

To: City Executive Board
Date: 20 March
Report of: Executive Director Sustainable City
Title of Report: Highways Maintenance Agreement

Summary and recommendations	
Purpose of report:	To seek authority to enter into an Agency Agreement with Oxfordshire County Council to provide highway maintenance services on the classified road network in the City, in addition to the works already undertaken on minor roads under section 42 of The Highways Act 1980
Key decision:	Yes
Executive Board Member:	Councillor Alex Hollingsworth, Board Member for Planning & Regulatory Services
Corporate Priority:	Corporate Plan priorities
Policy Framework:	none.
Recommendations: That the City Executive Board resolves to:	
<p>1) Authorise the Executive Director Sustainable City, in consultation with the Portfolio Holder, Monitoring Officer and Section 151 officer, to negotiate and enter into an agency agreement with Oxfordshire County Council under which Oxford City Council would be appointed to carry out certain highway maintenance on the classified road network in the City as the agent of Oxfordshire County Council, in accordance with the provisions of s101 Local Government Act 1972 and other enabling legislation;</p> <p>2) Authorise the proposed Service Contract with Oxford Direct Services Ltd be extended to cover the provision of these works as the sub-contractor of Oxford City Council;</p> <p>3) Note that in entering into the proposed contract with Oxfordshire County Council, up to three members of Oxfordshire County Council staff may be subject to the TUPE regulations, and thus would transfer their employment to Oxford Direct Services Ltd; and</p> <p>4) Recommend to Council the inclusion of a gross expenditure and gross income budget of £1.56 million for the year 2018-19 i.e. nil cost to the Council</p>	

Appendices	
Appendix 1	Delegated functions
Appendix 2	Highways Agency Proposal CONFIDENTIAL
Appendix 3	Risk Register
Appendix 4	Current Condition Survey CONFIDENTIAL
Appendix 5	Financial summary of condition survey CONFIDENTIAL

1. Introduction

1.1 The maintenance of the road network in Oxford is the responsibility of the Oxfordshire County Council as the Highways Authority. For over 20 years, Oxford City Council has invoked Section 42 of the Highways Act 1980 which gives it the right to maintain the minor roads with funding passported from Oxfordshire County Council. All other roads are currently maintained by Oxfordshire County Council, primarily through their contract with Skanska.

1.2 The Section 42 arrangements have demonstrable benefits in that:-

- Oxford City Council, subject to the budget provided and the rules which govern its allocation, has discretion over the prioritisation of works to better reflect local needs.
- The arrangements provide economies of scale by sharing the costs of overheads with Oxford City Council's responsibilities in respect of non-adopted roads, car parks and hard landscaping on Oxford City Council land, meaning that more is achieved with the money available than would otherwise be possible.
- The service is focused on the city's needs meaning that it can flex and respond quickly.
- A highways and engineering capacity and competence can be maintained in the city which provides the ability to respond and resource Oxford City Council's obligations under the Oxford City Flood Management Plan and other emergencies.

1.3 In recent years the two systems of maintenance have worked more closely together with the advent of the jointly employed City Steward for highways matters, Oxford Direct Services working both as sub contractor for Skanska and directly for Oxfordshire County Council. In addition in recent years the winter maintenance of all roads in the city has been carried out by Oxford City Council.

1.4 This has proved a positive experience for all parties which has led to discussions about how arrangements could be developed to improve the service to residents and at the same time achieving greater efficiencies to allow more of the limited budget for road repairs to be used for delivering that service.

1.5 It is proposed that Oxfordshire County Council would appoint Oxford City Council to carry out certain highway maintenance obligations (as set out in Schedule 1) as its Agent. This limits Oxford City Council's responsibilities.

1.6 The objectives of this proposal are to make the provision of highway related services simpler, provide better value and more responsive service delivery for the public, to reduce duplication and to improve customer experience.

2.0 Proposal

2.1 Oxford City Council would enter into an Agency agreement with Oxfordshire County Council to provide the services outlined above and that works would then be sub-contracted by Oxford City Council to Oxford Direct Services Limited (ODSL), which being a wholly owned and controlled company of Oxford City Council can carry out the work without the necessity for a formal procurement process.

2.2 ODSL would establish a team of operatives along with the necessary equipment from within existing resources and support from the supply chain to deliver the additional requirements. It is anticipated that 3 staff would transfer from Oxfordshire County Council direct to ODSL. It is not anticipated that there would be any increase in management costs or direct overheads.

2.3 The financial arrangements would be similar to those tried and tested for the existing Section 42 works; Oxfordshire County Council will allocate revenue and capital monies for maintenance based on the length of carriageway or footpath in the city as a percentage of the county as a whole.

2.4 For planned works Oxford City Council would put forward a programme for approval by Oxfordshire County Council. The obligation on Oxford City Council is to implement that programme and a standard maintenance programme, in accordance with Oxfordshire County Council's specification and requirements within the budget allocation. The financial risk to Oxford City Council is limited in the same way it is for the current contractor Skanska - there is an agreed schedule of works which is deliverable within the cost envelope. In the event of significant unforeseen works arising (such as road failures, sink holes, extreme adverse weather causing excessive damage) there is a bidding process under which Oxfordshire County Council would be responsible for funding (subject to their agreement). Therefore Oxfordshire County Council retains responsibility in these instances.

2.5 The total value of additional works under this new arrangement is approximately £1.56m per annum.

2.6 The agreement will exclude Network Management functions such as co-ordination and approval of works on the highway and granting of licences for skips and scaffolds; this function will be retained by Oxfordshire County Council.

