

**Dated** **2016**

- (1) Harlow District Council**
- (2) HTS (Property and Environment) Limited**

**Heads of Terms for a Services Agreement between the Parties**

Subject to contract

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## **1. Introduction**

- 1.1. This document sets out the principal terms of a contract to be entered into between Harlow District Council (the “Council”) and HTS (Property and Environment) (the “Contractor”) subject to the agreement and signing by the parties of the detailed legally binding contract (the “Contract”).
- 1.2. This document is not exhaustive and is not intended to be legally binding between the parties.

## **2. Contract Period**

- 2.1. The initial contract period will be 5 years from service commencement unless terminated earlier.
- 2.2. The Council will be under no obligation to extend the contract period beyond the 5 years and will review in 2020 whether the contract is providing best value.

## **3. Service Provision**

- 3.1. The services to be provided by the Contractor (the “Services”) will be provided against the same specification (and including any amendments to the specification made through the change control process under the current contract and enhanced grounds maintenance) as those currently provided by Kier Harlow (the “JVCo”).
- 3.2. The Company will provide a business plan on an annual basis for approval by the Council and work under the specification will be provided in accordance with the approved business plan.
- 3.3. The Council may add or remove services during the contract period. New services may incur an additional cost. The removal of services may incur a termination cost - However, HTS will be required to mitigate such cost where possible e.g. redeployment of affected staff The Contractor will be required to establish and maintain a system of quality and environmental management. This will ensure full record and account keeping, adequate complaints processes, service improvement and supervision. The Council may recommend modifications that should be acted upon where reasonably practicable to do so.
- 3.4. The Contractor will ensure that the Services are provided (among other things) in a proper skilful and diligent manner and in accordance with the specification, legislation, other relevant guidance and policies and Council guidelines in relation to customer care.
- 3.5. The Contractor will supply all resources required to deliver the Services.
- 3.6. In the provision of the Services, the Contractor will not do anything that puts the Council in breach of its statutory duties and will reimburse any losses suffered including payments to third parties due to a breach of statutory duty which results from the actions of the Contractor save for where the Council has specifically instructed the Contractor to take a course of action under the Contract and such action is not manifestly unlawful.

- 3.7. The Contractor will undertake all work in progress at the service commencement date.
- 3.8. The Contractor will comply with reporting requirements to the Council, and to third parties where there is a need to do so.
- 3.9. Changes to services will follow the same process as the JVCo followed, with the wording in the Contract to be updated to reflect this.

#### **4. Capital Works in addition to the Services**

- 4.1. Capital works which are not included in the specification of Services will only be carried out by the Contractor when a specific order has been raised to the Contractor.
- 4.2. For the first three years of the contract period and after that at the Council's option, the Contractor will be asked to put forward an annual capital works proposal to a value of £5.8m or such other amount as the Council indicates from time to time. The proposal will contain a methodology for the completion of a business case that the Contractor must complete for the £5.8m and for additional awarded capital works to allow the Council to decide whether awarding a contract for specific capital works will deliver best value.
- 4.3. Pursuant to the requirement imposed upon the Contractor in paragraph 4.2 Capital works will be ordered by the Council unless the Contractor cannot demonstrate that best value will be achieved.

#### **5. Payment for Services**

- 5.1. The Services will be paid for in accordance with the agreed payment mechanism.
- 5.2. The payment mechanism will follow the same structure and principles as the current arrangement with the JVCo with the following changes:
  - 5.2.1. The Volume Parameters will be updated.
  - 5.2.2. Capped Housing Property Services will be removed.
  - 5.2.3. Where the Contractor provides services to third parties at a cost that is lower than its financial model for the Council costs, the costs to the Council shall be reduced to the same level as those for the third party service provision.
- 5.3. A new financial model for the 5 year term will be produced by the Contractor and costs will be paid against this. To determine the financial model the Council will set an overall maximum budget and the Company will produce a detailed operational budget/financial model through the business plan and annual review of the business plan.
- 5.4. Open book accounting by the Contractor will be required.

#### **6. Performance management**

- 6.1. Quarterly, the Contractor will attend meetings of the Council's Shareholder Sub-Committee to report on the financial and operational affairs of the company and performance of the Services.
- 6.2. Monthly, the parties shall attend Joint Performance Review Meetings to discuss the finances, operation and performance by the Contractor of the Services.
- 6.3. The Contractor will be obliged to continually monitor its performance and keep records of levels of performance.
- 6.4. Equality legislation must be adhered to at all times.
- 6.5. Deductions will be due to the Council in line with the KPIs and the performance monitoring regime in the payment mechanism following the same process as set out in the current arrangements with the JVCo.
- 6.6. Aggregation of defaults may result in the termination of some or all Services.

