

AGREEMENT

between

THE SCOTTISH MINISTERS

Buchanan House
Port Dundas Road
Glasgow
G4 0GH

and

THE CITY OF EDINBURGH COUNCIL

Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

WHEREAS-

- (a) By letter dated 17th January 2008 (together with a schedule and annexes) the Scottish Ministers, in exercise of the powers contained in section 70 of the Transport (Scotland) Act 2001, offered up to £500,000,000 (five hundred million pounds sterling) grant funding towards a City of Edinburgh Council project to build a tram network;
- (b) on 24th January 2008 the Council unconditionally accepted that offer;
- (c) valid claims under that agreement ("the grant agreement") required to be submitted by 31st March 2011;
- (d) by letter dated 30th March 2011 the Scottish Ministers extended, to 31st August 2011, the period during which they would make grant payments following valid claims;
- (e) on 1st September 2011 less than the maximum amount of grant funding made available under the grant agreement had been paid out;
- (f) Phase 1a as defined in clause 3.2.1 of the grant agreement schedule remains incomplete;

(g) the Council has decided to phase the delivery of Phase 1a by first completing the section of tram line between St Andrew Square and Edinburgh Airport, by summer 2014, within an overall budget of £776,000,000 (seven hundred and seventy six million pounds sterling); and

(h) the Scottish Ministers, in exercise of their powers under section 70 of the Transport (Scotland) Act 2001, have decided to further extend the period for making claims under the grant agreement, subject to modified and additional terms and conditions as set out in this agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS-

Project collaboration and personnel

1. Ministers (acting through their agency Transport Scotland) and the Council will collaborate on the Project, with Transport Scotland providing advice and direction to assist the Council in delivery of the Project.
2. Ministers will be represented by a Project Director and that role will be discharged by Transport Scotland's Director of Major Transport Infrastructure Projects or such other official as Ministers may nominate.
3. The Council will assume the Project Director into the formal Project governance arrangements at a date and at a position determined by Ministers in consultation with the Council.
4. Ministers will deploy such Transport Scotland officials as they consider necessary throughout the formal Project governance arrangements at dates and positions determined by them in consultation with the Council; and the Council will assume those officials into those arrangements accordingly.
5. The Council will meet the reasonable costs of engaging the officials referred to in paragraph 4, calculated in accordance with Schedule 1 (the initial staff allocation being set out, by reference to quantity, grade and discipline, in that schedule, with staff costs beyond that being subject to agreement between the parties). Ministers will periodically recover such costs by deducting them from grant payments prior to disbursement (giving

the Council 14 days' notice of any intended deductions) and providing the Council with evidence of costs incurred in such form as the parties may agree.

6. Subject to paragraph 7, ~~the Council will~~
 - (a) give the Project Director and other Transport Scotland officials such assistance, co-operation and information as the Project Director may require of it;
 - (b) update or consult the Project Director on Project related matters and decisions in so far as it is required to do so by the Project Director;
 - (c) implement any direction that the Project Director issues to it in connection with the Project,

and the reporting requirements set out in clauses 16.1 to 16.2.6 (project management and controls) of the grant agreement schedule are superseded by paragraphs 1 to 6.

7. ~~The Project Director will not direct the Council to act in a way that would cause it, or tie to be in breach of contractual or statutory obligations. The Project Director and the Council will use all reasonable endeavours to resolve any difference of opinion between them as to whether a direction will have, or is likely to have, either of those effects, with the Council providing such information or evidence to demonstrate or substantiate its position as the Project Director may require.~~
8. The Project Director may engage external consultants to support Transport Scotland officials. The Project Director may also (subject to relevant public procurement considerations) engage external consultants to provide services jointly to Ministers and the Council and, in that event, the Project Director will manage such engagements jointly with the Council, ensuring that such consultants are aware that they have been engaged to act on behalf of Ministers and the Council. The Council will meet the reasonable costs of such external consultants engaged to provide services to Ministers and the Council as the Council has agreed prior to their appointment.

Public Communications

9. The parties will adhere to the public communications protocol set out in Schedule 2, which protocol supersedes clauses 12.1.1 and 12.1.2 of the grant agreement schedule.

10. Clauses 12.2 to 12.6.4 of the grant agreement schedule apply to this agreement as they apply to the grant agreement.

Project delivery and contractual obligations

11. The Council will remain responsible for Project delivery and Ministers will not assume any obligations or liabilities under contracts entered into by, or on behalf of, the Council in relation to the Project.

12. In so far as the Council has not novated to itself the interests of tie in any contracts related to the Project, or otherwise retains tie for purposes related to the Project, it will procure that tie does anything required to enable the Council to fulfil its obligations under this agreement.

