

<b>Meeting:</b>	Executive
<b>Meeting date:</b>	14/03/2024
<b>Report of:</b>	<b>Pauline Stuchfield</b> Director of Customer & Communities and <b>Neil Ferris</b> Corporate Director of Place
<b>Portfolio of:</b>	<b>Cllr Coles</b> - Executive Member for Health, Wellbeing and Adult Social Care and <b>Cllr Kilbane</b> Executive Member for Economy and Transport

## **Make It York Limited – Service Contract Renewal**

### **Subject of Report**

1. This paper sets out the proposal to extend the Term of the current Make it York Limited (MiY) Service Contract expiring on 22 September 2024, for a further 2 years until and including 22 September 2026 and to grant MiY a lease/occupational agreement of the Shambles Market site and market office on Silver Street (at a peppercorn annual rent) until and including 22 September 2026.
2. It also sets out any changes to the Service Level Agreement (SLA), charging and invoicing provisions, as well as any property related arrangements for the extended term.

### **Benefits and Challenges**

3. This decision allows the continued operation of MiY as a trading company and builds on the success of the last three-year period which has seen MiY stabilise following the COVID-19 pandemic and champion visitors back into our great city.
4. The latest scrutiny committee on 22 January 2024, received a performance report from MiY which presented a strong healthy financial position for the company, forecasting by the end of 2023-24 a position where MiY will have financial reserves in place and

paying dividends to City of York Council (CYC). Some highlights of performance included:

- a) Strong governance arrangements.
- b) Commitments to sustainability and how MiY can contribute to the net-zero carbon city by 2030.
- c) Improved business performance with company dashboard data being presented to CYC every 3 months.
- d) A successful events programme including the new Snooks trail focussing on resident engagement and being developed alongside fostered children.
- e) 2023 York Christmas Market new layout and voted No 3 in top 10 markets in Europe on 'The Travel.Com'.
- f) Shambles Market has recently been awarded the 'Travellers' Choice award for 2023, due to its top rankings on TripAdvisor.

The full scrutiny report is referenced as a background paper for further information.

5. The continuation of MiY provides a commercial focus on maximising the opportunities from the city centre market and events for both residents and visitors.
6. City of York Council (CYC) is working with North Yorkshire Council, MiY and the new Combined Authority to establish a Local Visitor Economy Partnership for York and North Yorkshire ("YNYLVEP"), and the collaborative arrangements in place for developing and implementing the YNYLVEP. MiY is a key partner in this work, representing York's tourism businesses and performing the role of Destination Management Organisation (DMO) for the city. Without MiY, this essential work would be the responsibility of the Council.

## **Policy Basis for Decision**

7. The Council set up MiY as a Teckal trading company in 2015 to deliver key priorities including economic development, city centre and markets, visitor economy and culture.
8. In May 2021 the Council approved a new three-year service contract for the period 2021-24, with a new SLA that returned to the Council the economic development function and staff, to allow MiY to focus on tourism, city centre and markets, culture and events.

9. The 'Our City Centre Vision' approved at Executive in October 2023, re-launched a vision for the city centre to create "a vibrant city centre, where a wide range of people want to spend time in the day and night, which creates the right conditions for responsive businesses to grow and adapt, for city living to develop, and for cultural and social activity to flourish."
10. To reflect the current environment and align to the city strategies, the 'Our City Centre Vision' includes 8 themes, with a strong focus on accessibility, residents, affordability, equalities, climate resilience and carbon reduction. The 8 themes are shown below:

Figure 1: Our City Centre Vision Themes



11. This new City Centre Vision will provide a framework for the future SLA for MiY to ensure that it aligns with not only the new vision, but the three 10-year strategies which were approved by Full Council in December 2022 comprising of:
  - a) Climate Change Strategy 2022-2032
  - b) Health and Wellbeing Strategy 2022-2032
  - c) Economic Strategy 2022-2023.
12. These overarching strategies and the recently adopted Council Plan 2023-2027, **One City, For All**, have all been reflected in the MiY SLA and aligns to our four commitments:
  - a) **Equalities and Human Rights** – Equality of opportunity.
  - b) **Affordability** – Tackling the cost-of-living crisis.
  - c) **Climate** – Environment and the climate emergency.

d) **Health** – Improve health and wellbeing and reduce health inequalities.

