

Nick, Best start from scratch for new
Tram O.A. with Tie. This document
will give some AGREEMENT help.

between

Chris.

THE CITY OF EDINBURGH COUNCIL
OF THE FIRST PART

and

TRANSPORT INITIATIVES EDINBURGH
LIMITED
OF THE SECOND PART

2005

GILL LINDSAY, LLB
COUNCIL SOLICITOR
CITY CHAMBERS
HIGH STREET
EDINBURGH

AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL,
the Local Authority for the said City
constituted in terms of the Local
Government etc. (Scotland) Act 1994 and
having its principal offices at City Chambers,
High Street, Edinburgh EH1 1YJ (hereinafter
referred to as "the Council" and which term
"the Council" shall also be deemed to include
the statutory successors of the Council)

OF THE FIRST PART

and

TIE LIMITED, a company incorporated
under the Companies Acts and having its
Registered Office at City Chambers, High
Street, Edinburgh EH1 1YJ (Registered
Number SC230949) (hereinafter referred to
as "the Company")

OF THE SECOND PART

WHEREAS:-

- (One) The Council and SESTRAN (the South East Scotland Transport Partnership), a voluntary partnership of nine local authorities, have come together to identify, develop, implement and monitor matters of mutual strategic transport interest.
- (Two) The Council has agreed and approved a Local Transport Strategy as the Local transport authority in terms of the Transport (Scotland) Act 2001 (hereinafter referred to as "the Act").
- (Three) The Council has included in its Local Transport Strategy a number of projects to address the city's transport problems.
- (Four) The Council wish to enter into an arrangement with TIE Limited, a company formed by the Council for the specific purpose of assisting in the development and delivery of the Council's Local Transport Strategy.
- (Five) The Company has agreed to provide services to the Council in delivering the Local Transport Strategy and specifically defined projects, as varied by the Council from time to time by developing, procuring and implementing integrated transport projects within Edinburgh and the surrounding SESTRAN area.

NOW THEREFORE THE PARTIES HERETO HAVE AGREED AND DO HEREBY AGREE
AS FOLLOWS:-

FIRST

In this Agreement the following words and expressions shall have the

DEFINITIONS

following meanings:-

“Annual Business Plan” - means the Annual Business Plan (including the Adjustment Sheet) annexed as relative hereto, being the Annual Business Plan for the first year and in each consecutive year thereafter means the Annual Business Plan submitted by the Company and approved by the Council in terms of clause SIXTH (3);

“Council sponsored projects” means transport projects identified by the Council and defined in writing as suitable for development, delivery and implementation by the Company;

“SESTRAN area” means the South East Scotland Transport Partnership area of City of Edinburgh, Fife, Stirling, Clackmannanshire, East Lothian, Midlothian, Scottish Borders, Falkirk, Perth and Kinross, and West Lothian Councils respectively or a successor body in which the Council is a statutory participant

“Strategy” - means the Council's revised Local Transport Strategy as approved by the City of Edinburgh Council on 22 January 2004 and as varied from time to time;

“Third Party projects” mean transport projects located within the SESTRAN area, in which the Company is not acting as agent for the Council, but is acting for or on behalf of another party.

“Third Party” means any party or parties with whom the contracts to provide services in connection with a Third Party project.

SECOND

Commencement
and Term

This Agreement shall commence on the date of execution hereof and shall subsist so long as the Company remains in existence or until termination in terms of clause SEVENTEENTH. This Agreement supersedes the Operating Agreement between the parties dated 3rd May 2002.

THIRD

In consideration of the payments as set out in this agreement the Company hereby binds and obliges itself to provide the following services:-

The Company's
Obligations

- (1) To comply in all respects with the Annual Business Plan (including any amendments the Council considers necessary).
- (2) In so far as not already done (i) to develop, procure and implement integrated transport projects (a) sponsored by the Council and (b) Third Party projects in the SESTRAN area in so far as expressly approved by the Council. The Council sponsored projects will form part of the Strategy as defined by the Council from time to time and notified in writing by the Council to the Company. The Council sponsored projects will include but not be restricted to those projects as set out in [Part 1] of the Schedule attached hereto and any other projects approved by the Council. The Company accepts that all projects must be approved in writing by the Council and the number and extent of the projects may be varied by the Council and that the Council at its sole discretion may request the Company to provide services to the Council in respect of every integrated transport project. For the avoidance of doubt the Company hereby agrees that it shall not contract to work on Third Party projects until such approval in writing is issued by the Council. Such approval shall not be unreasonably withheld.

