

Report for:
ACTION

Item Number:

Contains Confidential or Exempt Information	YES Appendix A contains Exempt Information by virtue of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (see paragraph 10 to the Access to Information Procedure Rules)
Title	Environmental Services Company Contract Changes including extension (Greener Ealing Limited)
Responsible Officer(s)	Darren Henaghan, Interim Strategic Director of Housing and Environment
Author(s)	Earl McKenzie, Assistant Director Street Services John Arnold, Contracts and Performance Manager
Portfolio(s)	Cllr Deirdre Costigan, Deputy Leader and Cabinet Member for Climate Action
For Consideration By	Cabinet
Date to be Considered	17 th May 2023
Implementation Date if Not Called In	1 st April 2025
Affected Wards	All
Keywords/Index	Street Services, waste, recycling, street cleaning, grounds maintenance, Enterprise Managed Services, Greener Ealing Limited, Environmental Services

Purpose of Report:

To seek approval from Cabinet to agree:

To a five (5) year contract extension from July 2025 for the Environmental Services contracts operated by Greener Ealing Limited and to include provision for a further contract extension of 5 years from April 2030, and the corresponding contract variations set out in Recommendation 1.2 of this report.

1. Recommendations

It is recommended that Cabinet:

- 1.1 Agrees to extend the contract between the Council and Greener Ealing Limited (GEL) dated 6th July 2020 for the provision of environmental services (“the Contract”) for 5 years from 7th July 2025 to 6th July 2030 pursuant to clause 5.2 on at least 3 months' prior written notice of such intention before the expiry of the initial term.
- 1.2 Agrees in principle to the variations set out in a current draft deed of variation to include the following variations of the Contract and authorises the Strategic

Director of Housing and Environment following consultation with the Director of Legal & Democratic Services and the Strategic Director for Resources to finalise the following variations:

- 1.2.1 inclusion of an industry-based contract indexation clause and mechanism for annual contract price adjustment
- 1.2.2 confirmation of the Council's status as parent company guarantor.
- 1.3 Agrees in principle to GEL's dividend policy set out in Confidential Appendix A and authorizes the Strategic Director of Housing and Environment following consultation with the Director of Legal & Democratic Services and the Strategic Director for Resources to agree its terms with GEL.
- 1.4 Notes that on 13th December 2022, the Strategic Director of Housing and Environment approved the addition of graffiti and flypost removal services to the Contract.
- 1.5 Thanks Darren Henaghan for his work as Council shareholder representative for Greener Ealing Limited and appoints Nicky Fiedler to be the Council's shareholder representative for Greener Ealing Limited, with effect from 3rd July 2023.

2. Background and Context

- 2.1 In July 2020 GEL commenced delivery of the borough's Environmental Services contract for the provision of Waste & Recycling Collection, Street Cleaning, Grounds Maintenance, Burials and Associated Services from the previous contractor Amey Plc. The initial contract period is for 5 years with provision to extend for a further 5 years.
- 2.2 To support business expansion and diversification objectives and to align with refinancing arrangements, there is a need to extend the contract well in advance of end of the initial term.

3. Reason for Decision

- 3.1 Since the award of the Environmental Services contract to GEL in July 2020, there has been a significant improvement in performance compared with the previous contractor. Contract Key Performance Indicators are being consistently met or exceeded, and customer complaint levels have dramatically reduced. The business has demonstrated its ability to deliver to high standards and Graffiti Removal has been authorised to be added to the Contract and it is also planned for parking enforcement services to be added to the GEL portfolio soon. The proposed contract terms for both these services extend beyond the term of the current GEL contract, with Graffiti services delivered by GEL from June this year and therefore requiring formal inclusion in the agreement with the Council.
- 3.2 Additionally, as part of efficiency savings in 2022/23 to assist with revenue pressures, the lease financing agreement for the GEL fleet signed in 2020 for 5 years was extended by 2 years. The current GEL Contract with the Council

officially ends in 2025 and must therefore be extended to align with contract terms for the additional graffiti removal and parking enforcement services, and the extended finance lease agreements.

- 3.3 The extension of the GEL Contract provides an opportunity to make amendments to it, clarifying clauses and to include minor omissions.
- 3.4 There is potential for the Council as the shareholder to receive a dividend, based on a share of operating surplus. The original contract did not specify exactly how this might be apportioned and accordingly, a dividend distribution clause will now be included in the agreement.
- 3.5 The original contract did not include a formula for calculating annual contract price uplift. A formula based on industry standard for similar contracts will now be included, along with clarification of the mechanism for other annual price adjustments.
- 3.6 To support GEL endeavours to successfully bid for works outside of any agreement with the Council, confirmation of the Council's position as guarantor in relation to any GEL third party contract, if required, is sought. This will be at the discretion of the Council.
- 3.7 The Interim Strategic Director of Environment and Housing (Darren Henaghan) leaves the Council in July 2023. The Strategic Director acts as the Council's shareholder representative for GEL. This post will be held by Nicky Fiedler from 3rd July 2023.

4. Financial Implications

- 4.1 The current GEL Contract does not include an indexation clause. Annual price increases/decreases are agreed as part of the annual business planning process. At the start of the contract this was seen as necessary to ensure control over start up costing, while gaining a deeper understanding of operating costs under the previous contract. With all operating cost implications now clear and with a transparent open book arrangement, it is now appropriate to apply standard industry annual contract uplift. This gives both the Council and GEL a degree of certainty in support of business planning and impact on the Medium-Term Financial Strategy (MTFS). The agreed uplift formula will be supported by a clause which recognises realistic cost increases to the contractor while protecting the Council from excessive price increases.
- 4.2 The financial implications of the contract indexation and dividend distribution policy will need to be factored into the future Medium-Term Financial Strategy (MTFS) process.

