

<b>DECISION-MAKER:</b>	<b>CABINET COUNCIL</b>		
	<b>HIGHWAYS CONTRACT RENEGOTIATION</b>		
<b>DATE OF DECISION:</b>	18 July 2017 19 July 2017		
<b>REPORT OF:</b>	<b>CABINET MEMBER FOR ENVIRONMENT AND TRANSPORT</b>		
<b><u>CONTACT DETAILS</u></b>			
<b>AUTHOR:</b>	<b>Name:</b>	<b>Paul Paskins</b>	<b>Tel: 023 8083 4353</b>
	<b>E-mail:</b>	<b>paul.paskins@southampton.gov.uk</b>	
<b>Director</b>	<b>Name:</b>	<b>Rob Harwood</b>	<b>Tel: 023 8083 3436</b>
	<b>E-mail:</b>	<b>rob.harwood@southampton.gov.uk</b>	

#### **STATEMENT OF CONFIDENTIALITY**

Appendix 1 of this report is not for publication by virtue of categories 3 (financial and business affairs), and 7A (obligation of Confidentiality) of paragraph 10.4 of the Council's Access to Information Procedure Rules, as contained in the Council's Constitution.

It is not in the public interest to disclose this information as the appendix contains confidential and commercially sensitive information supplied by the Service Provider. It would prejudice the Council's ability to operate in a commercial environment and obtain best value in contract negotiations and would prejudice the Council's commercial relationships with third parties if they believed the Council would not honour obligations of confidentiality.

#### **BRIEF SUMMARY**

This paper sets out the terms relating to the renegotiation of the Council's Highways Service Partnership (HSP) contract and associated terms in respect of the Citywatch contract. The Service Provider for both contracts is Balfour Beatty Living Places Ltd (BBLP).

This paper also seeks authorisation to make the HSP and Citywatch contracts co-terminus and for General Fund expenditure, consisting of contract costs, over the extended years of these contracts.

#### **RECOMMENDATIONS:**

##### **CABINET recommends to Council:**

	(i)	To delegate authority to the Service Director, Business Operations and Digital, following consultation with the Service Director, Legal and Governance and the Service Director, Finance and Commercialisation, to amend the HSP Contract by extending its term until 23:59 hours on 30 September 2025 and make associated amendments to reduce the Council's General Fund costs associated with this contract in each of the remaining years of the contract from
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		2017-18 onwards.
	(ii)	To delegate authority to the Service Director, Business Operations and Digital, following consultation with the Service Director, Legal and Governance and the Service Director, Finance and Commercialisation, to extend the term of the Citywatch (also known as 'ROMTV') contract until 23:59 hours on 30 September 2025 and make associated amendments to reduce the Council's General Fund costs associated with this contract in 2017-18.
	(iii)	To note the increase in financial commitment to the Authority covering the period 2020/21 to October 2025 to meet the additional contract costs over the extended years of the HSP and Citywatch contracts which total an estimated £13.3M (uplifted by indexation).
	(iv)	To note that the renegotiated terms for the HSP and ROMTV contracts will achieve estimated General Fund savings - compared to current spending and costs. These are detailed in confidential Appendix 1.

#### **COUNCIL**

	(i)	To delegate authority to the Service Director, Business Operations and Digital, following consultation with the Service Director, Legal and Governance and the Service Director, Finance and Commercialisation, to amend the HSP Contract by extending its term until 23:59 hours on 30 September 2025 and make associated amendments to reduce the Council's General Fund costs associated with this contract in each of the remaining years of the contract from 2017-18 onwards.
	(ii)	To delegate authority to the Service Director, Business Operations and Digital, following consultation with the Service Director, Legal and Governance and the Service Director, Finance and Commercialisation, to extend the term of the Citywatch (also known as 'ROMTV') contract until 23:59 hours on 30 September 2025 and make associated amendments to reduce the Council's General Fund costs associated with this contract in 2017-18.
	(iii)	To note the increase in financial commitment to the Authority covering the period 2020/21 to October 2025 to meet the additional contract costs over the extended years of the HSP and Citywatch contracts which total an estimated £13.3M (uplifted by indexation).
	(iv)	To note that the renegotiated terms for the HSP and ROMTV contracts will achieve estimated General Fund savings - compared to current spending and costs. These are detailed in confidential Appendix 1.

#### **REASONS FOR REPORT RECOMMENDATIONS**

1.	The revised contractual arrangements would ensure that the Council retains appropriate service levels and risk allocation whilst achieving General Revenue Fund savings.
2.	Extending the contracts would avoid the need to re-procure the HSP and ROMTV contracts in 2020 and 2022 respectively, the associated re-procurement costs and the prospect of the costs associated with one or both