(3) To ensure best value in the provision of services to the Council ; to act commercially; to act in the Council's best interest at all times; in relation to Council sponsored projects the Company shall liaise solely in the first instance with the Council regarding the resolution of strategic or business planning issues; to work with the Council to ensure that all of the statutory requirements on the Council in respect of Council Sponsored projects are met to apply principles of good corporate governance; to co-operate with and implement any recommendations made to the Council by its external auditors concerning the performance of this Agreement by the Company; and to co-operate with any monitoring operation carried out by or on behalf of the Council, in particular the Company will provide a copy of all Board papers to the Council's monitoring officer as advised by the Council;

(4)(1) To carry out the following services in relation to the Council sponsored projects referred to at Clause THIRD (3) above as directed by the Council including but not restricted to:-

- (i) providing services to the Council in carrying out or commissioning necessary feasibility work;
- (ii) providing services to the Council in prioritising transport projects to agreed criteria on value for money, social and environmental benchmarks;
- (iii) providing services to the Council in obtaining any necessary statutory approvals where appropriate;

- (iv) providing services to the Council in trying to achieve public acceptance of these schemes through: (a) public consultation; (b) preparation of necessary publicity material; (c) communication with all necessary stakeholders; and (d) preparation of exhibitions etc.
 - (v) providing services to the Council in obtaining funds for Transport Projects through appropriate grants from inter alia bid funding and the Scottish Ministers and funds available to support rail projects from the Strategic Rail Authority or others;
- (2) To carry out Council sponsored project related activities including but not restricted to:
- (i) obtaining all other necessary consents and planning permissions;
 - (ii) establishing the optimal procurement strategy for each project;
 - (iii) preparing specifications and contract documents;
 - (iv) managing the bidding process and meeting all requirements where applicable of the procurement process;
 - (v) managing the award and implementation of the projects;
 - (vi) ensuring that the necessary safety, quality, financial and supervisory controls are implemented over the life of the project;
 - (vii) establishing and monitoring Operations & Maintenance procedures;
 - (viii) ensuring ongoing value for money.

- (ix) securing a relevant share of any increase in revenue to third parties such as fare box revenue resulting from projects implemented by the Council;
 - (x) ensuring that relevant windfall opportunities are obtained e.g. intellectual property rights fees;
 - (xi) seeking funding based on net income through bank finance bonds, income securitisation etc.
 - (xii) seeking equity funding and partners if appropriate.
- (5) Not used.
- (6) Given the level of public sector funding the Company will, where appropriate and required by law, follow regulations governing public procurement.
- (7) Not used.
- (8) In respect of Council sponsored projects the Company shall provide a Duty of Care Agreement in favour of the Council and require all professional advisers and contractors to provide Duty of Care Agreements in favour of the Council.
- (9) To allow the Council in respect of Council sponsored projects and Third Party projects to examine the books, accounts and other records, kept by the Company and each of its subsidiary undertakings (if any) and to supply the Council with all relative information, including quarterly management accounts, budgets and management reports (including explanations of variances against budget) statutory accounts in respect of each financial year of the Company and each of its subsidiary undertakings (if any) and such other trading and financial information relating to the Company and each of its subsidiary undertakings (if any) in such form as the

Council may reasonably require to keep them properly informed about the business of the Company and each of its subsidiary undertakings (if any) and generally to protect the Council's interest.

- (10) In respect of (9) above to participate in formal stakeholder liaison arrangements that may be established from time to time by the Council and the Scottish Executive. The aim of these arrangements will be to assure the mutual exchange of information about Strategy projects.
- (11) Unless the Council directs otherwise, to retain ownership of the assets acquired by the Company in the performance of its obligations in terms of this Agreement with regard to Council Sponsored Projects and to maintain such assets to the highest standard until termination of this Agreement.
- (12) To transfer all of its right, title and interest in and to the residual assets of the Company, obtained in the performance of its obligations in terms of this Agreement, to the Council at zero cost on termination of this Agreement, whenever that might be.
- (13) To obtain all necessary insurance cover for potential liability resulting from ownership of the assets or carrying out its business.

FOURTH

Council's

Obligations

- (1) The Council have secured funding for transport projects to enable payment to be made to the Company in consideration of services including to work on and deliver projects referred to in Clause THIRD (3) which shall for the avoidance of doubt exclude Third Party Projects.
- (2) In return for the services provided by the Company to the Council in relation to the Council sponsored projects referred to at Clause THIRD (3) above, the Council will make payment within 28 days of

receipt of the monthly tax invoices submitted by the Company, which relate to the Services provided by the Company in terms of the Annual Business Plan and the terms of this Agreement. Said invoices will be in a format specified by the Council and payment will be subject to the Council being satisfied that the quarterly reports prepared by the company in terms of clause THIRD (10) properly reflects the agreed position in each Annual Business Plan and for the avoidance of doubt other than as provided for in terms of Clause SIXTH (6) the Council shall not be liable to make payment of any invoice which relates to Third Party projects carried out by the Company.

