.

In relation to the Infrastructure Conflicts, at the time of the meeting on 17 December the existing order for SDS works to resolve utilities conflicts had reached the financial limit and an increase was required. This was confirmed in **tie** letter ref INF CORR 3364/DC which stated, *'without prejudice and in the interests of completion of this task, tie will provide an extension to the Order, based on the meeting on 20 January 2010 between tie and SDS to confirm a new not to be exceeded value to cover the remaining requirement which will be paid on approved timesheet hours.* This additional order cover was agreed and Change Orders 157 and 161 issued by **tie** to SDS, the latest under cover of letter INF CORR 4644/DC on 2 April 2010. Again, we assume that these instructions will be sufficient to secure payment.

Various redesigns have been undertaken by SDS as detailed in SDS letter ULE90130-SW-LET-01780 of 9th November 2009, at the request if **tie**. Payment for these works was agreed by **tie** in your letter INF CORR 3364/DC of 1 February, para 3. *'tie is content for you to proceed with this work up to a not to exceed level of £60,000. Payment will be made on the basis of approved timesheet hours'.*

SDS have also provided a full time member of staff at **tie's** request to assist **tie** on sit with MUDFA related clarifications, see letter 25th November 2009. **tie** requested the full time dedicated SDS resource due to a decision by **tie** to change not only the contractor undertaking the MUDFA works in the area but also the contract type used to engage the contractor. A dedicated resource was deemed to be required by **tie** to provide support to the appointed contractor on site. The dedicated resource for Section 1A was also instructed in point 4 of your letter INF CORR 3364/DC of 1 February agreeing a not to be exceeded value of £50,000. This was extended by your letter INF CORR 5259/DC of 3 June 2010 to a not to be exceed value of £95,000.

**Tie** also requested a further dedicated resource from SDS to for Section 1C and 1D of the MUDFA works. As detailed in **tie** letter ref CORR 5259/DC of 3 June 2010. Mr Richard Welsby undertook the duties at **tie's** request to close out Technical Queries on Sections 1C and 1D and a not to be exceed value for these works of £42,000 was agreed by **tie**.

SDS has continued to support **tie** through the completion of the MUDFA works with the supply of numerous issues that were outwith the scope of SDS services detailed in the collateral warrantee lump sum specified particularly in Appendix A as well as services that are totally outwith the scope of the original SDS Agreement. SDS has secured agreement for the supply of these services on agreed rates as per the requirements of the collateral warrantee, as detailed in the aforementioned paragraphs and previous correspondence. Despite this, SDS has not been paid for the services provided in relation to the items above since March 2010 for these works which was the subject of our letter Ref ULE90130-SW-LET-02147 dated 19th August 2010. The value of outstanding monies to SDS currently stands at £305,670, as per our Application for Payment dated 7 October 2010 despite the various **tie** letter instructing SDS to undertake the additional work. We have also not received certification or payment against any works beyond 27<sup>th</sup> March 2010 and no explanation has been provided to SDS for the failure by **tie** to certify or pay for these works. Failure to respond to the SDS



Applications is against the terms and conditions of the original SDS Agreement which detail the payment mechanism. Despite this SDS has continued to support ~~tie~~ in the supply of services requested by ~~tie~~.

We would appreciate your response to this letter, which addresses all of the issues raised in you most recent correspondence and also your urgent response to the SDS Applications, the issue of the associated Payment Certificates and outstanding payment.

If you require any further information or clarification on the points made in this letter please do not hesitate to contact myself at your earliest convenience.

Yours sincerely



Jason Chandler  
Project Manager  
Parsons Brinckerhoff

Cc: Alan Dolan  
Kate Shudall  
Frank McFadden (~~tie~~)