

**CABINET
21 JULY 2020**

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: HITCHIN MARKET – CONTRACT EXTENSION

REPORT OF THE COMMERCIAL MANAGER AND SERVICE DIRECTOR - COMMERCIAL

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR ENTERPRISE AND COOPERATIVE DEVELOPMENT

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES / RESPOND TO CHALLENGES TO THE ENVIRONMENT / ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY

1. EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek approval to enter into a contract extension with Hitchin Market Limited for a further period of eight months (1 August 2020 – 31 March 2021). The reason for this is to allow current negotiations with Hitchin Markets Limited (HML) to continue, and to allow the Council more time to evaluate other options such as a tendering/ procurement exercise if required.

2 RECOMMENDATIONS

- 2.1 That Cabinet approves the entering into a contract extension with Hitchin Market Limited for a further eight months up to 31 March 2021.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To seek approval of the proposed contract extension and to update Cabinet Members on the current position regarding Hitchin Markets Limited.
- 3.2. To ensure that Hitchin Market continues to operate.
- 3.3. To allow the Council more time to evaluate its options such as undertaking a tendering/ procurement exercise.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. To allow the current contract to come to a natural conclusion at the end of July 2020 and bring the operational management back in-house. However, there have been positive meetings with HML to provide a contract extension for a further period of eight months. If this is not possible, it also provides the Council with enough time to explore other procurement options.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member and Deputy Executive Member for Enterprise and Co-operative Development and the Executive Member for Finance and IT have been kept regularly updated on this matter and support the proposed contract extension with HML.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1. This report has been written because the current contract with HML expires on 31 July 2020. The current contract was extended for two years from 1 August 2018 by the Deputy Chief Executive by Delegated Decision Notice dated 10 September 2018.
- 7.2. This report outlines the need for a contract extension and explains why it is in the Council's best interest to allow more time to consider all options associated with the future management of Hitchin Market. Regarding the contract extension, HML is best placed to continue operating the Market at this point in time.

8. RELEVANT CONSIDERATIONS

- 8.1. The Council originally tendered the contract for Hitchin Market in 2008. HML was successful and has operated this contract since 1 August 2008. The contract has since been extended a number of times. It was agreed at the last contract extension of two years in 2018, that HML would pay the Council a management fee of £2,180 on a monthly basis. However, due to increasing financial difficulty, HML has only paid the Council six months of the management fee in the last financial year – which is equal to £13,082. They have not paid their management fee since October 2019.
- 8.2. It was agreed at the time that HML's situation would be reviewed with the Council in April 2020. The team at HML has explained to the Council in recent contract meetings that their financial situation is becoming increasingly poor due to a shift in shopping habits, a change in demand and a lack of new traders.
- 8.3. The Council has worked closely with the team at HML since October 2019 to overcome this difficult period. Hitchin Market is also now suffering financially due to the impact of Covid-19, which resulted in the Market closing on 24 March 2020 following Government guidance. The Market has since reopened with the implementation of Covid-19 secure measures and has been operational since 2 June 2020.
- 8.4. Contract negotiations have been taking place between the Council and HML regarding the future management of the Market. Although good meetings have taken place between both parties, the Council and HML have not yet been able to agree a long-term contract and governance structure that would be able to commence on 1 August 2020. To ensure we continue a good working partnership with HML, Officers advise that more time is required in order to try and reach an agreed decision between the two parties.

- 8.5. Although the Council would like to continue to negotiate an agreed position with HML, Officers will continue to consider what other options are available to the Council. This could include a tendering exercise for the future management of the Hitchin Market contract, as well as reviewing the option to operate the Market in-house (run by the Council directly).
- 8.6. Due to the impact of Covid-19, HML is predicting an 80% total income of last year's figures. As mentioned above, the proposed contract extension going forward has no contract value. The agreement between the Council and HML will be based on a cost neutral basis. As a result, the Council will no longer receive a management fee from HML. Financial support from the Council during the term of the contract extension could be required if the Market continues to decline.
- 8.7. This contract extension will be for a period of eight months (1 August 2020 – 31 March 2021). It will be based on the same terms as the previous contract extension in 2018, with changes to the contract length, financial implications and updates in law. HML will also continue to maintain an open book accounting approach with the Council.
- 8.8. Any decision regarding the future management of the Market after 31 March 2021 will be presented back to Cabinet at a later date.

9. LEGAL IMPLICATIONS

- 9.1. Concession Contracts with a value less than £4,733,252 do not need to be competitively tendered for under The Concession Contracts Regulations 2016 (CCRs).
- 9.2. Regulation 43(1)(5) of the CCRs allows the Council to modify the current contract where the value of the modification is below-
 - (a) the procurement threshold (£4,733.252); and
 - (b) 10% of the value of the initial concession contract,provided that the modification does not alter the overall nature of the concession contract.
- 9.3. The contract extension has no contract value so an extension of the current contract for a further eight months from 1 August 2020 to 31 March 2021 is allowed under the CCRs.
- 9.4. Rule 3.11 of the Council's Contract Procurement Rules (CPRs) [Part B, Section 20 dated 16 January 2020] states that these rules do not apply to Concession Contracts.
- 9.5. Legal will prepare the appropriate legal documentation to deal with the contract extension.

10. FINANCIAL IMPLICATIONS

- 10.1. In the previous contract, the arrangement was that HML pay the Council £26,123 (19/20 Fee). This contract extension means that no management fee payment would be made to the Council, as HML is forecasting only to breakeven with the strong possibility of a shortfall in income.

- 10.2. As a result, there will be a loss of future income of £26,163 to the Council. There could also be further costs to the Council if the forecasted income targets are not met and costs are higher than projected. Additional financial resources from the Council will be required short-term to boost the Market. Therefore, this combined with projected forecasts not being achieved will see further costs being incurred.
- 10.3. Officers have worked closely with HML in recent months to review and understand their financial challenges. Executive Members have also been kept up to date regarding HML's financial difficulty.
- 10.4. A financial check has been carried out on HML as part of the Council's procedure and has reported the company as low risk.

11. RISK IMPLICATIONS

- 11.1. The main risk associated with this report is regarding the financial impact of Covid-19 on HML. There is a risk that the Council will have to provide financial support to HML, however this is subject to HML income levels which are dependent on trader and shopper behaviour.
- 11.2. However, generally, this report is considered relatively low risk due to the fact the Council is currently receiving no income from the existing contract, is maintaining an established working relationship with HML and has the flexibility to change circumstances bearing in mind the duration of the contract extension.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no direct equality implications arising from this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. None identified.
- 13.2. As the recommendations in the report relate to a contract below £50,000 the "go local" policy has been applied. HML is a locally based company that operates from Hitchin and is made up of local board members.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known direct Environmental impacts or requirements that apply to this report. However, further consideration may be required in the future, such as around the disposal of waste if the Market is transformed into an experience destination.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1. None identified.

16. APPENDICES

16.1 None

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 None identified.