


Report of: City Works Business Manager


To: Executive Board


Date: 5th November 2007

Item No:

Title of Report : Bus Shelters – Contract Clarification


**Summary and Recommendations**

**Purpose of report:** To recommend approval of a Supplemental Agreement which clarifies the terms of an existing long-term contract with Adshel in regard to the provision of bus shelters in Oxford


**Key decision:** Yes

Portfolio Holder: Jean Fooks


Scrutiny Responsibility: Environment

**Ward(s) affected:** All


Report Approved by


**Portfolio Holder:** Cllr. Jean Fooks

Legal: Lindsay Cane

**Finance:** Andy Collett

Strategic Director: Sharon Cosgrove

**Policy Framework:** This links in with the Vision because it aims to improve Council's performance and will help to improve the environment where we live and work. It links with improved transport and mobility and may, depending on the final decision taken, involve working with others to develop and deliver shared goals and while doing so improve dialogue and consultation.

**Recommendation :**
The Executive Board is recommended to approve that the Council enter into a supplemental agreement with Adshel (Clear Channel UK Limited) in accordance with the terms set out in this report.

Background

- 1.1 In 1987 the City Council entered into a long-term agreement with Adshel Ltd., in regard to the supply of bus shelters within Oxford. This 1987 Agreement created a fairly complex arrangement between the parties under which Adshel were, in effect, appointed as the Council's "exclusive" supplier of bus shelters in the city, which Adshel could then use to generate advertising income. The terms of the 1987 Agreement do not stipulate the supply of any fixed, or even a minimum, number of bus shelters, and in practice significantly fewer shelters have been installed in the city under these provisions than was perhaps envisaged at the time.
- 1.2 One of the difficulties with the 1987 Agreement is that the drafting of the termination clause is less than entirely clear. A disagreement exists between the City Council and Adshel over the terms of contract termination. This is important, as under Adshel's interpretation, the agreement would remain in force for a period of 14 years following the installation of any new shelter. Thus, if Adshel were to provide a series of new shelters over the next, say, 10 years, the agreement (and Adshel's exclusive rights under it) could not be terminated for a period of at least 24 years from now.
- 1.3 In summary, therefore, it is the case that under the current arrangements the City Council is not receiving the number of new, up-to-date shelters it would wish, and that some unhelpful uncertainty exists over the terms of the duration of the 1987 Agreement.

Proposed New Arrangements

- 2.1 At January 10th 2005 Exec. Board, officers from OCC were tasked to consider the closure of the agreement. However it soon became obvious that the termination provisions of the 1987 agreement were at best unclear, and at worst gave Adshel exclusivity for 14 years after the installation of the last shelter. The contract has continued in force, but without real clarity on its precise duration.
- 2.2 Adshel consistently refused to accept our right to terminate on any basis other than by the expiration of 14 years after the installation of their last bus shelter, and while the Council reserved its right to terminate within a much shorter time-span, it also sought to achieve a more constructive approach and outcome to what looked like a contractual impasse.
- 2.3 Adshel maintained that in the absence of any further bus shelter installation, the contract, and their exclusive rights, would persist until 22nd July 2015 (as Adshel installed its last shelter on 23 July 2001).
- 2.4 In an effort to resolve this situation, over a lengthy period officers have entered into detailed negotiations with Adshel (now trading as Clear

Channel UK Ltd) with the objective of investigating whether the 1987 Agreement could be clarified in a way which would meet both the Council's and Adshel's requirements. As a result of these negotiations, officers are now able to recommend to the Executive its acceptance of a supplemental agreement which clarifies the parties' positions under the original agreement with Adshel (see attached confidential appendix), in that it would contain the following terms.

- a) Adshel would install no less than 180 new bus shelters within Oxford over a 5+ year period (heavily weighted for the first 3 years) – at no cost to the Council.
- b) Adshel would fully maintain all the shelters installed by it - at no cost to the Council.
- c) Adshel would be granted the advertising rights (and all income) from any shelters they had installed (subject to their being granted advertising consent for such shelters).
- d) Adshel's exclusive advertising rights would extend only to the actual sites on which they had installed shelters;
- e) The Agreement would terminate in 15 years.

