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**From:** Nick Smith  
**Sent:** 05 November 2007 14:34  
**To:** Andrew Holmes; Donald McGougan  
**Cc:** Duncan Fraser; Alan Coyle; Alan Squair; Gill Lindsay; Colin MacKenzie; Rebecca Andrew  
**Subject:** tie Operating Agreement  
**Attachments:** Operating Agreement v1.doc

All

Please find attached the proposed first draft of the tie Operating Agreement for comments/discussion. Please note that this is only an internal CEC document at present and it is hoped to pass it to tie by 13 November.

A few comments:

- As instructed, the draft is fairly high level in its terms.
- I have, however, attempted to place as many obligations on tie as possible to protect the Council's position. These can be amended/revised as per instructions in due course.
- Whilst I understand from Colin that the Council wishes to avoid having a fully detailed specification of services and to keep the agreement general in its terms I would, however, sound a note of caution. As previously advised, if the services which tie are to provide are not specifically, sufficiently and correctly specified, then this will likely negate the ability of the Council to rely upon the terms of the agreement to prove tie's failure to deliver should that be necessary. This in turn will likely affect the Council's ability to rely on tie's PI or other insurance should this be required. It is therefore imperative that the agreement (an in particular the schedule) is suitably detailed to ensure that at least some form of control/oversight is possible in practice.
- Accordingly, as previously discussed, I should be very grateful if City Development and Finance would pull together the relevant schedule details. I have attempted to detail some high level services/requirements as a starting point. The schedule should detail everything tie are required to do to facilitate the tram project.

I should be very grateful for other comments/instructions on the agreement as soon as possible.

Finally, it may be useful to formulate some form of negotiation plan prior to providing the draft to tie. Can you please confirm whether the draft is it to be presented as a "done deal" given that tie are a Council controlled and owned company and therefore tie should be required to do whatever the Council decides or is there to be formal negotiation as with an independent third party?

In the meantime, if you have any queries, please do not hesitate to contact me.

Kind regards

Nick

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