2.7 In addition to the funding allocated through this arrangement, Oxford City Council may receive additional funds passported by Oxfordshire County Council from any future ad-hoc funding allocations such as the DfT pothole fund.

2.8 The effect of the agreement is that Oxford City Council would become Oxfordshire County Council's agent for the works. This carries with it a risk regarding the state of maintenance of roads and pavements in the city, limited to surface and 150mm of immediate depth. These risks would be mitigated by undertaking an assessment

of the current condition of the relevant network at the point of transfer, which will be quantified in terms of cost and placed on the exclusions list (i.e. which Oxfordshire County Council would remain responsible for). Oxfordshire County Council would retain responsibility for major repairs and / or road failures. There remains a reputational risk which we currently manage in respect of the minor roads, but as previously stated the benefits are a simpler, better value and more responsive highways service and improved customer experience. Good communication with the public about the new service and our responsibilities and limitations within it will be key.

- 2.9 The current condition of the existing network has been assessed and a required level of capital investment of at least £2.9million has been identified (Appendices 3 & 4). This sum includes £265k for committed works for resurfacing in Hollybush Row and Marston Road scheduled for March / April 2018.
- 2.10 The allowance within the financial agreement for larger capital repairs and resurfacing is currently circa £700k per annum.
- 2.11 The list of locations identified in the summary requiring more extensive repairs will be prioritised on a two year rolling programme. It is therefore anticipated that it will take at least 4 years to bring the network up to the required standard based on its current condition and assuming that funding levels are maintained and that further works don't arise. The anticipated timescale is likely to be extended to reflect the likely deterioration of the network during the intervening period.
- 2.12 If a specific location is identified for capital funding Oxford City Council will continue to ensure that the location remains safe for public use; therefore Oxford City Council will be responsible to make safe and Oxfordshire County Council will be responsible to make good.
- 2.13 The Ring Road would be excluded from the Agency agreement, as would be high cost maintenance areas such as Frideswide Square and other parts of the highway network with latent or patent defects. A list is being prepared as is a detailed plan to confirm/highlight the extent of our responsibility and implementation of the Agency Agreement will be subject to this.

3.0 Legal Implications

- 3.1 Under the proposed agreement, Oxford City Council would be appointed as agent of Oxfordshire County Council under s101 of the Local Government Act 1972 to carry out the specified work. A back-to-back contract would then be made between Oxford City Council and Oxford Direct Services Ltd for delivery of the services. In practice this would form part of the wider services contract that the council will have with ODSL. Three existing Oxfordshire County Council staff would transfer under TUPE to ODSL as the entity carrying out the activities.
- 3.2 Both Oxford City Council and Oxfordshire County Council would have the right to terminate the agreement providing sufficient notice is given. Subject to agreeing the initial fixed period, likely to be 12 months, a minimum period of six months notice is to be given.

4.0 Financial Implications

- 4.1 Oxford City Council through its wholly owned Local Authority Trading Company, Oxford Direct Services would carry out additional work to the value of approximately £1.56m per annum (as set out in confidential appendix 1).
- 4.2 Oxford City Council has the advantage of having operated the section 42 arrangements successfully for more than 20 years, and having been a sub contractor to Skanska. Therefore the costs and risks associated with this work are well understood and control mechanisms are mature. The costings allow for an element of risk management and overall a return to Oxford City Council as a contribution to shared overheads or rebate on the cost of services. This would be managed through the services contract and shareholder agreement between Oxford City Council and ODSL.
- 4.3 Oxford City Council currently carries the insurance risk for the minor roads in the city. With this arrangement that cover would have to be extended to cover the work carried out on the principal roads as Oxfordshire County Council's agent. The additional insurance cost associated with this has been included in the budget.

5.0 Risk

- 5.1 A risk assessment is attached at appendix 2. While both parties are entering into the agreement in good faith, financial resources for local authorities remain uncertain, and dependent on decisions at national and local level which would be outside the control of Oxford City Council. While the intention of both parties is that the initial funding level outlined above is maintained in future years, it is important to note that the setting of the overall budget is entirely at the discretion of Oxfordshire County Council. If the overall funding for this activity was reduced, there could be a reputation and financial risk to Oxford City Council from being the public face for a service that was not adequately funded. In these circumstances Oxford City Council could mitigate this risk by giving notice, as outlined in paragraph 3.2 above.

6.0 Review and Monitoring

- 6.1 The two year rolling programme will be reviewed annually in conjunction with an assessment of the backlog of need. The review will target a reduction of the anticipated timescales from 4-5 years. If the outcome of the review identifies that the arrangement is unsustainable, Oxford City Council would give notice as outlined in paragraph 3.2.

7.0 Equal Opportunities Policies

- 7.1 All relevant Council policies such as the Oxford Living Wage and Apprenticeships will be applied to the delivery of these services and will be costed into the proposal.
- 7.2 There are staffing implications for both authorities and include the TUPE transfer of three members of Oxfordshire County Council staff to Oxford Direct Services Limited.

8.0 Conclusion

8.1 The proposed Agency Agreement extends our tried and tested management of some parts of the highways network in the city. A more seamless delivery of highways services in the city will bring economies of scale delivering better outcomes in proportion to the available budget. The public will benefit from this and the simplification of who is responsible for the roads in the city. We have a clear picture of the risks involved and have mitigated these through agreeing exclusions with Oxfordshire County Council, limiting our responsibilities appropriately, undertaking an assessment of the network to determine the investment requirement and ensuring that in the unlikely event we wish to withdraw from the arrangement we can do so with notice. Taking all things into consideration, the Council could enhance its reputation through better service provision and better outcomes for the people of Oxford.

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