



**Report of: Chief Officer, Highways & Transportation**

**Report to: Director of City Development**

**Date: 26 March 2020**

**Subject: Leeds Street Lighting PFI, LED Deed of Variation Agreement.**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## Summary

### 1. Main issues

- Under the terms of the existing PFI contract, the City Council may request a contract change at any time, subject to certain constraints. Upon receipt of a formal contract change notice, the Service Provider, Tay Valley Lighting (Leeds) Ltd (TVL), is required to provide specific details, 'the Estimate', in terms of the introduction of the potential change and any effect that it may have on the delivery of the PFI.
- On 17 October 2018, the Executive Board approved the the injection of £25.4m into the Capital Programme, with 'approval to spend' also being granted, in order to deliver the conversion of 86,000 street lighting units to LED technology.
- In addition, it was resolved that the Director of City Development be granted approval and the necessary authority to conclude the contractual changes required in the Street Lighting PFI contract (and to agree any related or ancillary documents); with the Director also being provided with the necessary authority to implement the conversion to LED street lighting with or without remote control.
- A change notice was issued to TVL and subsequently a significant amount of dialogue has taken place between the parties, in order to ensure the conversion of

c.86,000 street lighting units to LED. A formal variation document has now been agreed.

- As part of the variation negotiations the parties have also sought to settle various outstanding contract disputes.

## **2. Best Council Plan Implications**

- The street lighting energy saving programme supports the Council's ambition to have a Sustainable Infrastructure and to be an efficient and enterprising organisation and contributes in particular to the Best City priority on 21st-Century Infrastructure as set out in the Best Council Plan 2019/20 – 2020/21.

## **3. Resource Implications**

- The costs for overall programme is budgeted at £22,105,224.62. This sum is inclusive of the previous mobilisation costs. Energy and maintenance savings in the value of £3.4m per year are anticipated.
- The settlement of various contractual disputes will result in compensation payments of over £2m to the City Council.

## **Recommendations**

The Director of City Development is recommended to:

- a) Note the contents of this report;
- b) approve Council entering into the Deed of Variation, the settlement and various ancillary documents; and
- c) approve the expenditure of the estimated cost of £22,105,224.62, as detailed in the previous report dated 01 July 2019.

### **1. Purpose of this report**

- 1.1 The purpose of this report is to recommend that the Director of City Development approves the agreed Variation to invest in the works related to the conversion of street lights to LED, at the estimated cost of £22,105,224.62.

### **2. Background information**

- 2.1 Under the terms of the existing PFI contract, the City Council may request a contract change at any time, subject to certain constraints. Upon receipt of a formal contract change notice, TVL, is required to provide the Estimate, in terms of the introduction of the potential change and any effect that it may have on the delivery of the PFI.
- 2.2 On 17 October 2018, the Executive Board approved the the injection of £25.4m into the Capital Programme, with 'approval to spend' also being granted, in order to deliver the conversion of c.86,000 street lighting units to LED technology.
- 2.3 In addition, it was resolved that the Director of City Development be granted approval and the necessary authority to conclude the contractual changes required in the Street Lighting PFI contract (and to agree any related or ancillary documents);

with the Director also being provided with the necessary authority to implement the conversion to LED street lighting with or without remote control.

### **3. Main issues**

- 3.1 In order to achieve the programmed works commencement date of September 2019, a report setting out an underwriting agreement, based upon the contract change estimate and the necessary mobilisation works, dated 01 July 2019 was approved by the Director. The Director is referred to that report, which detailed the principles set-out and agreed by the parties in the Estimate.
- 3.2 Subsequently, initial works commenced on Monday 14th October 2019.
- 3.3 The Deed of Variation has been developed between the parties.
- 3.4 A final review of the Deed of Variation has been completed and is considered to reflect the the principles set-out and agreed by the parties in the Estimate. In total, the budget is £22,105,224.62.
- 3.5 Once the formal LED Deed of Variation is signed, it supersedes the previous underwriting agreement.
- 3.6 In addition, the parties have taken the opportunity to settle various outstanding contractual disputes. Compensation in the sum of c£2m will be paid to the Council over a period of 4 years.

