

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet Member for the Environment

Date: 07/10/2021

Subject: VPACH - EV Charge Point Framework

Report of: Bram Kainth – Chief Officer for Public Realm

Report author: Masum Choudhury – Head of Transport

Responsible Director: Sharon Lea – Strategic Director for the Environment

SUMMARY

The VPACH (Virgin Park & Charge) project will provide electric vehicle charging infrastructure to residential areas as a proxy for home charging for residents without access to off-street parking. As the economics for on-street residential charging is challenging, the VPACH consortium is supported by Innovate UK to install on-street charging solutions for areas with electrical supply constraints using the network assets of Virgin Media.

This report requests that the Council enters into a Framework Agreement and subsequent Call-off Contracts with the consortium's only approved charge point operator, Liberty Charge Limited ("Liberty Charge"), to supply, install, maintain and operate charge points in H&F at identified sites in the borough.

RECOMMENDATIONS

1. To note that Appendix 2 is not for publication on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).
2. To award a Framework Agreement to Liberty Charge Limited (as set out by Option 1 below) to supply, install, maintain and operate the user interface (back-office) for the EV charge point service under the VPACH project and subsequently enter into Call-off Contracts for each identified EV charge point site for a minimum of 10 years.
3. That authority be delegated to the Chief Officer - Public Realm, in consultation with the Cabinet Member for Environment, for the installation of the charge points installed under this Framework Agreement and subsequent Call-off Contracts.

Wards Affected: ALL

Our Values	Summary of how this report aligns to the H&F Priorities
Building shared prosperity	Supporting the growth in EV ownership in H&F and London-wide to support cleaner air and reduced transport related noise.
Creating a compassionate council	Supporting cleaner air initiatives for our residents and visitors to enjoy, by installing charge points and providing greater options to meet consumer needs.
Doing things with local residents, not to them	Responding to the needs and requests from our residents for more local charge points. Communicating and consulting on the proposed sites and providing for the increased demand for charging.
Being ruthlessly financially efficient	Providing charge points that are protected for overnight use by residents only at zero cost to the council.
Taking pride in H&F	Helping the Council to maintain its status as one of the leading UK local authorities for charge point provision.
Rising to the challenge of the climate and ecological emergency	The further development of electric vehicle charge points in the borough directly supports Business Plan actions to support both air quality initiatives and growing electric vehicle ownership and use.

Financial Impact

The total value of the contract awarded by H&F is likely to exceed £300,000 and is a Key Decision.

There are no cost implications for the Council and all fees associated with this project will be fully reimbursed through the Innovate UK funding awarded to H&F.

Costs associated with the project:

- set up costs, including officer fees, planning application and consultation costs, up to £105,000 will be covered by grant funding from Innovate UK;
- the estimated total value of the Framework Agreement and potential Call-off Contract is £500,000 (i.e. the amount received by Liberty Charge from users) to cover 50 charge point sites;
- the Call-off contracts shall be entered into as land transaction arrangements whereby Liberty Charge will fund; supply, installation, maintenance and operation of the EV Charge Points and generate income from the service users over a minimum of 10 years for each charge point installed.
- the Council shall receive a peppercorn rental of £1 p.a. per charge point from Liberty Charge, referenced in more detail in Appendix 1 to this report.

Liberty Charge has a current credit rating of 91. This high score gives the council confidence there is very low financial risk in awarding this contract to Liberty Charge.

Legal Implications

This report recommends that a Framework Agreement is awarded to Liberty Charge Limited for the supply, installation, maintenance and operation of the user interface (back-office) for the EV charge points under the VPACH project and subsequently to enter into Call-off Contracts for each identified EV charge point site for a minimum of 10 years.

The Framework Agreement is not subject to the Public Contracts Regulations 2015. The reason for this is, the arrangement is a land transaction rather than a service concession contract and land transactions are not subject to the PCRs. The Framework Agreement does not refer to services being provided by Liberty Charge but rather a mechanism to enter into a land transaction. The table below sets out the reasoning further:

Ocean Outdoor tests for Licence / Lease amounting to a concession arrangement	LA Agreement analysis
There is a statutory obligation for the Council to provide the services and the services are provided on the Council's behalf	<ul style="list-style-type: none"> • There is no statutory obligation on the Council to provide electric vehicle charging points. In any event neither the precedent framework agreement or the licence/lease contains obligations on Liberty Charge (LC) to take leases/licences (LC must serve a Selection Notice to take a site forward) and there is no obligation to construct an EVCP (although there is a right for the Council to take the licence/lease back if one is not operational within 6 months of the date of the lease/licence)
There is direct benefit to the Council and the Council's residents as a result of the services provided.	<ul style="list-style-type: none"> • The LA Agreement does not place an obligation on LC to provide a service to the public. • The Council's residents will have access to EVCPs however they will need to be paid for commercially and therefore this is no different to any other facility within the Council's area (e.g. a hairdressers on Council premises). Additionally they do not benefit those residents who do not have electric vehicles or who have home charging. • The Agreement and/or lease/licence are not a benefit for the Council / Council residents if they do not own an electric car or if they have home charging. Accordingly the Agreement does not provide a benefit of the Council or its residents as a class.
The lease/licence is a contract for pecuniary interest for the purposes of Regulation 3 of the Concession Contract Regulations 2016.	<ul style="list-style-type: none"> • The only legally enforceable obligations in the precedent base document relate to normal landlord and tenant obligations in relation to the occupation of land – not the provision of services
The arrangement in question imposes legally enforceable obligations in respect of services to be provided.	<ul style="list-style-type: none"> • as above – the only legally enforceable obligations in the precedent base document relate to normal landlord and tenant obligations in relation to the occupation of land – not the provision of services.