13. Finally, the Vision also aligns to the priorities in the emerging Tourism Strategy for the City “A vision for tourism in York 2023”, due to be considered by the Executive in February.

## Financial Strategy Implications

14. The current MiY service contract up until 22 September 2024 costs the Council £112k per year. The budget proposals (approved at Budget Council) agreed a reduction of £25k per year (2024/25 and 2025/26). It is anticipated that MiY will achieve this through efficiencies or raising additional income.

15. Table 1 below, sets out the future payments from the Council to MiY:

<b>Contract Year</b>	<b>Net cost</b>	<b>Notes</b>
23 Sept 2024 to 22 Sept 2025	£87k	Saving £25k
23 Sept 2025 to 22 Sept 2026	£62k	Saving £25k

16. The Council also budgets to receive a dividend from MiY totalling £25k per annum.
17. The long-term aim is that the company will be wholly funded from event income and external contributions.

## Recommendation and Reasons

18. The recommendations are:
- a) Approve the MIY Service Contract extension for two years (23 September 2024 to 22 September 2026), using the extension provisions under the current contract.
  - b) Approve the new SLA shown at Annex A and the changes to charging set out at paragraph 14-15.
  - c) To delegate authority to the Director of Customer and Communities (and their delegated officers), in consultation with the Director of Governance (and their delegated officers in Legal Services), to determine the provisions of any documentation required under the terms and conditions current contract to effect the extension and incorporate the new SLA in the contract.

- d) Approve the granting of a lease/occupational agreement to MiY of the Shambles Market site and market office on Silver Street (at a peppercorn annual rent) until and including 22 September 2026 with delegated authority to the Director of Customer and Communities (and their delegated officers), in consultation with the Director of Governance, to negotiate the provisions of and conclude the entry into of such agreement.

Reason: To keep secure a strong future for MiY as a Teckal company.

## **Background**

19. MiY have operated now as a Council Teckal company since 2015 and the current service contract was entered into on 23 September 2021, expiring 22 September 2024.
20. The current contract can be extended, up to a further three years (until and including 22 September 2027), provided that both the Council and MiY mutually agree (in writing) to an extension on or before 22 March 2024.
21. The current contract if extended can also be varied, allowing the contract to be updated, in particular the service standards, known as the Service Level Agreement (“SLA”) and charging and invoicing provision, as well as negotiating the terms of the leases, access, and other property related arrangements for the extended term.
22. The previous Executive decision which considered the current contract was approved initially on 20 May 2021, which also approved changes to the Memorandum and Articles of Association, changes to priorities the SLA was based on and noted the extensive consultation of key stakeholder groups.

## **Consultation Analysis**

23. The Economy, Place, Access, and Transport Policy and Scrutiny Committee have reviewed the new SLA template on 22<sup>nd</sup> January 2024 and comments from committee members were in support of the template.
24. Extensive consultation with key stakeholder groups was last undertaken in 2021, prior to the approval of the current MiY

contract. The need to undertake this scale of external consultation is not necessary at this point, as the performance of MiY has stabilised during the current contract period 2021 to 2024.

25. The current SLA was approved in October 2023 at the Shareholder Committee as each year the contract allows for updates to ensure the SLA remains current. The key updates were:
  - a) The inclusion of the Council plan priorities in part 1.
  - b) Removal of the Economic Development section to reflect that this function had been moved back in-house by the Council in 2021.
  - c) Added in the role for MiY to play in the emerging York & North Yorkshire LVEP (Local Visitor Economy Partnership), working collaboratively with North Yorkshire Council.
  - d) Removed some out-of-date actions and targets.
  - e) Added in MiY role to lead on events in the parks.
  - f) Reduced administration role for MiY around Culture (Cultural Leadership Group and Culture forum).
  - g) Added in the need to co-produce a Spaces & Places policy for the city centre.
26. Within the Council, the new SLA template shown at Annex A has been consulted with all relevant chief officers and Executive members with the feedback that there is strong support for using the Our City Centre Vision themes to structure the future SLA.
27. Consultation with MiY senior management team and MIY board has been critical to reach this point, with a very positive, healthy and challenging client and contractor relationship to ensure a balance of commercialisation and social benefits are reached.

