

## Commissioning and Procurement Executive Committee – 12 September 2023

<b>Subject:</b>	Hot Water Agreement		
<b>Corporate Director:</b>	Colin Parr - Communities, Environment & Resident Services		
<b>Portfolio Holder:</b>	Councillor Corall Jenkins - Energy, Environment, Waste Services and Parks		
<b>Report author and contact details:</b>	Antony Greener, Head of District Heating and Waste Strategy <a href="mailto:antony.greener@nottinghamcity.gov.uk">antony.greener@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Sejal Mistry, Senior Commercial Business Partner Anthony Heath, Contracts and Commercial Steve Oakley, Head of Procurement		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Subject to call-in</b>
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b>	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more
taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
<b>Total value of the decision:</b> £800,000			
<b>Wards affected:</b> St Anns, Mapperley, Castle, Meadows, Dales			
<b>Date of consultation with Portfolio Holder:</b>			
<b>Relevant Council Plan Key Outcome:</b>			
Green, Clean and Connected Communities	<input checked="" type="checkbox"/>		
Keeping Nottingham Working	<input type="checkbox"/>		
Carbon Neutral by 2028	<input checked="" type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Living Well in our Communities	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>The Council has a separate contract with Wastenotts (Reclamation) Ltd for the supply of supplementary hot water, recovered from the cooling of flue gases at the Eastcroft Incinerator to the Nottingham District Heating Scheme. The report seeks approval to extend the contract term to 30<sup>th</sup> June 2030 to become co-terminus with the District Heating Scheme Agreement 1972.</p>			
<b>Exempt information:</b>			
<p>An appendix to this report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> <p>It is not in the public interest to disclose the information because it may offer a competitive advantage to other companies tendering for future Council contracts.</p>			

**Recommendations:**

- 1 To approve an extension to the Hot Water Agreement between the Council and Wastenotts Reclamation Ltd for the supply of Hot Water to the Nottingham District Heating Scheme.
- 2 To delegate authority to the Director of Legal and Governance to seal a Deed of Variation to the contract to extend the contract term as detailed in the report.

**1. Reasons for recommendations**

- 1.1 The extension to the contract term will secure the supply of hot water recovered from the Eastcroft Incinerator to provide supplementary heat energy to the district heating network to align with the expiry of the District Heating Scheme Agreement.

**2. Background (including outcomes of consultation)**

- 2.1 The Council has a contract with Wastenotts (Reclamation) Limited to supply waste disposal and steam supply services from the Eastcroft Incinerator. During the 1990s modifications to the Eastcroft Incinerator enabled additional recovery of energy from the cooling of flu gases in the form of hot water and a contract was entered into between Wastenotts and the Council's subsidiary company, Enviroenergy Ltd for access to this additional heat source.
- 2.2 The necessary infrastructure to recover waste heat, and a separate pipe were installed at the Eastcroft Incinerator, feeding to the London Road Heat Station and c. 30,000MWh of energy, in the form of hot water, is delivered annually to the heat station. The hot water supplements the requirements of the district heating scheme, whose principal energy source is the steam delivered under the District Heating Scheme Agreement 1972.
- 2.3 In 2013, the original contract expired and was replaced by a contract between the Council and Wastenotts directly. This contract requires renewal through an extension to its term, to ensure the supply of hot water is maintained on a contractually sound basis.
- 2.4 The parties have agreed to extend the Hot Water contract on existing terms and conditions, such that it becomes co-terminus with the District Heating Scheme Agreement 1972, as amended by the Steam Agreement 1994 variation, as amended by a side letter in 2013, and therefore expires on 30<sup>th</sup> June 2030.
- 2.5 Entering into the contract extension, by means of a Deed of Variation to the contract will create a suite of contracts between the Council and Wastenotts regarding the delivery of energy to serve the Council's district heating scheme which are all co-termini.