### **4. Corporate considerations**

#### **4.1 Consultation and engagement**

- 4.1.1 City Development, H & T officers, the Head of Commercial, the Head of Finance, Senior Treasury Manager, the street lighting PFI Project Liaison Group and the Executive Board Member for Climate Change, Transport and Sustainable Development have been involved in and consulted in respect of this matter.
- 4.1.2 As noted above, the Executive Board has already approved the overall project and delegated authority to the Director. Throughout the process, external legal advice and support has been sought from Weightmans LLP. The Department for Transport has been informed of progress throughout, and confirmed that this not constitute a material variation to the Project Agreement.

#### **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 An equality, diversity, cohesion and integration impact assessment was included within the Executive Board report.

#### **4.3 Council policies and the Best Council Plan**

- 4.3.1 The street lighting energy saving programme supports the Council's ambition to have a Sustainable Infrastructure and to be an efficient and enterprising organisation and contributes in particular to the Best City priority on 21st-Century Infrastructure as set out in the Best Council Plan 2019/20 – 2020/21.
- 4.3.2 **Climate Emergency:**

The successful mobilisation and subsequent conversion of 86,000 street lights is estimated to reduce our street lighting energy consumption by c.62%, along with c.7050tonnes of carbon savings. Following the declaration of a Climate Emergency in March 2019, Leeds is working towards becoming a carbon neutral city by 2030 and this project will contribute to that aim.

#### **4.4 Resources, procurement and value for money**

- 4.4.1 The capital investment required to convert c.86,000 street lights to LED over a 4 year time-scale is estimated at £22.1m, including the mobilisation costs, with resultant saving in energy and maintenance costs post completion of circa £3.4m per annum (based on 12.5ppkWh).
- 4.4.2 The LED variation costs can be fully funded from Salix Finance Ltd. With zero percent interest repayments over the duration of the works. A commitment letter has been received from Salix Finance Ltd for the first years estimated costs, should we wish to accept it.
- 4.4.3 The settlement of various contract disputes will result in compensation of c£2m being paid to the Council over 4 years.

#### **4.5 Legal implications, access to information, and call-in**

- 4.5.1 The decision of the Director of City Development in relation to the recommendation is a Significant Operational Decision and is therefore not subject to call-in.
- 4.5.2 Advice has been taken in the drafting of the contract change Agreement from the Head of Commercial (Legal), Procurement and Commercial Services and Weightmans LLP.
- 4.5.3 The variation is not a material variation to the Project Agreement, and is not considered to give rise to any procurement implications.

#### **4.6 Risk management**

- 4.6.1 Advice has been sought from Weightmans LLP regarding the impact of the contract change agreement and it is considered that the Council is not materially disadvantaged by this agreement and that it will not change the contract risk profile agreed at financial close.
- 4.6.2 Under the current PFI agreement TVL have taken responsibility for all liabilities arising from the street lighting provision and apparatus. The proposal to alter the routine functioning of the lighting system will result in partial liabilities being returned to the council.
- 4.6.3 The settlement of outstanding contractual disputes prevents the escalation of these issues and avoids friction between the parties which may adversely impact on the services.
- 4.6.4 As part of the LED installation works, TVL will undertake a full survey of the lighting estate to ensure that it is fully compliant with the requirements of the contract, thus reducing the risk of future service failure.
- 4.6.5 COVID-19 presents a risk of delay to the LED installation works. To the extent that COVID-19 may cause a delay, the energy and maintenance savings would also be

delayed and the Council is still obliged to pay a reduced value of unavoidable prelims costs.

## **5 Conclusions**

- 5.1 Following a long and intensive period of dialogue and review of the LED variation, developing the Estimate and now the Deed of Variation and settlement, the opportunity now exists to conclude the LED variation agreement. This will provide significant energy efficiencies and significant financial benefit. This will enable the Council, TVL and SSE to progress the works in a timely manner (and in any event by October 2023). In doing so, this will ensure significant financial and carbon savings, along with the inevitable environmental benefits which will positively contribute to the climate emergency and ensure a better value service.

## **6 Recommendations**

- 6.1 The Director of City Development is recommended to:

6.1.1 note the contents of this report;

6.1.2 approve Council entering into the Deed of Variation, the settlement and various ancillary documents; and

6.1.3 approve the expenditure of the estimated cost of £22,105,224.62, as detailed in the previous report dated 01 July 2019.

## **7 Background documents<sup>1</sup>**

- 7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.