## **7. TUPE and pensions**

- 7.1. Staff will TUPE to the Contractor from the JVCo on the same terms and conditions that they currently enjoy with JVCo.
- 7.2. There are a number of staff that have already been employed, and will be employed before the service commencement date, that will not be covered by the TUPE provisions.
- 7.3. The Council will indemnify the Contractor to the extent that it is indemnified by the JVCo.
- 7.4. The Contractor will indemnify the Council for any losses, costs, claims, etc in connection with a claim relating to measures taken by the Contractor.
- 7.5. TUPE obligations will apply at the end of the contract period.
- 7.6. Pensions will be provided as follows:
  - 7.6.1. The Company will provide pension provision through the LGPS where employees are eligible;
  - 7.6.2. The LGPS scheme will remain as an open scheme for new employees (to the extent that they are eligible);
  - 7.6.3. The Company will obtain statutory employer status;
  - 7.6.4. An appropriate risk-sharing arrangement will be agreed;
  - 7.6.5. Liabilities/deficits carrying over from the JVCo will need to be reviewed;
  - 7.6.6. Employees not eligible for LGPS pensions will be provided with alternative pension arrangements by the Company;

## **8. Insurance**

8.1. The Contractor will maintain insurance at all times in accordance with the following:

8.1.1. Public liability insurance: £30,000,000 with an excess of £ 1,000 (property damage only);

8.1.2. Professional indemnity insurance: £10,000,000 each and every claim with an excess which is to be agreed;

8.1.3. Employers liability insurance: £30,000,000;

8.1.4. Occupier's liability insurance: £30,000,000; and

8.1.5. Contractor all risks insurance: to the value of the works ordered with an excess of £5,000 each and every loss.

8.2. Claims in excess of £25K will be notified to the Council.

## **9. Intellectual Property**

9.1. The Council will have a non-exclusive, irrevocable and royalty free licence to copy and use for all proper purposes all intellectual property which is generated in connection with the Services by the Contractor during the contract period.

9.2. Where intellectual property is generated by any third party in connection with the Services during the contract period, the Contractor will use reasonable endeavours to ensure that the Council obtains the benefit of a licence (on similar or equivalent terms to that described in paragraph 9.1) in relation to all such intellectual property.

## **10. Step In**

10.1. The Council will, in advance of terminating the Contract, have the right to step in and manage the Service or appoint a substitute contractor.

10.2. Such rights will be triggered by certain events including:

10.2.1. The Company substantially failing to meet the targets in the Business Plan for the current year;

10.2.2. Default under the Facility Agreement

10.2.3. Performance below that of other providers on the market;

10.2.4. Failure to provide cost efficient proposals for Capital Works projects over a 12 month period as determined through benchmarking and best value reviews.

## **11. Dispute Resolution**

11.1. The dispute resolution procedure will remain broadly the same as the current arrangements with the JVCo.

11.2. Disputes not resolved at the first tier will be reported to the Council's Shareholder Sub-Committee.

11.3. The Contractor will retain a record of all disputes and how they have been resolved.

## **12. Termination of the Contract**

12.1. The Council may terminate the Contract in the following circumstances:

12.1.1. A fundamental breach of the Contractor's obligations;

12.1.2. An accrual of defaults above a certain level;

12.1.3. The Contractor entering administration or other arrangements linked to financial losses and possible winding up;

12.1.4. The Contractor breaching certain obligations in relation to things such as insurance provision;

12.1.5. An event of default under the loan arrangements between the Council and the Contractor;

12.1.6. Force majeure;

12.1.7. The Contractor or its employees or sub-contractors committing an act of fraud or corruption;

12.1.8. Certain events taking place that are set out in Regulations 73 of the Public Contracts Regulations 2015.

12.2. The Contractor may terminate after a force majeure event.

## **13. Assignment and Subcontracting**

13.1. The Council has the right to assign.

13.2. The Contractor will be prohibited from assigning the contract.

13.3. The Contractor cannot subcontract for services that are not deemed "Low risk" in the Contractor's Purchasing Guidelines without the consent of the Council.

13.4. Where the Contractor enters into a subcontract with a subcontractor for the purpose of performing the Contract, it shall cause a term to be included in such subcontract which requires payment to be made to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements.

## **14. General Assistance**

14.1. The Contractor will give reasonable assistance the Council with (among other things):

- 14.1.1. Disputes and claims that relate to works on residential or commercial properties and capital works;
- 14.1.2. Transfer of residential property;
- 14.2. Such assistance could include the provision of information, the transfer of data, support at meetings and dispute resolution forums etc. at no additional cost to the Council.

**15. Exit Arrangements**

- 15.1. The Contractor will be obliged to produce an exit plan within 6 months of contract commencement and this will follow principles to be set out in the appropriate schedule.
- 15.2. The Contractor will be obliged to assist the Council with the provision of information if the Council is retendering for the Services, bringing the Services back in-house or entering into another arrangement for their provision.