**3. Other options considered in making recommendations**

- 3.1 The option to do nothing was rejected on the basis that it would not comply with Contract Procedure Rules.
- 3.2 The option to not extend the contract term for Hot Water supply is rejected because the energy supply is essential to the successful operation of the Nottingham District Heating Scheme, and significant heat recovery infrastructure would need to be decommissioned at the Eastcroft Incinerator plant.

#### **4. Consideration of Risk**

- 4.1 There are no additional contractual risks to consider because the extension is proposed on the basis of retaining the existing terms and conditions. Both parties acknowledge that if agreement is reached to vary the terms of the existing contracts between the parties which cut across any existing contractual provisions, then these new arrangements will supersede any existing contracts in place.

#### **5. Best Value Considerations**

- 5.1 The Council recognises that the receipt of hot water recovered from the cooling of flu gases at the Eastcroft Incinerator to be best value. Other cooling options would require this heat to be dissipated to atmosphere by cooling fans requiring additional electrical energy to service this system. With no useful energy recovered, the efficiency of the Combined Heat and Power plant would reduce, and the heat lost would need to be replaced from other, more expensive, sources.

#### **6. Finance colleague comments (including implications and value for money/VAT)**

There is an existing approved revenue budget in the Council's MTFP to cover the extension to the Hot Water Agreement between the Council and Wastenotts Reclamation Ltd for the supply of Hot Water to the Nottingham District of £0.793m.

Sejal Mistry, Senior Commercial Business Partner - 27 June 2023

#### **7. Legal colleague comments**

- 7.1 This report seeks authority to extend a contract. The contract has already come to the end of its term, on 5<sup>th</sup> March 2023, but the parties have continued to meet their obligations under that contract.
- 7.2 Procurement colleagues will deal with the procurement issues and recommended approach in their comments.
- 7.3 The proposed Deed of Variation seeks to extend the term of the contract until the expiry of the present agreement (1<sup>st</sup> July 2030) or, if earlier, the date on which supply ceases pursuant to a new energy supply agreement being entered into; all other terms of the contract remain as agreed in 2013. Subject to Procurement colleagues comments, and the Council retaining flexibility for early termination should circumstances warrant, this proposal raises no significant legal risks.

Anthony Heath, Contracts and Commercial – 4 August 2023

#### **8. Other relevant comments**

- 8.1 Under regulation 88 of the Utilities Contract Regulations 2015 an extension to a contract is allowed where a change of contractor for economic or technical reasons would cause significant inconvenience or substantial duplication of costs. As the supply of hot water can only be supplied to the network via the incinerator at Eastcroft Depot, without building a new incinerator, the extension to the contract is believed to be covered by regulation 88 (1) (b) of the Utilities Contract Regulations 2015. Therefore, this decision raises no significant procurement concerns.

Steve Oakley, Head of Procurement – 4 August 2023

**9. Crime and Disorder Implications (If Applicable)**

9.1 N/A

**10. Social value considerations (If Applicable)**

10.1 The Nottingham District Heating Scheme provides heating to 5,056 domestic customers who benefit directly from the recovery of the hot water delivered under the Hot Water Agreement.

**11. Regard to the NHS Constitution (If Applicable)**

11.1 N/A

**12. Equality Impact Assessment (EIA)**

12.1 An EIA is not required because the contractual arrangement described has no direct impact on Council policy affecting any group of individuals holding protected characteristics.

**13. Data Protection Impact Assessment (DPIA)**

13.1 A DPIA is not required because the decision does not propose changes to existing obligations of the Council with respect to data protection.

**14. Carbon Impact Assessment (CIA)**

14.1 A CIA is not required because a recent CIA of the Nottingham District Scheme demonstrated that in 2022 the Scheme offset 15,315 tonnes of CO<sub>2</sub>e. The supply of hot water contributes to this performance, and the recommendation is to retain current provision.

**15. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

15.1 None.

**16. Published documents referred to in this report**

16.1 None.