



Havering

LONDON BOROUGH

Notice of Non-key Executive Decision

Subject Heading:	Novation and Variation of a Contract for asset management software and associated technology solutions
Decision Maker:	Tony Galloway Interim Assistant Director, Environment
Cabinet Member:	Councillor Barry Mugglestone, Cabinet Member for Environment.
SLT Lead:	Neil Stubbings, Strategic Director, Place
Report Author and contact details:	Mark Hodgson Head of Highways, Traffic and Parking Mark.hodgson@havering.gov.uk
Policy context:	This decision supports the Corporate Plan, especially delivering value for money and efficient services
Financial summary:	There are no financial implications
Relevant OSC:	Place
Is this decision exempt from being called-in?	Yes-Non Key

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

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This Executive Decision requests authority to novate a contract between the Council and Yotta Limited to Causeway Technologies Limited (Causeway) following the latter's purchase of the former. Financial checks into the standing of Causeway have been completed and deemed satisfactory with an assessed low risk.

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Additionally, the contract needs to be varied to amend the payment milestones and duration of the contract to reflect the current status of the contract, although the total value of the contract remains unchanged and as per that at award.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3 [Responsibility for Functions] of the Council's Constitution

3.4 Powers of Second Tier Managers

General Powers

(a) To take any steps necessary for proper management and administration for their allocated portfolios.

STATEMENT OF THE REASONS FOR THE DECISION

1.0 Background

- 1.1 In September 2021 the Council took the decision to award a contract to Yotta Limited (Yotta) for the provision of asset management software and associated technology solutions. This followed a compliant procurement exercise in accordance with the Council's Contracts Procedure Rules and legislative requirements.
- 1.2 Following the above decision a contract was signed between the parties on 30 September 2021.
- 1.3 In May 2022 Yotta was acquired by Causeway Technologies Limited (Causeway) (Company Number 3921897). Causeway has now written to the Council requesting the contract to be novated to them.
- 1.4 Apart from the operational changes listed below all rates, costs, provisions, rights and terms and conditions included in the original contract with Yotta remain in place. The main modification is that the contract will now be with Causeway rather than Yotta and the Start and Finish dates will be reflective of the delivery timelines.
- 1.5 Checks into the standing and financial risk associated with Causeway have been completed and deemed satisfactory.
- 1.6 The original contract set out a fixed timeframe for delivery of the Alloy product for various modules. It included a two year fixed term plus an optional one year extension. The number of licences bought by the Council are therefore fixed for the first two years but opportunity to review need, based on changing business needs of the Council, can be taken for year three, should the contract be extended.

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- 1.7 It is also the case that the original Project delivery timeframe has not been achieved due to Resourcing challenges and to allow time for Causeway to take over the Yotta project and service provisions. It makes sense, therefore, to reset this to reflect a realistic implementation programme. The effect of this is to amend the term of the contract. This would include maintaining the same rates and payments (values) as per the original contract. To help incentivise good performance interim payments for implementation have also been agreed (payments for implementation will only be made on completion of specific tasks). The existing contract is for a term of three years, but due to the delays in implementing the modules already incurred, officers believe that a realistic time frame for implementing the solution is the remaining term of the 3-year Contract plus a 1-year extension. However, the number of modules to be implemented, the number of licences and the charges will all remain the same.
- 1.8 In summary, a deed of variation will set out the following amendments. These have all been discussed and agreed with Yotta/ Causeway in principle, subject to agreement.
- 1.9 The deed of variation will:
- Novate the contract to Causeway
 - Amend the finish date of the three year contract as above and exercise a final permitted one year extension (but rate payment, values and costs as per the existing three year contract)
 - Year two of the contract to start on 1 April 2024, aligning all modules with a common start and end date
 - Enable the Council to specify the number of licences required from the end of Year 2, closer to the start of the third year (1 April 2025)
 - Aim for a revised implementation and go live of all modules by (or before) 1 April 2024
 - Revise the payment schedule based on the revised implementation and go live dates

OTHER OPTIONS CONSIDERED AND REJECTED

Not novate the contract – the Council would then need to terminate the contract with Yotta and re-procure the service, which is not viable as it would incur time and expense. The Council would also not have the benefit of this contract.

PRE-DECISION CONSULTATION

None required or undertaken

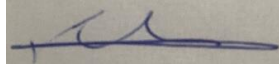
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NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Mark Hodgson

Designation: Head of Highways Traffic and Parking

Signature:



Date: 19.10.2023

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

This report seeks authority to novate a contract for asset management software and associated technology solutions from Yotta Limited to Causeway Technologies Limited following a takeover by Causeway.

The value of the contract is £499,950 which is above the relevant threshold for service contracts (£213,477) as set out in the Public Contracts Regulations (as amended) 2015 (PCR). Therefore, any modification must be in compliance with the PCR as well as the Council's Contracts Procedure Rules (CPR).

Regulation 72(1)(d) states:

Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of—

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part;

The body of this report confirms that Causeway Technologies Limited is the majority shareholder of Yotta Limited from 28 May 2022. Officers have undertaken due diligence to further satisfy themselves that novating the contract will not result in undue risk to the Council.

The proposed novation also complies with CPR 19.1.

This report also seeks authority to amend the expiry date of the contract and term of contract at no additional cost and revise the implementation plan and payment schedule. The proposed amendment is in compliance with Regulation 72(1)(e).

72.—(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8)

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

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(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

- (i) allowed for the admission of other candidates than those initially selected,*
- (ii) allowed for the acceptance of a tender other than that originally accepted, or*
- (iii) attracted additional participants in the procurement procedure;*

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

The proposed amendments should not be considered significant as they do not change the nature or scope of the contract or the economic balance between the parties. The amendments are unlikely to have attracted further participants to the tender opportunity.

FINANCIAL IMPLICATIONS AND RISKS

This report is asking the Director of Environment, to approve the novation of a contract along with approving some operational changes to reflect the current position.

The financial implications associated with the contract were considered in the original report seeking approval to award the contract to Yotta.

There are no further financial implications associated with this decision as the total contract price will be contained within the originally stated £499,950.

The following table shows the annual spend breakdown.

	Yr1 2023/24	Yr2 2024/25	Yr3 2025/26	+Yr4 2026/27	Total
<u>Capital</u>					
Implementation (up to 5 modules)	44,320	40,680	16,700		101,700
<u>Revenue</u>					
Licensing	132,750	132,750	66,375	66,375	398,250
Total					499,950

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

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

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EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

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:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

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.

There are no implications as a result of this decision

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

There are no implications as a result of this decision

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

Proposals as recommended in the report - agreed

Details of decision maker



Signed

Name: Tony Galloway

Cabinet Portfolio held: Councillor Barry Mugglestone, Cabinet Member for Environment

Head of Service title: Mark Hodgson, Head of Highways, Traffic & Parking, Environment

Date:

Lodging this notice

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____

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