- (3) Not used.
- (4) Not used.
- (5) The Council will use its reasonable endeavours to appoint up to four non-executive directors from outwith the Council with a proven track record in business, finance and or transport, who would bring valuable expertise to the Board of Directors. These would be annual appointments made by the Council. The Council may re-appoint any director.
- (6) The Council will nominate an individual to act as a liaison officer for day to day communication between the company and the Council;

FIFTH

Not Used

SIXTH

Funding

- (1) The Company shall be responsible for ensuring that its future capital and revenue funding requirements to finance the Council sponsored projects, strategies or schemes as required by the Council are met.

- (2) The Company shall be responsible for ensuring that its future capital and revenue funding requirements to finance Third Party projects expressly authorised by the Council are met. The Company shall free and relieve the Council of any or all liability arising out of contracts, agreements and grant obligations entered into by the Company on Third Party projects.
- (3) The Council will be supplied by the Company on or before 31 December in each year with a draft Annual Business Plan (incorporating capital and revenue budgets, profit and loss account, balance sheet, 12 monthly cashflow statement and output targets for each quarter) for the Company for its next financial year which will allow the Company to deliver the targets as specified by the Council from time to time. The Annual Business Plan will also detail the proposed scope of operations for the year, a project implementation plan, a financial model for the implementation plan, a financial analysis including public, private funding, balance and revenue potential from "farebox" enhancement etc. The Annual Business Plan shall include timescales and output measures for all work streams. The Annual Business Plan will identify the breakdown of the all of the costs of each project separately (including overhead costs) showing Council sponsored and Third Party projects and in addition for any individual transaction in excess of £5m. The Company will include in the Annual Business Plan any proposed public/private partnership strategy, the proposed procurement strategy, a risk allocation model and the proposed staffing and resource allocation to deliver the business plan on time and within budget, together with contingency provision.

- (4) The draft Annual Business Plan for each financial year except in so far as it specifically relates to Third Party Projects, shall be approved by the Council (such approval not to be unreasonably withheld) prior to the commencement of that financial year with such amendments as the Council consider necessary and thereafter such Annual Business Plan incorporating all such amendments and as approved by the Council shall in this Agreement be referred to as the Annual Business Plan for that financial year.
- (5) At the same time as approving the Annual Business Plan the Council shall agree the amount and form of each or any payments to be made by the Council in the financial year to which the Annual Business Plan relates.
- (6) The Annual Business Plan shall include a summary of the net financial and resource effects of Third Party projects and the Council will have no obligation to fund Third Party projects save that in the event the Council requests that the Company provide them with services in relation to Third Party projects, the Company shall be authorised to request funding from the Council on the basis set out in the Annual Business Plan.

SEVENTH

Indemnity

The Company shall be wholly responsible for meeting timeously all obligations, liabilities or claims of whatsoever nature arising out of or in connection with each Council sponsored project and each Third Party project and the implementation of the Company's obligations under this Agreement and hereby binds and obliges itself to indemnify the Council against all liability for such obligations, liabilities or claims.

EIGHTH

Notices

Any Notice requiring to be served hereunder shall be in writing and shall be sufficiently served upon the Council if sent by pre-paid Recorded Delivery post, addressed to the Director of City Development, One Cockburn Street, Edinburgh, or such other authorised representative of the Council as the Director of City Development may notify in writing to the Company and upon the Company if sent by prepaid Recorded Delivery post, addressed to City Chambers, High Street, Edinburgh or such other address as the Company may notify in writing to the Council and any such Notice shall be deemed to have been served Forty eight hours after the date on which the same was posted as aforesaid (excluding weekends and public and statutory holidays). In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Company or to the Council as the case may be in accordance with this Clause and posted to the place to which it was so addressed.

NINTH

Intellectual
Property
Rights

The copyright, patent, design rights and any and all other intellectual property rights of whatever nature in any drawings, document, reports, plans and related materials provided by the Company to the Council or prepared by the Company in the performance of its obligations under Council Sponsored projects, in terms of this Agreement shall vest in the Council unless the Council otherwise agrees in writing, which agreement may be subject to such conditions as the Council consider appropriate.

