



For The Attention of Alastair McLean
Senior Solicitor
City of Edinburgh Council
City Chambers
High Street
Edinburgh
EH1 1YJ

Our Ref: RJ/CEC/JS

Date: 22 November 2010

FOISA Exempt and Legally Privileged

Dear Alastair,

Edinburgh Tram Network

Following our meeting this morning with Nick Smith and Senior Counsel I am keen to ensure that we embark upon the proposed mediation having established full agreement and understanding between us of the desired outcomes and the decision making processes that this will entail. The purpose of this letter is to raise such issues before I meet with Infraco within the next few days.

1. My letter of 17 November 2010 to Infraco was deliberately ambiguous as to whether the mediation should be within or outwith the formal contract procedures. This was to enable us to structure the mediation to achieve one of two potential outcomes. Within the Contract; this would broadly entail a very detailed analysis of the current contract position, i.e. encompassing issues of design, delay, quality, price, performance etc. This would inevitably take a considerable amount of time to set up. Concurrently we would need to be taking specific steps to manage the Contract, in order to apply its terms to pressurise Infraco, and so in turn improve the settlement outcome. We believe this would take about six months to conclude.

The alternative process, outwith the Contract, is to attempt to agree with Infraco a position where the parties agree that the Contract be terminated upon mutually agreed terms. Obviously Infraco would have to be willing to embark on this discussion. If a purely "commercial" approach were to be adopted, in other words simply a price is brokered at which point the parties walk away, then this can be dealt with quickly, hopefully by Christmas. If however, a more detailed, but nevertheless "broad brush" build up of costs is required, and a structured resolution involving finishing/ securing elements of the works is proposed, I anticipate that any such mediation would not get underway until January.

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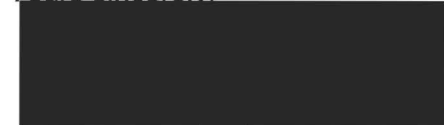
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2. Arising from the above is the issue of decision making. Depending upon which of the above is adopted, you will need to ensure that the necessary authorisations are in place, and that they will withstand scrutiny.
3. One of the early steps will be to select and agree a mediator. The background and character of the mediator will be in part driven by the decisions made in 1 above. It is important that we agree how to structure your involvement in this decision.
4. In due course we will need to set up a mediation team for preparation, and in time to attend the mediation itself. Again we need to have a clear idea of your representation, and to the extent not covered above, their authority.
5. We cannot assume any mediation will achieve the desired outcome. Accordingly we believe that it is important that we continue to apply robustly the contractual mechanisms, because in our judgement it will assist in improving the eventual outcome. Do you agree?
6. Mediation is intended to be a confidential process, and is essentially a brokered negotiation. It is crucial, therefore, that the preparations, strategy, analysis and canvassed outcomes/ authorisations remain absolutely confidential. Otherwise our negotiation position will be undermined, with adverse financial consequences.

I look forward to having these clarified by the Council in the very near future.

Yours sincerely,



Richard Jeffrey
Chief Executive – Edinburgh Trams

cc Tom Aitchison