

## CABINET

18 December 2019

<b>Title:</b> Essex and Suffolk Water Agreement	
<b>Report of the Cabinet Member for Finance, Performance and Core Services</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
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<b>Accountable Director:</b> Robert Overall, Director, My Place	
<b>Accountable Strategic Leadership Director:</b> Claire Symonds, Chief Operating Officer	
<b>Summary</b> <p>The Council collects water and sewerage charges from its social housing tenants as an agent for Essex and Suffolk Water (ESW) who trade as Northumbrian Water. In return for providing this service, the Council receives an administration recoupment payment from ESW which is paid into the Housing Revenue Account (HRA). The recoupment payment is vatable at standard rate. The Council is providing a service to ESW so it will be treated as a standard rated business transaction.</p> <p>In 2017, negotiations were made with ESW by council officers to enter into a new contract. These negotiations resulted in changes to the contract with an administration recoupment rate of 15% of the charges from ESW (vatable at standard rate) plus a 2% void allowance (not vatable).</p> <p>The report presents the proposal to enter into a formal two-year contract with ESW which will be effective from 1 April 2020. There is a possibility of extending the contract for another two-year term (1 + 1). It is estimated that over the two-year term of the contract the Council could be collecting in the region of £14m on behalf of ESW and obtaining a total administration and voids allowance in the region of £2.4m (17%), subject to price inflation and stock loss adjustments.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none"><li>(i) Agree that the Council enters into an agreement with Essex and Suffolk Water regarding the collection of water and sewage charges, effective from 1 April 2020, on the terms set out in the report; and</li><li>(ii) Authorise the Director of My Place, in consultation with the Cabinet Member for Regeneration and Social Housing, the Director of Law and Governance and the Chief Operating Officer, to enter into the contract and all other necessary or</li></ul>	

ancillary agreements with Essex and Suffolk Water.

## **Reason(s)**

To assist the Council to achieve its priority of “A New Kind of Council” through robust procurement arrangements and improved value for money.

## **1. Introduction and Background**

- 1.1. The Council collects water and sewerage charges from its social housing tenants, as agent, on behalf of Essex and Suffolk Water (ESW) who trade as Northumbrian Water. In return for providing this service the Council receives an administration recoupment payment from ESW which is paid into the Housing Revenue Account (HRA).
- 1.2. The Council is empowered by section 1 of the Local Authorities (Goods and Services) Act 1970, as modified by paragraph 20 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991, to enter into an agreement for the collection and recovery by the Council on behalf of NWL of the Water Charges
- 1.3. During 2017 Council officers have been in negotiations with ESW to obtain a higher percentage level of admin fee and void allowance. These negotiations have resulted in an increase in the administration recoupment rate from 15% to 17% of the charges from ESW
- 1.4. The report presents the proposal to enter into a formal two-year contract with ESW from 1 April 2020 for two years with a possibility of 2 years extension (1+1) subject to providers satisfactory performance.
- 1.5. The Council’s fee for collection of water charges currently was revised from 15% to 17%. In 2017/18 the HRA paid Essex and Suffolk Water £7.1m in respect of water and sewerage charges and received an income of £1.2m. The water and sewerage charge and fee may both reduce in future years due to stock loss, but this will be partially offset by any price inflation. Over the course of the contract the Council could be collecting in the region of £28m on behalf of ESW and obtaining a fee in the region of £4.8m if the contract is extended as proposed in the report.
- 1.6. The contract is proposed to be effective from 1 April 2020 for a period of two years with either party having the right to cancel the agreement after two years by serving notice on the other party no less than 12 months prior to the commencement of a financial year (1 April).

## **2. Proposal and Issues**

- 2.1. The contract is for the council to collect water and sewerage charges from its social housing tenants as an agent on behalf of Essex and Suffolk Water (ESW) who trade as Northumbrian Water. The Council will receive administration recoupment payment from ESW which is paid into the Housing Revenue Account (HRA).