TENTH

Assignment

This Agreement is personal to the Company and the Council, who shall not be entitled to assign their rights hereunder nor, except as herein provided, to delegate the performance of the respective obligations incumbent upon them under this Agreement to any other party.

ELEVENTH

Staffing

The Company shall recruit and employ such staff and advisers as are required by the Board. Council staff may be seconded to or contracted to work with the Company on a full or part time basis and otherwise on terms to be agreed between the Company and the Council. If the Company consider any person so seconded is not suitable for employment in connection with the business it may require the Council to withdraw and replace such person or to take such other steps as may be necessary or expedient. All the salaries, wages, allowances, travelling and accommodation expenses and others to which such personnel may be entitled and all necessary employers, pension and national insurance contributions shall except where otherwise agreed, be borne and paid by the Company, declaring for the avoidance of doubt that where any of such expenditure has been incurred by the Council the Company shall reimburse the Council with the amount of such expenditure.

TWELFTH

Not Used

THIRTEENTH

The identity of the Chairman shall be determined annually by the Council, on written notice to the Company. The Council shall be entitled to change the identity of the Chairman or fill any vacancy in the office of Chairman at any time outwith the annual cycle of appointments by written notice to the Company. The Chairman of the Board shall not have a second or casting vote.

FOURTEENTH

Except with the consent in writing of the Council the Company shall not:-

Matters requiring the consent of the Council

- (a) create, any fixed or floating charge, lien (other than a lien arising by operation of law), security or encumbrance over the whole or any part of the undertaking, property or assets of the Company;

- (b) borrow or raise any sum of money other than in the ordinary and proper course of its business;
- (c) make any loan or advance or give any credit to any person, other than in the normal course of business;
- (d) give any guarantee or indemnity to secure the liabilities or obligations of any person;
- (e) sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking, property and/or assets of the Company or contract so to do;
- (f) issue any shares or any loan stock or any debentures or other securities convertible into shares or debentures or any options in respect of shares in the Company;
- (g) acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other body;
- (h) register any transfer of shares in the capital of the Company;
- (i) appoint any person as Chief Executive or Chief Finance Officer of the Company;
- (j) enter into any partnership or profit sharing agreement with any person;
- (k) exceed the total expenditure budget contained in the Annual Business Plan by more than 5%, provided that the Company has sufficient funds to meet additional expenditure when incurred without requiring further funding beyond that provided for in the Annual Business Plan from the council or any third party.

FIFTEENTH

The Company agrees to comply with the spirit and procedures as set out within the communications strategy agreed between the parties at that time.

The obligations contained in this clause shall not apply to any statement by the Company in relation to Third Party projects.

SIXTEENTH

Dispute
Provisions

In the event of any dispute or difference arising between the Company and the Council with regard to the construction of this Agreement and the obligations arising therefrom, shall be determined by a single Arbiter to be appointed by the parties concerned in the dispute or, failing agreement, by the President for the time being of the Law Society of Scotland and shall be deemed to be a Submission to Arbitration within the Arbitration (Scotland) Act, 1894, and any statutory modification or re-enactment thereof for the time being in force and the decision of any Arbiter appointed in terms of this Clause shall be final and binding on the parties concerned in the dispute and the said Arbiter shall have the power to award expenses as he may think fit and the parties hereto hereby expressly waive and exclude any rights competent to them to require the said Arbiter to state a Case for the Opinion of the Court of Session on any question of law arising in the Arbitration and accordingly, Section 3 of the Administration of Justice (Scotland) Act, 1972, shall not apply to any Arbitration hereunder.

SEVENTEENTH

Termination

Either party shall be entitled by notice in writing to forthwith terminate this Agreement if the other party is in material breach of any provision(s) of this Agreement and has failed to remedy that breach (if capable of remedy) within 14 days after receiving notice of such breach.

EIGHTEENTH

Law

This Agreement and the whole matters following hereon shall be construed and receive effect according to the Law of Scotland.

NINETEENTH

Continuation
of
Agreement

All terms, conditions and undertakings contained in these presents, in so far as of a further or continuing nature, are unaltered and will continue and remain in full force and effect and may be founded upon.

TWENTIETH

Terms of this Agreement to Prevail

If any ambiguity or conflict arises between the terms of this Agreement and those of the Articles of Association, the terms of this Agreement shall prevail as between the parties.