Grant funding

13. Following the parties' execution of this agreement, further claims for grant funding will be considered by Ministers in accordance with the terms and conditions of the grant agreement as supplemented and modified by this agreement.

14. For the purposes of paragraph 13 the modifications set out in Schedule 3 have effect.

15. The parties acknowledge that, as at the last date of execution of this agreement-

(a) the total grant funding that remains unclaimed is £72m (seventy two million pounds sterling) or thereby and that this agreement does not, and is not intended to, increase the total amount of grant funding of £500,000,000 (five hundred million pounds sterling) made available in terms of the grant agreement; and

(b) since 1 April 2011, £50,000,000 (fifty million pounds sterling) grant funding has been paid, with £12,000,000 (twelve million pounds sterling) of the grant funding allocated for the financial year to 31st March 2012 remaining available for that year.

Default

16. Without prejudice to the default, cure and remedies provisions contained in the grant agreement, for the purposes of clause 13.1 of the grant agreement schedule material breach by the Council of this agreement which if capable of remedy has not been

remedied within 14 days will constitute an Event of Default, but only in respect of grant funding claimed or paid out after the last date of execution of this agreement.

17. This agreement is without prejudice to the terms and conditions of the grant agreement applicable to grant funding paid out before the parties executed this agreement and does not-

(a) constitute a waiver of an Event of Default or a waiver of an event which, with the giving of notice, lapse of time or other condition may constitute an Event of Default; or

(b) constitute a waiver of, or otherwise prejudice, Ministers' rights or remedies,

in respect of such funding.

Continuation of conditions

18. Nothing in this agreement affects the operation of clauses 21 and 22 of the grant agreement schedule (continuation of conditions) and those clauses will also apply for the purposes of the terms and conditions set out in, and grant funding paid under, this agreement.

Edinburgh Gateway

19. The Council will, in such manner as may be required by the Project Director, to the extent this is compliant with public procurement requirements, commission the contractor to submit design, price and delivery proposals (including timescale) to integrate the Project with the proposed Edinburgh Gateway station at Gogar. The Council will submit those proposals to Ministers for a decision on whether they should be pursued (the proposals being subject to such funding arrangements as may be agreed between the parties).

Miscellaneous provision

20. The parties to this agreement will act reasonably at all times under it.

21. Unless otherwise agreed between them, neither of the parties is entitled to assign, sub-contract or otherwise transfer their rights or obligations under this agreement.

22. This agreement will be interpreted in accordance with Scots law and be subject to the non-exclusive jurisdiction of the Scottish Courts.

23. This agreement may be terminated by express written agreement between the parties.

Interpretation

24. In this agreement-

“the Council” means The City of Edinburgh Council, a local authority constituted by section 2 of the Local Government etc. (Scotland) Act 1994;

“grant agreement” means Ministers’ letter dated 17th January 2008, together with a schedule and annexes, offering up to £500,000,000 (five hundred million pounds sterling) grant funding towards the Council’s proposal to build an Edinburgh Tram Network, accepted by the Council on 24th January 2008;

“grant letter” means Ministers’ letter dated 17th January 2008 (excluding the attached schedule and annexes) forming part of the grant agreement;

“Ministers” means the Scottish Ministers;

“procure” has the same meaning as in clause 2.2(g) of the grant agreement schedule;

“Project” means Phase 1a of the Edinburgh Tram Network as described in clause 3.2.1 of the grant agreement schedule; and


“tie” means Transport Initiatives Edinburgh Limited, a subsidiary undertaking of the Council.

25. In this agreement references to paragraphs or schedules, unless otherwise stated, are to paragraphs of, and schedules to, this agreement.


A member of the staff of the Scottish Ministers

Transport Scotland
Buchanan House
Port Dundas Road
Glasgow
G4 0GH

Date... 16/1/12


Proper Officer

City of Edinburgh Council
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

Date... 17/1/12

SCHEDULE 1

Transport Scotland Staff Costs

Quantity/Grade/discipline	Daily rate
1 X C3 (Engineering/Technical)	£370.55
1 X C1 (Engineering/technical)	£290.03
1 X B3 (Engineering/technical)	£443.44
1 X C1 (Communications)	£322.84