2.5 Although Adshel had indicated their consent to the above terms, they made it clear that their formal commitment to this arrangement would be subject to the agreement of the Clear Channel Board. Although the Supplemental Agreement itself does not link the number of advertising planning consents with the total build programme, the Council understands that in effect Adshel was looking to receive advertising consent for at least 93 shelters, in order that it could fund the entire build programme. Adshel therefore requested permission for adverts at 130 shelters and have now achieved permission for over 110 of these. Therefore, Adshel's minimum requirements have been exceeded. Adshel have now stated that the Clear Channel Board has approved the terms of the Supplemental Agreement.

Officers are carrying out a benchmarking exercise with other local authorities to establish if the approach taken is in conjunction with best practice. There are further discussions taking place involving the County Council to establish a more joined up approach on transport issues within Oxfordshire.

2.6 In tandem with this, Oxfordshire County Council has been investigating ways of installing "real-time" information at bus stops and shelters. Originally they had hoped to appoint a contractor to do this work, but their tendering process was unsuccessful and that, coupled with the uncertainty of the situation in the city, has meant that the work the County's contractors are currently undertaking is being funded by the County.

2.7 In order to support the County Council, Oxford City Council have specified in the supplemental agreement that any new bus shelter must be "RTI-ready". The City has worked closely with the County in order to

ensure a consistent city-wide standard of compatibility, design, construction and maintenance.

- 2.8 Solar powered lighting is an option that some City Councillors are keen to progress. However the amount of light generated in Oxford by the street lights generally gives sufficient lighting at bus shelters.
- 2.9 It should be noted that advertising panels cannot currently be lit using solar power alone, which means that if solar technology were implemented, traditional power would also need to be used. This provision of dual power would increase start up and maintenance costs.
- 2.10 CCTV is not included in the specification as it would be an extremely costly approach to developing a CCTV system. Any system would also be easily vandalised. Currently we have CCTV cameras on poles, which are high up, and even they get vandalized. The City Council is in the process of reviewing all our systems to ensure emergency cover and best value for money on a city-wide basis.
- 2.11 The Council commented on the colours of the shelters. There are two designs: Insignia and Landmark. Although the shelters have contrasting component parts they are consistent in the silver/Oxford blue colour schedule for the city. This system will ensure consistency of providing the "Oxford" shelters, giving a distinct recognition throughout the city. The contrasting components also reflect considerations required under the DDA guidance for the partially sighted.

ALTERNATIVE OPTIONS

- 3.1 In the event that the Executive does not wish to accept the supplemental agreement terms as set out above, it would be necessary for the Council to seek to terminate the 1987 Agreement, and to put an alternative bus shelter supply contract out to tender, either by itself or in association with the County Council. Such a course of action would, however, immediately create a possibility of the Council being involved in legal action for breach of contract, which could well create real practical difficulties in regard to entering into new arrangement with an alternative supplier. Officers take the view that the terms currently on offer from Adshel would at least match any alternative offer, even in the event that the Council were free to let a new contract.

STAFFING IMPLICATIONS

- 4.1 None, although operative time would be freed up, allowing City Works operatives to concentrate on other areas of street cleaning. An officer needs to 'manage' the contract – to ensure Adshel are meeting the terms of the contract. Regular meetings and on-site inspections have been written into the contract. The amount of officer time required to be devoted to this would, in all probability, diminish over time but the first 3 years would require more attention.

FINANCIAL IMPLICATIONS

5.1 All the Adshel shelters would be installed, cleaned and maintained by Adshel at no cost to the Council. There are some locations where some sort of preparation would be necessary, perhaps a 'build out' of the pavement, or a leveling/tarmacing of a grass verge. The Council and Adshel have agreed during negotiations that the Council should meet this cost in locations where there is to be no advertisement within existing resources, and Adshel should meet the cost for the advertising shelters.

5.2 Adshel's level of investment over the term of the clarified agreement is in excess of £0.5million capital which will see the introduction of 180 shelters and full maintenance of the facilities (at Adshel's expense) to strict maintenance standards. It is not known what revenue income the advertisements generate, but it does present a risk and reward position for any business over the 15 year term. There are mechanisms within the agreement to deal with any complications that arise as a result of non-conformance with provision of shelters and maintenance thereof.

RECOMMENDATIONS

6.1 In light of the above, the Executive Board is recommended to approve that the Council enter into a supplemental agreement with Adshel (Clear Channel UK Limited) in accordance with the terms set out in this report.

Name and contact details of author: Kate Stratford Tel: 01865 252957

Background papers: None