Additional Clarifications

Role of Liberty Charge	<ul style="list-style-type: none"> • LC will enter into the licence / lease and therefore their role is as Licensee/Lessee. LC will separately enter into a sublease/sub-licence with a charge point operator however the Council will not be a party to that document.
Object of the LA Agreement (i.e. are any obligations placed on Liberty Charge?)	<ul style="list-style-type: none"> • The Local Authority Agreement contains the mechanism by which LC identifies sites which are in principle acceptable to the Council, assesses them and then, if they are acceptable LC can choose to draw down the licence / lease by serving a Selection Notice (please note that there is no obligation – it is optional, although on a practical level by that stage LC will have invested heavily in carrying out investigations as to suitability, drawing up plans etc.). • Once a Selection Notice has been served then LC have comfort that the Council will not dispose of the site to a third party enabling LC to incur the additional cost of securing the necessary consents and the CPO to ensure that once the licence/lease is granted they are in a position to construct and commission the EVCP within the requisite 6 month period. • As such the Agreement provide security for LC to expends the initial capital cost of securing sites within the Borough.

Land transactions are not subject to the Council's Contract Standing Orders (CSO 2.3) but the Council's Financial Regulations must still be complied with.

The Framework Agreement must be signed as a deed by Legal Services.

The decision to enter into the Framework Agreement is within the remit of Cabinet Member for the Environment. It is also a Key Decision. (see Article 12 of the Constitution) and the report must be submitted to Committee Services for publication on the Council's website

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Background Papers Used in Preparing This Report

(None)

DETAILED ANALYSIS

Proposals and Analysis of Options

1. Three options exist for progressing the expansion of residential EV charge points in H&F:

Option 1 – using the Innovate UK grant funding available to H&F through the VPACH Project to develop charge points for our residents at no cost to the Council with regard to officer fees or the supply, installation, management and operation of the charge points. The added benefit is that these charge points will be available exclusively to residents overnight and in the future, may include a preferential kWh cost for H&F residents.

Option 2 – H&F develop electric vehicle charge points without using an existing agreement. Following this path will incur considerable costs for the Council (fees and capital) and extend the delivery timeframe by many months, potentially years, by requiring liaison with District Network Operator, service providers and potential network operators.

Option 3 – not develop electric vehicle charge points in H&F. This does not support the Council's aspirations to become the greenest borough, improve air quality or realise the business plan targets for growing the electric vehicle charge point network in the borough.

2. It is recommended that Option 1 is adopted.

Reasons for Decision

3. As the only charge point operator on the VPACH consortium and approved by Innovate UK, it is recommended that a direct award be made to Liberty Charge for the supply, installation, maintenance and operation of the charge points, and the back-office user interface service.
4. The Council's officer input to the VPACH Project is funded by Innovate UK grant funding up to £105k. Thereafter, Liberty Charge shall supply, install, maintain and operate the charge points at their own cost, in return for the generation of income from service users and the Council will generate an agreed income from Liberty Charge.

Equality Implications

5. There are no direct negative equality implications for groups with protected characteristics, under the Equality Act 2010, associated with these proposals.
6. The Council has given due regard to its responsibilities under Section 149 of the Equality Act 2010 and it is not anticipated that there will be any negative impact on any groups with protected characteristics from the awarding of this contract.
7. The EQIA is provided in Appendix 3.

Implications completed by: Dan McCrory, Principal Transport Planner, Policy & Strategy, tel. 0208 753 6697.

Risk Management Implications

8. The report recommends entering into a framework agreement to allow call offs to be made for the location of EV charging points within the borough. This is in line with Council's climate change commitments and, with the installations being provided at no cost to the Council, in line with the objective of being ruthlessly financially efficient.

Implications completed by: David Hughes, Director of Audit, Fraud, Risk and Insurance, tel: 07817 507 695

Climate and Ecological Emergency Implications

9. This project supports the London Mayor's Air Quality Strategy (MAQS), specifically on improving air quality by setting tough new standards to put London on course to meet legal limits and to achieve 100,000 electric vehicles on London's roads by 2020.
10. VPACH supports the Council's announcement of a Climate Emergency, will be beneficial for local air quality and reduced CO2 emissions and the Business Plan commitment to become the greenest borough in Britain. A key contributor will be the continued promotion and support for EV ownership and use by providing charge point solutions for our residents.

Implications verified by: Hinesh Mehta (Strategic Lead – Climate Emergency) 07960 470125)

IT Implications:

11. No IT implications are considered to arise from the proposal in this report.
12. As the data collected from Liberty Charge and the VPACH project may be of interest to the H&F Business Intelligence Team it is recommended that the H&F Transport Team contact the BI Team to discuss this further.
13. IM Implications: A Privacy Impact Assessment should be completed to ensure all potential data protection risks resulting from this proposal are properly assessed with mitigating actions agreed and implemented.
14. The contract with Liberty Charge should include H&F's data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR).

Implications completed by: Karen Barry, Strategic Relationship Manager, tel 020 8753 3481.

LIST OF APPENDICES

- Appendix 1 VPACH Overview and Project Rationale
- Appendix 2 Procurement Summary (Liberty Global) - EXEMPT
- Appendix 3 Equalities Impact Assessment