Note: Initial staff allocation-

Graham Porteous
Scott Noble
Dominic Murphy
Lucy Adamson



SCHEDULE 2

Public Communications Protocol

1. The parties will establish and maintain effective public communications around the delivery of the Project, ensuring that stakeholder engagement is effective and external messaging is accurate, co-ordinated between the parties and properly timed to support the Project.
2. The parties will establish a Joint Communications Group ("the JCG"). The Project Director and the Council will each nominate 1 official to form part of the JCG. Additional members of the JCG may be nominated from time to time by agreement between the parties, including the nomination of external consultants engaged to support the parties' communications activity. The JCG will be the lead communications team for communications outputs on the Project and will supervise and direct the day to day work of any external communications consultants.
3. A revised integrated communications strategy for the Project ("the strategy") will be devised by the JCG and subject to approval by the Project Director and the Chief Executive or the Director of Corporate Governance of the Council. The strategy and any associated plans will be regularly reviewed and updated and any changes subject to approval by the Project Director and the Chief Executive or the Director of Corporate Governance of the Council. The strategy will provide for-
 - processes whereby the parties will agree in advance all proposed proactive communications activity;
 - regular stakeholder engagement including effective liaison with community and business interests affected by Project works;
 - processes for the effective handling and distribution of operational information, for responding to day to day enquiries and for complaints handling;
 - a social media plan; and
 - such other processes as are conducive to effective public communications handling on a major transport infrastructure project.

4. The JCG will manage the delivery of the strategy, including appropriate liaison with the contractor and ensuring the contractor adheres to any communications requirements agreed between them and the Council or the JCG.
5. The Project Director will be responsible for communicating to Ministers issues concerning their interests in the Project and Ministers and their officials will be responsible for representing the Scottish Government's interests in the Project to the Scottish Parliament.
6. A Trams Communications Group comprising the JCG and relevant Project staff of Ministers and the Council (including relevant communications or technical consultants working on the Project) will, each calendar month (or more frequently as required), meet to review the status and progress of Project communications and forward plan communications handling.
7. The JCG will be responsible for managing day to day media queries about routine aspects of the Project and will provide a daily media digest to the Project Director (or other nominated Transport Scotland official) and to the Chief Executive and the Director of Corporate Governance of the Council detailing all media calls received and media interviews carried out.
8. For media queries received by either party regarding high profile issues such as cost, programme, scope or corporate reputation, that party should alert the other in advance of responding to outline the query and intended course of action together with a draft response where possible. Dialogue will continue as appropriate throughout the course of the query and each party will give due consideration to any requests from the other party to make changes to any proposed statement.
9. Transport Scotland communications officials will be responsible for liaising with Ministers and Scottish Government communications officials where necessary.
10. The Council will host, and manage the technical aspects of, the official Trams project website and be responsible for the delivery of the social media plan as outlined in the strategy.

11. Production and delivery of any stakeholder materials, branding or other publicity materials will be subject to approval before use by the JCG in line with the strategy.

SCHEDULE 3

Grant funding arrangements – Specific modifications to the grant agreement

1. For the purposes of paragraph 4.2 of the grant letter, the total instalments paid in the following financial years shall not exceed the totals set against each of those financial years (“the Annual Totals”)-

(a) Financial year to 31 March 2012 – £62m;

(b) Financial year to 31 March 2013 – £25m;

(c) Financial year to 31 March 2014 – £25m;

(d) Financial year to 31 March 2015 – £10m.

and the terms of that paragraph will otherwise apply.

2. Clause 3.1 of the grant agreement schedule shall be read as if “31 March 2015” was substituted for “31 March 2011” (in each place where it occurs).

3. The arrangements set out in clauses 4.1 to 4.4 of the grant agreement schedule are substituted by the following-

(a) grant payments, as contributions to Eligible Capital Costs incurred and paid by the Council, will be made following receipt of valid claims;

(b) a valid claim means the Council certifying, in such form and accompanied by such supporting information as the Project Director may require, that it has incurred and paid Eligible Capital Costs and requesting a contribution towards those costs;

(c) grant payments will be made once per calendar month in respect of Eligible Capital Costs incurred and paid by the Council in the preceding calendar month or months;

(d) grant funding payable towards Eligible Capital Costs incurred and paid by the Council in any given calendar month will be 24 per cent of those costs to a maximum of one twelfth of the annual total of grant funding allocated for the relevant financial year;

(c) for the financial year to 31 March 2012 and the financial year to 31 March 2015 the Project Director will decide the payment profile of the grant funding available in that year,

and these arrangements supersede the reference to 4 weekly instalments in paragraph 4.1 of the grant letter.

4. In addition and without prejudice to the default, cure or remedies provisions generally applicable to the grant funding of the Project, in the event of any acknowledgement in writing by the Council that—

(i) the section of tram line between St Andrew Square and Edinburgh Airport cannot be completed within the budget of £776,000,000 (seven hundred and seventy six million pounds sterling); or

(ii) an operational tram line for that section will not be delivered by 31st July 2014,

the Project Director may reduce, stop or otherwise re-profile grant payments, as he sees fit, to enable Ministers to review the grant arrangements. In that event, the Council's entitlement to grant funding will be varied or suspended accordingly and, if Ministers so decide following the review, will be terminated.