

**AGENDA ITEM: 9**                      Pages 81 – 84

Meeting	Cabinet Resources Committee
Date	29 June 2011
<b>Subject</b>	<b>Novation of two highways contracts (The Highways Planned Maintenance &amp; Improvements Contract 2007-12 and The Highways Term Maintenance Contract 2007-12).</b>
Report of	Cabinet Member for Environment
Summary	The report seeks approval for the Novation of two highways contracts from “VolkerHighways Crowley Limited”, formerly known as “John Crowley (Maidstone) Limited”, to “VolkerHighways Limited”.

Officer Contributors	C. Chrysostomou/S Vaiti
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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## **1. RECOMMENDATIONS**

- 1.1 That the novation of the “Highways Planned Maintenance and Improvements Contract 2007-12” and “The Highways Term Maintenance contract 2007-12” from “VolkerHighways Crowley Limited”, formerly known as “John Crowley (Maidstone) Limited”, to “VolkerHighways Limited” be approved.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet Resources Committee, 19 February 2007, Decision Item 8 – the Committee agreed to award the “Planned Maintenance & Improvements Contract 2007-12”, contract 50069, and the “The Highways Term Maintenance contract 2007-12”, contract 50068, to VolkerHighways Crowley Limited”, formerly known as “John Crowley (Maidstone) Limited.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The novation of the Planned Maintenance & Improvements Contract 2007-12 and the Highways Term Maintenance contract 2007-12 would allow the delivery of services that contribute to the following objectives of the Council’s 2010-2013 Corporate Plan:
- A Successful London Suburb.
  - Better Services with Less Money,
  - Sharing Opportunities and Sharing Responsibilities.

In particular, this contract directly contributes in maintaining and improving of transport infrastructure, improving traffic flows, reducing journey times and improving quality of life and the local environment and creating conditions for a vibrant economy.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 The novation of the two contracts carries no additional risk to the Council as the terms and conditions of the contracts will not change and the overarching Parent Company Guarantee will remain.
- 4.2 We have considered whether the issues involved in the novation of the contracts are likely to raise significant levels of public concern or give rise to policy considerations and it has been concluded that this is unlikely to be the case.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Both the Highways Planned Maintenance & Improvements Contract and the Highways Term Maintenance contract have been procured using the Council’s procurement process. As part of this procurement process, VolkerHighways demonstrated they will be able to support the Council in meeting its public obligations to promote race equality and disability equality whilst undertaking work on the council’s behalf.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 There are no resource implications for the Council with regards to the novation agreement as the contractor, VolkerHighways Limited, will pay all the Council’s legal cost in relation to the novation of the two contracts.

## **7. LEGAL ISSUES**

7.1 None except any mentioned or referred to in the body of the Report.

## **8. CONSTITUTIONAL POWERS**

8.1 Council Constitution, Part 3, Responsibility for Functions - paragraph 3.5 states that Cabinet Committees may discharge the executive functions that fall within their terms of reference, whether or not they are also delegated to officers, except for matters specifically reserved to Cabinet.

8.2 Council Constitution, Part 3, Responsibility for Functions - paragraph 3.6 states the terms of reference of the Cabinet Resources Committee.

8.3 Council Constitution, Contract Procedure Rules, Paragraph 5.6.3 - provides that in the case of a contract novation or assignment, the original contract value shall be used to determine the level of authorisation required in accordance with the thresholds for Works, Supplies and Services set out in Table 5-1 (Authorisation and Acceptance Thresholds for Works, Supplies and Services) of the Contract Procedure Rules. Table 5-1 requires authorisation from Cabinet Committee for contracts of £500,000 and over.

## **9. BACKGROUND INFORMATION**

9.1 Following a competitive tendering process, under the EU procurement rules, John Crowley (maidstone) Ltd have been awarded two contracts, The Highways Planned Maintenance & Improvements Contract (contract No 50069) and The Highways Term Maintenance Contract (contract No 50068). The first contract had also been awarded to another contractor, Ringway Infrastructure Services Ltd. Both contracts were awarded following public advertisement, under the EU Procurement, and a competitive tender process. Both contracts commenced on 1<sup>st</sup> April 2007 for a period of 5 years, but with the Council having an option for a single two year extension.

9.2 Following the award of the contracts, John Crowley (Maidstone) Ltd was taken over by the VolkerWessels UK Group, a dutch owned group. Volker Wessels initially changed the name of "John Crowley (Maidstone) Ltd" to "VolkerHighways Crowley Limited" but subsequently restructured the various business of their group, which resulted in a new company, "VolkerHighways Ltd", being responsible for delivering the Barnet Contracts. These changes have resulted in a request from VolkerHighways Ltd, via a letter received on 8 September 2009, for a formal novation of the two contracts from "VolkerHighways Crowley Limited", formerly known as "John Crowley (Maidstone) Limited", to "VolkerHighways Limited".

9.3 All aspects of the novated contracts will remain identical to the original contracts, save the identities of the contracting parties.

9.4 Volker Wessels UK will provide an unconditional parent company guarantee of the performance of the contracts, to replace the original parent company guarantee provided at contract award.

9.5 Novation is a two way legal agreement with the organisations involved being London Borough of Barnet and VolkerHighways Ltd.

9.6 The novation agreement would result in allowing VolkerHighways Ltd to assume the rights and obligations previously enjoyed and incurred by VolkerHighways Crowley Ltd,

formerly John Crowley (Maidstone) Ltd. VolkerHighways Crowley Ltd, formerly John Crowley (Maidstone) Ltd, would be released from its obligations to the Council under the two contracts. The Council would be able to enforce the contracts against VolkerHighways Ltd.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None

Legal – PD  
CFO – JH