## **Options Analysis and Evidential Basis**

28. The principal options available to the Executive are to:
  - a) Agree up to a 3-year extension to the current service contract and the new SLA as set out in Annex A
  - b) Suggest amendments to the SLA or a shorter/longer extension to the service contract (one or three years, rather than two)
29. Option A provides MiY as the Council's Teckal company a period of certainty which allows them to seek best value from procuring its

own services and sub-contracts. It also allows for medium term financial planning and strategic planning. The proposed SLA is recommended reflecting views of both MiY and the Council's senior management teams.

30. Option B is available to the Executive, but a shorter contract extension would limit MiY's business planning.

## Organisational Impact and Implications

31. **Financial:** The council currently provides revenue support of c.£112,000 per annum to MiY for the provision of services. The council also budgets for a dividend of c.£25,000 per annum from the company. This 2024/25 budget has agreed a reduction of £50,000 phased over the next two financial years 2024-25 and 2025-26.

32. **Legal:**

### Constitutional & Decision Making Implications:

- a) Strictly speaking, Article 12 of the Council's Constitution states that Executive approval is required where entering, amending, or terminating any agreements which create a potential liability for any Council owned or co-owned company in excess of £500,000. Otherwise, under Article 12 authority is delegated to the Council's Shareholder Committee in respect of entering, amending, or terminating any agreements which create a potential liability for any Council owned or co-owned company in between £250,000 and £500,000, and to the Chief Operating Officer where entering, amending or terminating any agreements which create a potential liability for any Council owned or co-owned company less than £250,000.

### Procurement Law Implications:

- b) There are no procurement law implications with the proposals in this report so long as MiY continues to be a *Teckal* company (see **Procurement Implications** below).

### Contractual Implications:

- c) The current service contract was entered into between MiY and the Council on 23 September 2021 for a term from and including that date until and including 22 September 2024.

- d) As per the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution (the **Council's CPRs**), Contract extensions shall only be permitted if they are put in place before the Contract expiry date, the relevant notice has been given to the supplier and where the proposed extension is in accordance with the contract terms. The existing service contract contains a contract extension provision which states that contract can be extended by up to a further 3-years provided that both the Council and MiY mutually agree (in writing) to an extension **on or before 22 March 2024**. If no agreement to extend the current contract can be reached by this date, then the contract will expire on 23<sup>rd</sup> September 2024. Legal Services should be consulted to draft the relevant extension agreement to be signed by both the Council and MiY, and this agreement can also cover the required variations to the contract (see below).
- e) As per the Council's CPRs, all contract variations must be carried out within the scope of the original contract. In the event that the current contract is extended in accordance with the above, the contract states that the Council may decide that it is necessary to vary any of the provisions of the contract which will apply during the extended term, including in particular, the service standards under the contract, the SLA, and the charges and invoicing provisions under the contract. The contract requires that the Council shall, acting reasonably, consult with and consider the comments of MiY as to the nature and effect of such changes on the provision of the Services, the operation and costs of MiY during the extended term. The Council has already gone through this consultation process with MiY – see **Annex A**. No variation of the current contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### Property Implications

- f) The current contract also states that if the term of the contract is extended in accordance with its terms and conditions, the parties will negotiate the terms of the Shambles Market Lease, and any other property related arrangements required for the extended term. As the owner of Shambles Market and market office, the Council has the power to, and ought to, grant MiY a lease/occupational agreement thereof so as to enable MiY, in turn, to grant



licences and subleases to market traders in connection with operation by MiY of Shambles Market.