TWENTY FIRST

Miscellaneous

- (1) This Agreement does not and shall not in any circumstances constitute a partnership between the parties hereto.
- (2) Nothing herein contained shall (a) import any warranty by the Council in respect of any site owned by the Council to be used in connection with any project or (b) prejudice or affect the Council's rights, powers duties and obligations in the exercise of their functions as local authority or in any other capacity whatsoever under or by virtue of any public, general or local Statute, Order, Instrument, Regulation or Bye-law in operation from time to time in the City of Edinburgh or relieve the Company from the necessity of obtaining such approvals or consents in respect of the plans or otherwise as may from time to time be required from the Council in any such capacity in terms of any such public, general or local Statute or others foresaid.
- (3) In construing this Agreement, the marginal headings shall be ignored.
- (4) In the event of Value Added Tax (VAT) or any other charge tax or levy being chargeable in respect of any payment to be made in terms hereof such Value Added Tax, Charge Tax or Levy will be payable on receipt of a proper tax invoice by the party due to make such payment in addition to such payment.
- (5) The Company shall at all times give priority in terms of advice, interest, financing and resources to Council sponsored projects. Where the Company becomes aware of a potential conflict of interest

between a Council sponsored project and a Third Party project it shall immediately contact the Director of City Development for instructions. The Company shall make every effort to resolve the conflict with the Third Party giving due regard to the Company's obligation in this agreement (Clause Third (4)) to act in the Council's best interest at all times. In the event that such a conflict arises and is not resolved to the satisfaction of the Council , the Council shall request the Company to reconsider its position with regard to the Third Party project..()

TWENTY SECOND

Expenses

The Council and the Company shall each bear their own legal fees and outlays in connection with this Agreement and Schedule annexed hereto.

TWENTY THIRD

Separate
Agreements

The Council and the Company shall enter into separate project agreements as necessary in respect of each project if so required by the Council.

TWENTY FOURTH

The Council hereby acknowledges that the Company may enter into Third Party project contracts within the SESTRAN area, subject to written approval of the said Council. The Company may exceptionally undertake work outside of the SESTRAN area provided the Company demonstrates that in so doing a strategic interest for the Council is met. It is hereby agreed that the Council shall have no liability for debts or obligations due to be performed by the Company under Third Party project contracts. Prior to entering any such contracts the Company shall notify Third Parties that the Council has no such liability. Further the Company shall also notify the Third Party of the Company's obligation in the terms of Clause Third (3) to act in the Council's best interest at all times and to act in

the terms of Clause Twenty First (5) that will be followed in the event of an unresolved conflict of interest.

TWENTY FIFTH

The Council, however, gives no endorsement of any Third Party project subsequently approved in its approval of the Business Plan.

TWENTY SIXTH

Variations

The Council may vary the Part 1 of the said Schedule at any time during the subsistence of this Agreement and any such variation shall be made in writing between the parties hereto.

TWENTY SEVENTH

The Company and the Council agree that both parties where appropriate, will apply the Code of Guidance and Conduct annexed as relative hereto relating to Corporate Governance incorporated in "A framework for Governance of Council Companies", being a report submitted to the Executive of the Council on 18 December 2001 as such code may be varied/updated from time to time.

TWENTY EIGHTH

The parties hereto consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the [♦] preceding pages, together with the Schedule and the Code of Guidance and Conduct are executed as follows:

They are executed for and on behalf of The City of Edinburgh Council by the following Proper Officer before the following Witness:

Proper Officer...	[Redacted]	Witness...	[Redacted]
Name of Person Signing...	GILL SUDJAY	Name...	COLIN GEORGE MACKENZIE
Capacity in which signs...	COUNCIL SOLICITOR	Address...	City Chambers
Date...	16 th September 2015		High Street
Place...	EDINBURGH		Edinburgh

They are executed for and on behalf of the Transport Initiatives Edinburgh Limited before the following Witness:

Representative.....	Witness.....
Name of Person Signing.....	Name.....
Capacity in which signs.....	Address.....
Date.....
Place.....	

.....MXW462GT.SA(1)

This is the Schedule referred to in the foregoing Agreement between The
City of Edinburgh Council and TIE Limited

SCHEDULE PART I

List of projects to be delivered by TIE Ltd

Project	Description	Sponsor
1	Edinburgh Tram Line One (North Edinburgh)	City of Edinburgh Council
2	Edinburgh Tram Line Two (West Edinburgh)	City of Edinburgh Council
3	Ingliston Park and Ride	City of Edinburgh Council
4	Edinburgh Fastlink (West Edinburgh Busway)*	City of Edinburgh Council
5	Edinburgh Airport Rail Link	Scottish Executive
6	"One Ticket"	SESTRAN
7	Stirling Alloo Kincardine Rail Link	Clackmannanshire Council
8	FETA Charging Order	Forth Estuary Transport Authority

