

## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	Extension of Highways Tree Maintenance Contract for one year.
<b>Cabinet Member:</b>	Cllr Osman Dervish, Cabinet Member for Environment
<b>SLT Lead:</b>	Barry Francis, Director of Neighbourhoods
<b>Report Author and contact details:</b>	Jacki Ager Waste and External Contracts Manager Ext 3363
<b>Policy context:</b>	Ensure Havering is kept Clean and Safe
<b>Financial summary:</b>	The cost of the Highway Tree Maintenance Contract is currently £350,000 per annum and will be met via the existing budget.
<b>Relevant OSC:</b>	Environment
<b>Is this decision exempt from being called-in?</b>	Yes

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**The subject matter of this report deals with the following Council Objectives**

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval to extend the current Highways Tree Maintenance Contract with City Suburban for a period of one year, from 1<sup>st</sup> April 2021 – 31<sup>st</sup> March 2022 at an estimated cost of £350,000.

### AUTHORITY UNDER WHICH DECISION IS MADE

**Power to authorise this** contract extension process is delegated to members of the Second Tier Management under Part 3 (Responsibility for Functions), Paragraph 3.4 of the Council's Constitution as follows

#### **Contract powers**

(a) To approve commencement of a tendering process for, and to award all contracts below a total contract value of £500,000 but above the EU Threshold for Supplies and Services.

Contracts Procedure Rules 19.4: power of a chief officer under the Scheme of Delegation to extend a contract provided that it was contemplated at the time the contract was awarded

### STATEMENT OF THE REASONS FOR THE DECISION

The Council, as the Highway Authority, has a statutory duty to keep the highways free of hazards. Unmanaged, trees on the highway may be subject to disease and damage that could pose a threat to highways users. Therefore, keeping a healthy tree stock via regular inspections and arboricultural works helps to mitigate any such risk.

The Highways Tree Maintenance Contract is a 5-year contract that commenced on 1<sup>st</sup> April 2016, costing Havering approximately £350,000 per annum. The contractor is currently City Suburban, who operate in a number of other boroughs in London.

The tree maintenance service was due to feature within the Integrated Public Realm Contract, which was put on hold due to challenges experienced by potential bidders caused by Covid-19. The current contract is due to expire on 31<sup>st</sup> March 2021, meaning there is very little time to complete a competitive tender with the due diligence required on both sides.

The current contract permits a one year extension.

#### **Recommendation:**

Due to the reasons above, it is recommended that the contract be extended for period of one year at the current price to enable Havering to progress a full procurement exercise and allow potential bidders sufficient time to submit viable bids.

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### **OTHER OPTIONS CONSIDERED AND REJECTED**

#### **End the contract and put out a competitive tender**

Not enough time for due diligence to effectively take place on both sides.

#### **Take the contract in-house**

Likely to be considerably more expensive, plus very little time to carry out due diligence in terms of TUPE and resource requirements, as well as procure specialist equipment and vehicles.

#### **Discontinue the service until it can be retendered**

Under the Highways Act, the Highways Authority has a duty of care to keep its highways free from obstruction and danger. A lack of tree maintenance would potentially endanger road users, with risks of failure caused by death or disease of the tree. Any such incident would render the Council liable under its statutory duty to keep the public highway free of hazards and obstructions.

### **PRE-DECISION CONSULTATION**

Consultation with the service provider. In addition to this, consultation has taken place with finance, legal and the Strategic Procurement Unit.

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**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Jacki Ager

Designation: Waste and External Contracts Manager

Signature:



Date: 22.12.20

## Part B - Assessment of implications and risks

### **LEGAL IMPLICATIONS AND RISKS**

1. The Council is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, pursuant to Part I of the Local Government Act 1999. The Council has the general power of competence under section 1 of the Localism Act 2011 to do anything an individual may generally do, together with the power under section 111 of the Local Government Act 1972 to do anything ancillary to or which facilitates any of its functions, including the matters set out in this report.
2. This report seeks approval to extend the contract with City Suburban for a period of one year. The extension is subject to the Public Contract Regulations 2015 (PCR). Section 72 (1) (a) of the PCR permits variations of a contract where the contract sets out the scope and nature of the variation. The one year extension is permitted by the terms of the contract.
3. The extension must comply with the Council's Contract Procedure Rules (CPR). Under CPR 19.4 an extension is permitted where certain conditions are fulfilled which are the extension was contemplated at the time the contract was awarded, the award followed an OJEU-compliant procurement and the published contract notice permitted the contract to continue past the defined period. CPR 19.4 also requires the extension does not exceed 50% of the awarded contract value. The body of the report confirms that the proposed extension falls within CPR 19.4.
4. Under CPR 19.5 the extension document will be completed in the same manner as the original contract.
5. The Council's legal services team will assist with drafting the extension. Any notice to extend the contract must be at least three months before the expiry of the current contract

### **FINANCIAL IMPLICATIONS AND RISKS**

Under the current pricing schedule the extension will cost the Council approximately £0.350m per annum and will be met from existing budget.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

Havering outsources its tree maintenance services to City Suburban, therefore there are no human resources and / or TUPE implications for Havering Council.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

- 1.1. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

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- 1.2. (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- 1.3. (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- 1.4. (iii) Foster good relations between those who have protected characteristics and those who do not.
- 1.5. Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.
- 1.6. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Maintenance of trees on the highway helps to ensure a safe borough for all.

An equalities and health impact assessment is attached, however the TUPE element is no longer applicable.

### **BACKGROUND PAPERS**

None

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**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed



Name: Sue Harper

Cabinet Portfolio held:

CMT Member title:

Head of Service title:

Other manager title: Assistant Director - Environment

Date: 10/02/21

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_



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