33. **Procurement:** The council originally directly awarded this contract to MiY without undergoing a procurement process due to its status as a Teckal company in accordance with regulation 12(1) of the Public Contract Regulations 2015. This rule states that any contract awarded by the Council to such a company will fall outside if the full public procurement regime under the Regulations provided that (i) the council to exercise similar control over the company as it does over its own departments, (ii) that at least 80% of the activities of the company are those entrusted to it by the council, and (iii) that there is no direct capital participation from the private sector in MiY. At the time of writing this report, all of these requirements of Regulation 12(1) have been met, therefore there are no procurement implications in relation to this contract, or the proposed extension and/or variations to the contract set out in this report and any annexes hereto. It should be noted that these requirements under Regulation 12(1) will be carried over into Paragraph 2 of Part 1 of Schedule 2 (Exempted Contracts – Counterparty Exempted Contracts – Vertical Arrangements) of the new Procurement Act 2023 once it comes into force.
34. **Affordability:** The SLA links directly to Our City Strategy themes which includes a ‘Family friendly and affordable city centre’ which ensures MiY business plan will reflect this and look to develop greater opportunities that are affordable for families. Many MiY activities are free of charge or discounted for residents wherever possible.
35. **Equalities and Human Rights:**
- a) The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority’s functions).
  - b) At the time of writing there are no equalities implications identified in respect of the matters discussed in this report.

36. **Economy:** Although the Council now leads on economic development, MiY actions still have a significant impact on the animation, attractiveness and vibrancy of the city centre. The SLA links across to the relevant strategies including Economic Strategy, Tourism Strategy and the Our City Centre vision to ensure MiY and the Council work hand in hand towards the same place-based goals. Tourism is a key sector for the York economy, and MiY act on behalf of the Council to deliver specific actions to increase the value and productivity of tourism and support businesses in this sector. In particular, the DMO role of MiY is an essential part of the new YNYLVEP, so extending the contract provides clarity on local arrangements for the next phase of LVEP development.
37. **Data Protection and Privacy and Communications:** Data protection impact assessments (DPIAs) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK GDPR. Failure to carry out a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines. DPIAs helps us to assess and demonstrate how we comply with all our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve. As there is no personal data, special categories of personal data or criminal offence data being processed to inform the decision in this report, there is no requirement to complete a DPIA. This is evidenced by completion of DPIA screening questions. However, there will need to be consideration and completion of DPIAs where required, within delivery of the extended contract if approved.
38. There are no implications to note for human resources, Environment and Climate Action, health and wellbeing.

## **Risks and Mitigations**

39. In compliance with the council's risk management strategy the main risks arising from this report have been identified. These risks are mainly ones that could lead to the inability to meet business objectives (Strategic) and to deliver services (Operational), leading to financial loss (Financial), non-compliance with legislation (Legal & Regulatory), damage to the council's image and reputation and failure to meet stakeholders' expectations (Governance).

40. Measured in terms of impact and likelihood, the risk score has been assessed at 14. This “medium” risk level is acceptable but means that regular active monitoring is required.

## Wards Impacted

41. With this service contract the main impact is in relation to the city centre, therefore Guildhall and Micklegate Wards. However, MiY also provide wider functions that have an impact on the whole city for example operating the market charter and support for city wide events.

## Contact details

For further information please contact the authors of this Decision Report.

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## Background papers

**21.05.2021 Executive Committee.** Agenda item 133: The Council's Contract with Make it York

**12.10.2023 Executive Committee.** Agenda item 37: Delivering the Vision for the City Centre

## **Annexes**

### **Annex A – New Make It York SLA (Service Level Agreement)**

#### **List of Abbreviations Used in this Report.**

CLG – Culture Leadership Group

CYC – City of York Council

*DMO – Destination Management Organisation*

*LVEP - Local Visitor Economy Partnership*

*MiY – Make It York Limited*

*SLA – Service Level Agreement*

*YNYLVEP - York and North Yorkshire Local Visitor Economy Partnership*