

## **Integration of Public Transport - Company Structures**

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### **The City of Edinburgh Council**

24 June 2010

#### **1 Purpose of report**

- 1.1 This report seeks to update Council in relation to Edinburgh Trams Limited, a subsidiary of Transport Edinburgh Limited (TEL).

#### **2 Main Report**

##### **Edinburgh Trams Limited**

- 2.1 On 17 December 2009, Council approval was obtained for a number of changes to the Tram Project governance arrangements, including the transfer of the ownership of Edinburgh Trams Limited from Lothian Buses to TEL.
- 2.2 At that meeting, Council delegated authority to me to agree appropriate terms and conditions with TEL and Edinburgh Trams Limited in relation to the preparation for integrated operations and instructed me to report back to Council on the implementation of such transfer and the terms of the relevant agreement.
- 2.3 I can confirm that the transfer of Edinburgh Trams Limited was successfully completed in late December 2009 and Appendix 1 contains a copy of the relevant Memorandum of Understanding among the Council, Edinburgh Trams Limited and TEL.

#### **3 Financial Implications**

- 3.1 The revised governance arrangements for the Tram Project will ultimately lead to a more streamlined and cost efficient organisational model.

#### **4 Environmental Impact**

- 4.1 The arrangements proposed in this report should help to enhance the prospects of the Council's goal of integrated public transport being realised.

## 5 Recommendations

- 5.1 The Council is asked to note that the transfer of Edinburgh Trams Limited from Lothian Buses to TEL has been completed and to note the terms of the Memorandum of Understanding among the Council, TEL and Edinburgh Trams Limited.

  
**Jim Inch**  
**Director of Corporate Services**

08/06/10

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Appendices	1. Memorandum of Understanding
Contact/tel/Email	Jim Inch, Director of Corporate Services; telephone 0131 469 3008; jim.inch@edinburgh.gov.uk
Wards affected	City wide
Single Outcome Agreement	
Background Papers	

**Appendix 1**

**Memorandum of Understanding**

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**MEMORANDUM OF UNDERSTANDING**

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**THE CITY OF EDINBURGH COUNCIL**, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors ("**the Council**")

and

**EDINBURGH TRAMS LIMITED**, a company incorporated under the Companies Acts (registered number SC219797) and having its Registered Office at 55 Annandale Street, Edinburgh EH7 4AZ ("**ETL**")

and

**TRANSPORT EDINBURGH LIMITED**, a company incorporated under the Companies Acts (registered number SC269639) and having its Registered Office at 55 Annandale Street, Edinburgh EH7 4AZ ("**TEL**")

(together "**the Parties**")

**Whereas:-**

1. The Council entered into a revised Operating Agreement and Memorandum of Understanding with TEL in December 2009 ("the CEC TEL Documents") in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006;
2. ETL is a wholly-owned subsidiary of Lothian Buses plc ("LB") which has not traded since incorporation except for the employment of one person;

3. The Parties wish to utilise ETL as the corporate entity to which certain third party employees will be transferred arising from revised arrangements with Transdev plc under the DPOFA contract (“the Revised DPOFA Agreement”) and related matters in furtherance of the Edinburgh Tram project; and
4. The Parties now wish to enter into this agreement to further regulate the relationship between the Parties, specifically with regard to ownership structures and modified governance arrangements.

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

- 1.1 This Agreement should be read in conjunction with the CEC TEL Documents and defined terms should be construed accordingly.
- 1.2 To facilitate the arrangements envisaged by this Agreement, the entire issued share capital of ETL will be transferred for nil consideration from LB to TEL.
- 1.3 The initial purpose of the transfer of ETL is to facilitate the transfer under TUPE and related legislation of certain employees of Transdev plc (or its subsidiary companies, together “the Transdev Group”) as a consequence of the assignation of the DPOFA contract from Transdev to ETL.
- 1.4 The Board of ETL will comprise David Mackay who will act as Chairman, Richard Jeffrey, Alastair Richards, and Brian Cox. Stewart McGarrity will act as Company Secretary. TEL will have the right to appoint up to five directors. A quorum for Board meetings and resolutions will be at least two directors. The Board of ETL has no delegated authority from TEL, other than to fulfil ETL’s statutory responsibilities under the Companies Acts and other relevant legislation and regulatory requirements and including those relating to the employment and welfare of staff employed by ETL. All activities of ETL pursuant to the Revised DPOFA Agreement will be governed by specific delegated authority from TEL through the Tram Project Board and it is acknowledged by TEL that ETL has responsibilities and obligations to TEL and to third parties under the Revised DPOFA Agreement which will require to be authorized in due course in order that ETL may properly fulfil those responsibilities and meet those obligations. It is further acknowledged by TEL that ETL may require involvement, support and resources from TEL or subsidiaries of TEL or other companies owned by the Council in order to fulfil those responsibilities and meet those obligations and that TEL will take all reasonable steps to procure that such is made available to ETL but always in accordance with the terms of the CEC TEL Documents. The parties acknowledge that this may include the enforcement by ETL of, and defence by ETL against, any rights of indemnity pursuant to the interface provisions contained in the Revised DPOFA Agreement and in the Limited’s contract with the Infraco.
- 1.5 Financial arrangements for ETL will be executed such that all costs incurred by ETL in fulfilling its obligations will be fully reimbursed by TEL or companies owned by TEL. Accordingly, ETL will make no profit or loss

from its activities and will have no financial resources beyond those provided to it so that ETL can meet its obligations.