5. Legal Implications

- 5.1 The Council may extend the Contract as GEL continues to remain a controlled local authority company and meets the requirements of Regulation 12 of the Public Contracts Regulations namely that the Council:
 - a. exercises control similar to that it exercises over its own departments.

- b. more that 80% of the activities carried out by GEL are for the Council
- c. there is no direct private capital participation in GEL.

5.2 The Contract may be varied by written agreement of the parties pursuant to clause 46 of the Contract.

6. Value For Money

GEL was first established following An independent assessment of the options available to the Council by Eunomia showing estimated service costs:

All the options include the application of the London Living Wage. Costs are based on the current operational resources (crews, employee numbers, vehicles, management and supervision, administration) the assessment showed that the LATCO (GEL) was the cheapest option for the Council.

One of the key benefits to the Council setting up a LATCo is the ability to 'Control and Flex' service costs.

GEL continues to be value for money for the Council, this is seen in the recent acquirement of the Graffiti and flypost removal contract saving the Council £38,374 PA explained in 5.1 and 5.2 of the Graffiti and flypost removal Officer decision.

7. Sustainability Impact Appraisal

GEL is an essential partner in helping to deliver Ealing's sustainability aspirations. Through the delivery of the Council's frontline services in accordance with the service contract, the very latest thinking has been applied to environmental issues, incorporating the Council's waste reduction, transport, air quality and carbon reduction policies. In addition to this, GEL has identified development of a Carbon Reduction plan as one of its Key Objectives for 2021/20. GEL will work with the Council to introduce the greenest fleet possible, improve recycling rates, and work with the community on behaviour change and awareness programmes.

8. Risk Management

The annual Business Plan provided by GEL, sets out the processes by which risk will be managed. This has been agreed by the GEL Board and the Board has agreed that this will be reported to every Board meeting. GEL's risks also form a part of the Housing and Environment Directorate risk register and will appear on the Corporate risk register should they meet the necessary criteria.

The risk to the Council is a potential increase in contract prices which may be required in the absence of commensurate increases in government funding. The Council would require saving to be delivered to mitigate against the increase.

The Council would have the risk of financial liabilities under any parent guarantee should GEL fail.

9. Community Safety

None.

10. Links to the 3 Key Priorities for the Borough

Environmental Services is one of the areas where the Council can have a positive impact on developing a more sustainable place through encouraging and pushing residents to reduce waste and increase recycling.

For the year 2017/18, the Council's recycling rate was the second highest in London at a time when recycling rates nationally have plateaued. COVID has played a large factor for all councils who have seen a shift in behaviours. Ealing has a 48% recycling rate in 2022, which is similar to the other London boroughs. Increasing recycling further is a key environmental and financial aim of the Council and these proposals will allow the Council to pilot different approaches and propose longer term change.

Ealing is a clean borough and a high-quality place where people want to live. Waste collection, street cleansing and grounds maintenance are key in maintaining a clean and quality place and an area where there are significant pressures in terms of increasing population numbers and higher density housing placing pressures on environmental infrastructure.

11. Equalities, Human Rights and Community Cohesion

The Equalities implications have been considered and there is no adverse impact arising from the decisions set out in this report. Further thought will need to be given to equality implications when the Council has determined the way forward for the services.

The Council is required to comply with the Public Sector Equality Duty which is set out in S.149 Equality Act 2010 when making decisions regarding the future delivery of public services. S.149 requires the Council to have "due regard" to:

- the need to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1)(a)).
- the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b)). This involves having due regard to the needs to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(4)); and
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Schedule 19 of the Equality Act 2010 provides a list of public authorities that must comply with the Public Sector Equality Duty. Local authority-controlled companies such as GEL are not contained within that list. However, the general equality duty also applies to other organisations that exercise public functions in their own right or on behalf of the Council.

The Act defines a public function as a function of a public nature for the purposes of the Human Rights Act 1998.

12. Property and Assets

Property leases with the Council will need to be extended to align with the contract extension.

13. Any other implications

None

14. Timetable for Implementation

The contract extension will be from July 2025.

15. Appendices

Confidential Appendix A: Greener Ealing Limited – Dividend Policy (12846356.3)

16. Background Information

LATCO April 2019 Cabinet report final
Cabinet report GE Oct 2019 final

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Darren Henaghan	Interim Director of Housing	13/04/23		
Emily Hill	Chief Finance Officer	04/05/2023	04/05/23	Throughout
Cllr. Deirdre Costigan	Deputy Leader of Ealing Council and Cabinet Member for Climate Action	21/04/23	21/04/23	
Russell Dyer	Head of Accountancy	21/04/23	02/05/23	Section 4. Financial Implications
Helen Harris	Director of Legal and Democratic Services			
Sajal O'Shaughnessy	Lawyer (Legal Contracts)	04/05/23	04/05/23	throughout
Chuhr Nijjar	Senior Contracts Lawyer	06/04/23	multiple	throughout

Report History

Decision type:	Urgency item?
Key decision Yes	
Report no.:	Report author and contact for queries:
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