	contracts rising against current expenditure levels.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
3.	<p>Alternative options rejected include:-</p> <ul style="list-style-type: none"> <li>• Making no changes to the two contracts and leaving costs and terms unchanged.</li> <li>• Termination of one or both of the contracts. The Council would be responsible for financial damages to BBLP and would suffer reputational damage.</li> <li>• Re-procuring the contracts at the expiry of their core term. The Council would need to fund costs associated with re-procurement and would achieve contract prices at the prevailing market rate.</li> <li>• In-sourcing the services relating to one or both contracts at the expiry of their core terms. Services would be delivered at in-house costs.</li> </ul>
<b>DETAIL (Including consultation carried out)</b>	
4.	<p>The Council has two contracts with BBLP:-</p> <p>(i) The 'Highways Service Partnership' (HSP) which commenced in October 2010. The core term expires in October 2020 and the contract allows extensions of up to five years to be granted, based on performance against a set of Key Strategic Indicators (KSIs).</p> <p>Legal opinion has indicated that, whilst the contract provides that extensions are assessed on performance against these targets, the Council could take a risk-based decision to grant the extension years to BBLP Irrespective of this KSI performance framework by waiving the Council's rights to apply it, providing it is in the Council's interests to do so.</p> <p>(ii) 'Citywatch' (also known as 'ROMTV') which commenced in October 2012. The core term expires in 2022 and the contract allows for up to five years of extensions, solely at The Council's discretion and not based on specific performance criteria.</p> <p>The original procurements and Cabinet reports relating to these contracts envisaged, and allowed for, the five year extension periods.</p>
5.	The Council has General Fund savings targets (reference BOD5) for the major contracts. These targets are £654k in 2017-18 and £854k (recurring) in 2018-19 to 2020-21 inclusive
6.	The confidential Appendix 1 to this paper sets out the commercial terms and benefits associated with this proposal.
7.	The annual effect of the revenue savings associated with this proposal are anticipated to be £774,000 in 2017-18; the exact in-year benefit would be dependent on the timing of the implementation of the proposals and the outcome of the final associated negotiations.
8.	The total General Fund saving over the remaining term of the contracts is estimated to be against current spend levels. It should be noted that the General Fund costs associated with both contracts are increased in accordance with indexation formulas on an annual basis.

9.	Changes to both the HSP and Citywatch contracts would be required to implement these changes. It is recommended that Cabinet delegates the Service Director, Business Operations and Digital, following consultation with the Service Director, Legal and Governance and the Service Director, Finance and Commercialisation to implement the changes to the HSP and Citywatch contracts outlined in this paper. It is anticipated that the changes could take effect on or before 1 September 2017.
10.	The core contract terms relating to both the HSP and ROMTV contracts would be unchanged.
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
11.	It is anticipated that the total effect of the changes over the remaining terms of the contracts would generate an overall General Fund revenue saving as detailed in confidential Appendix 1. It is not possible to guarantee this level of saving as it is partially dependent on the commercial terms contained in confidential Appendix 1.
12.	There will be an increase in financial commitment to the Authority covering the period 2020/21 to October 2025 to meet the additional contract costs over the extended years of the HSP and Citywatch contracts which total an estimated £13.3M (uplifted by indexation).
13.	The Council would retain the discretion to vary highways capital expenditure and set the level of budget.
<b><u>Property/Other</u></b>	
14.	BBLP would continue to occupy the parts of City Depot designated to them through leasing arrangements.
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
15.	Highways maintenance and associated and ancillary functions are authorised by a variety of Statutory powers including the Highways Act 1980 as amended and the Traffic Management Act 2004, together with secondary legislation (Regulations, Directions and Orders). The power to enter into contracts for the delivery of a Council function is contained in s1 of the Local Government (Contracts) Act 1997 and s.111 Local Government Act 1972 (power to do anything calculated to facilitate, ancillary to or conducive to the discharge of a primary function). Regard must be had to the Part 1 (Best Value) provisions of the Local Government Act 1999, the National Procurement Strategy and EU Procurement Rules as enacted in the Public Contracts Regulations 2015.
16.	Part II (Contracting Out) of the Deregulation and Contracting Out Act 1994 is the primary legislation which allows a Minister to make an Order enabling certain statutory functions to be carried out by persons on behalf of the local authority. The Contracting Out (Highway Functions) Order 2009, sets out those functions of the Highways Act 1980 and NRSWA 1991 which can be contracted out. The functions under the 2009 Order include (among many others): <ul style="list-style-type: none"> <li>○ Section 41(1) - duty to maintain highway maintainable at public expense</li> <li>○ Section 62 – general power of improvement</li> </ul>

	Section 150 – duty to remove snow, soil etc. from the highway
<b>Other Legal Implications:</b>	
17.	Legal opinion has indicated that, whilst the contract provides that extensions are assessed on performance to these targets, the Council could take a risk-based decision to grant the extension years to BBLP Irrespective of this KSI performance framework by waiving the Council's rights to apply it, providing it is in the Council's interests to do so. The Citywatch contract terms allow the contract to be extended at the Council's discretion.
<b>RISK MANAGEMENT IMPLICATIONS</b>	
18.	Risks will continue to be managed through existing mechanisms and contractual obligations.
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
19.	These proposals are consistent with the policy framework including the Local Transport Plan. The Council would continue to maintain control over setting policy.

<b>KEY DECISION?</b>	Yes
<b>WARDS/COMMUNITIES AFFECTED:</b>	All
<u>SUPPORTING DOCUMENTATION</u>	
<b>Appendices</b>	
1.	Commercial Terms: Evaluation and benefits summary (Confidential)

**Documents In Members' Rooms**

N/A	
<b>Equality Impact Assessment</b>	
<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	No
<b>Privacy Impact Assessment</b>	
<b>Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.</b>	No
<b>Other Background Documents</b>	
Other Background documents available for inspection at: N/A	
<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
N/A	