## 2.2 Outline Timetable

<b>Stage</b>	<b>Estimated Date</b>
Cabinet meeting	18 <sup>th</sup> December 2019
Contract Award and Sign agreement	January - February 2020
Contract Commencement	1 <sup>st</sup> April 2020

## 3. Options Appraisal

The structure of the water supply industry in the UK is such that the Council has no choice in who provides the service.

### 3.1 Do Nothing

This is not an option; legal advice has been issued by the Cabinet Office stating that all local authorities must go out tender or enter into an agreement for their retail water Supplies. The implications of doing nothing will be non-compliant and the council will lose the revenue that would have been generated.

3.2 **Enter into agreement with ESW** – This is our preferred option as entering into an agreement with ESW will generate revenue for the HRA. The market has not been deregulated for this type of service, EDF is the only provider in the market that can perform the service due to the assigned geographic area.

## 4. Consultation

4.1 Consultation has been held with the stakeholder representatives from My Place. Also, approval has been sought from Corporate Procurement, Finance department and Legal services.

4.2 Consultation has been held with the Leasehold section regarding section 20. We were advised that s20 will not be relevant as the Council act as administrator on behalf of ESW and at present there is no choice but to get water supply from the local water company.

## 5. Financial Implications

Implications completed by: Tony McNamara, Finance Business Partner

5.1 Water and sewerage charges are raised weekly on all general needs housing stock and generate over £7m income to ESW. LBBD's 15% administration recoupment payment equates to £1.1m pa which covers collection, administration processes and debt management.

5.2 A further 2% for void allowances generates around £150k pa. This is a fixed rate and therefore good performance on voids will ensure a surplus against allowance while poor performance will cost the business more than ESW allow.

- 5.3 The income from both elements goes directly into the HRA and is used to support delivery of services to tenants.
- 5.4 The recoupment payment is vatable at standard rate. The Council are providing a service to ESW so it will be treated as a standard rated business transaction. As negotiations were made with ESW by council officers to enter into a new contract in 2017, these negotiations resulted in changes to the contract with an administration recoupment rate of 15% of the charges from ESW (vatable at standard rate) plus a 2% void allowance (not vatable).

## **6. Legal Implications**

Implications completed by: Kayleigh Eaton, Senior Contracts and Procurement Solicitor

- 6.1 This report is seeking authority to enter into an arrangement with Essex and Suffolk Water (ESW) for the collection water and sewerage charges from the Council's social housing tenants on behalf of ESW in return for an administration fee.
- 6.2 Pursuant to Section 1 of the Local Authorities (Goods and Services) Act 1970 the Council has the specific power to collect ESW's charges from tenants on behalf of ESW.
- 6.3 Recent case law has highlighted that such an arrangement must make it clear that the Council is acting as a collection agent on behalf of the water company and not as a re-seller in which case the charge levied is restricted by the Water Resale Order 2006.
- 6.4 The legal team has had sight of the proposed form of agreement with ESW and notes that it clearly sets out that the Council is acting as agent for ESW in collection of the water charges.

## **7. Other Implications - Corporate Procurement**

Implications completed by: Euan Beales, Head of Procurement

- 7.1 The paper has outlined that the Council will be performing collection services on behalf of ESW. As the Council is not procuring a service then it is my view that PSR2015 would not apply in this circumstance, and as such there are no procurement implications.

## **8. Other Implications**

### **8.1 Risk Management**

- 8.1.1 Risk of not putting a contract in place, being non-compliant with the Council Rules, and purchasing outside of a contract - To minimize the risk, we are seeking approval to enter into an agreement with ESW. The Council will retain the risk of non-collection. Whilst 2% void allowance has been built into negotiations, any additional losses will have to be absorbed within the remaining 15%.

- 8.1.2 Risks are further mitigated by ensuring the correct levels of insurance and liability cover are held by the contractor and that Key performance indicators encourage good performance. Legal shall ensure the contract documents do not make the Council liable for any issues that may arise from this service.
- 8.2 **Corporate Policy and Equality Impact:** The contract will be fully compliant with Health and Safety and other legislative requirements. Consideration will be measured regarding potential impacts of the decision/proposal in relation to the Equality Act 2010 protected characteristics.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:** None