- 1.6 ETL will have no power to enter into any contractual arrangements nor to make any commitments to any third party, except for the Deed of Assignment of the Revised DPOFA Agreement, employment contracts arising from the transfer of employees under TUPE from Transdev and other matters approved by TEL through the Tram Project Board in accordance with the terms of the CEC TEL Documents. At the direction of TEL, and in the capacity of in-house provider, ETL shall perform and discharge the agreed scope of operational responsibilities under the Revised DPOFA Agreement.
- 1.7 For the avoidance of doubt, the Parties agree that ETL has no delegated authority to approve changes to the contractual arrangements, scope, programme, cost or any other substantive aspect of the Project except to the extent that TEL or the Tram Project Board expressly provides such delegated authority to ETL through the Chairman of ETL.
- 1.8 It is anticipated by the Parties that the activities of ETL will evolve in the period leading to commencement of tram revenue service and it is acknowledged by the Parties that the arrangements envisaged under this Agreement are subject to modification by express agreement of the Tram Monitoring Officer, the Board of TEL and the Board of ETL to accommodate revised activities by ETL but always in accordance with the terms of the CEC TEL Documents.
- 1.9 It is further acknowledged by the Parties that the governance and operating model for the Project may develop such that the activities and employees of ETL require to be transferred to another legal entity which is wholly or majority owned by the Council in due course. Such matters will require to be approved in accordance with the terms of the CEC TEL Documents.
- 1.10 The Parties acknowledge that the CEC TEL Documents now include obligations with regard to the delivery of the Gogar Intermodal Station project. To the extent required, and as directed by TEL in accordance with the terms of the CEC TEL Documents, the Parties agree to work together to ensure that TEL manages and delivers the Gogar Intermodal Station project.
- 1.11 All remuneration policies, principles and practices in relation to employees of ETL will be governed by the Board of TEL through its Remuneration Committee in accordance with the terms of the CEC TEL Documents. For the avoidance of doubt, this includes inter alia the agreement of remuneration packages for all ETL employees, annual salary reviews and all bonus or incentivisation arrangements. In this connection, the Board of TEL and its Remuneration Committee will take full account of the relevant terms of the CEC TEL Documents.
- 1.12 Neither the Chairman nor the Board members of ETL will receive any remuneration whatsoever in respect of their appointments or duties in respect of ETL. It is acknowledged that such remuneration entitlement is derived from their appointment to the TEL board, not the boards of TEL subsidiaries.
- 1.13 It is acknowledged by the Parties that although day-to-day management of the tram project will remain with tie, all strategic and other material decisions will be made by TEL and direction will be given to tie and ETL on relevant matters through the Tram Project Board. All activities of ETL and its employees will be subject to the direction of the Tram Project Board, but always in accordance with the terms of the CEC TEL Documents. In this

- regard the companies shall comply with the governance diagram at Schedule 1, as amended by the inclusion of ETL as a wholly-owned subsidiary of TEL.
- 1.14 ETL will not be required to submit an annual business plan to the Council. TEL agrees to include the activities of ETL within its business plan.
  - 1.15 The Parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002 ("FOISA"). Insofar as compliant with FOISA, the Parties agree to keep confidential all appropriate matters relating to the business and operations of ETL and TEL.
  - 1.16 This Agreement is governed by the Laws of Scotland and the Parties submit to the exclusive jurisdiction of the Scottish Courts.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding three pages and the attached Schedule are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at *Edinburgh* on  
 18 day of *December* 2009

Witness... *[Signature]*  
 Full Name... *NICK SMITH* ..... *[Signature]*  
 Address... *CITY CHAMBERS, HIGH ST* Proper Officer  
*EDINBURGH*

Subscribed for and on behalf of Edinburgh Trams Limited at *Edinburgh* on 18 day  
 of *December* 2009

Director... *[Signature]*  
 Director/Secretary... *A. Richards*

Subscribed for and on behalf of Transport Edinburgh Limited at *Edinburgh* on 18 day  
 of *December* 2009

Director... *[Signature]*  
 Director/Secretary... *[Signature]*

Schedule 1

**Governance Structure**

