

**DERBYSHIRE COUNTY COUNCIL**

**Cabinet Member – Health and Communities**

**18 July 2013**

**Report of the Strategic Director Cultural and Community Services**

**ARRANGEMENTS FOR SAFE STORAGE OF PETROLEUM**

**1. Purpose of the report:**

To seek the Cabinet Member – Health and Communities' approval to give notice to Derbyshire Fire and Rescue to terminate the current arrangements for seeking compliance with the legal requirements for the safe storage of petroleum spirit.

**2. Information and analysis:**

- 2.1. The local authority has a duty to ensure that local businesses operating in Derbyshire comply with legislation requiring the safe storage of petroleum spirit – the Petroleum (Regulation) Acts 1928 and 1936. Any business wishing to store or sell petroleum has to be licensed with the local authority and pay the requisite fee. Businesses such as petrol filling stations, but also any other business that stores petrol, are liable to inspection by the enforcing authority to ensure both compliance with legal requirement for safe storage and that licensing requirements are met. Petroleum, and in particular petroleum vapour, is highly combustible and following several fatalities in the early 20<sup>th</sup> century, legislation was brought into ensure that it is stored safely.
- 2.2. Whilst in many local authorities petroleum legislation is enforced by trading standards services, for the past 10 years, Derbyshire County Council has had an agreement with Derbyshire Fire and Rescue Service to enforce the provisions of this legislation in Derbyshire. This has been in the form of an annual contractual agreement – a copy of which is provided as Appendix 1. The contract specifies an inspection programme to visit petrol filling stations throughout the county and other 'high risk' premises that either sell or store petroleum. Any new installation for the storage of petroleum is also liable to inspection to ensure that public safety is maintained.
- 2.3. Currently the county council pays a fee of £58,000 to Derbyshire Fire and Rescue Service (DFRS) for the performance of its functions under the petroleum legislation. As trading standards staff already have an enforcement role to seek compliance with other 'trading standards' legislation which impacts on local businesses and requires an inspection programme, there are potential economies to be made by bringing this service 'in-house'. A number of staff have been identified to undertake the necessary training and

development to become competent to enforce the legislation, which includes shadowing DFRS colleagues.

**3. Legal Considerations**

Under the terms of the current arrangements with DFRS, six months' written notice is required to terminate the agreements. It would therefore be necessary to write to DFRS by 30<sup>th</sup> September in order to give the requisite notice. (See appendix 1, paragraph 4).

**4. Other considerations:**

In preparing this report the relevance of the following factors has been considered; financial, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

**5. Background papers**

None

**6. Key Decision:**

No

**7. Call-in:**

Is it required that call-in be waived for any decision on this report?

No

**8. Strategic Director's recommendation:**

That the Cabinet Member – Health and Communities agrees to give notice to Derbyshire Fire and Rescue to terminate the current arrangements for seeking compliance with the legal requirements for the safe storage of petroleum spirit and supports the training and development of existing trading standards staff to deliver this service.

**Martin Molloy**  
**Strategic Director**  
**Cultural and Community Services**

## Petroleum Contractual Agreement with Derbyshire Fire and Rescue Service

Derbyshire Fire & Rescue Service

PETROLEUM CONTRACTUAL AGREEMENT 2013-14



Derbyshire  
Fire & Rescue Service  
Making Derbyshire Safer

**DERBYSHIRE FIRE & RESCUE SERVICE**

**PETROLEUM CONTRACT 2013-14**

This Contract is entered into on 01 April 2014 between the Derbyshire Fire and Rescue Authority (“DFRA”) and the Derbyshire County Council (“the Council”) for the provision of consultancy services by DFRA to support the Council’s administration of petroleum licensing and inspection.

For the purposes of this Contract, “Legislation” shall principally mean the Petroleum (Regulation) Acts 1928 and 1936, but shall also include all applicable laws statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes, rules of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body in relation to the Council’s responsibilities as a petroleum licencing authority, and in particular the Dangerous Substances and Explosives Atmospheres Regulations 2002.

## **1. BRIEF DESCRIPTION OF ARRANGEMENTS AND TYPE OF AGREEMENT**

DFRA will provide a consultancy and support service to the Council in respect of the Council’s duties in accordance with the Legislation. This includes a risk-based inspection programme of all existing and new sites identified by the Council and provision of a 24 hour emergency cover for petroleum incidents and contraventions. A comprehensive list of the services is indicated at 2 below.

## **2. SERVICE PROVIDER**

The service is to be provided from 1 April 2013 (the “Commencement Date”) by DFRA:

### **A Administration**

To provide written confirmation that inspected sites are complying with the Legislation.

### **B Consultants**

DFRA will provide authorised personnel who will provide advice and be a source of expertise to assist the Council in discharging its duties in accordance with the Legislation.

### **C Enforcement**

To assist the Council to enforce its legal obligations in accordance with the Legislation and, where appropriate, issue prohibition or improvement notices, carry out investigations, write reports, attend court, or take such other enforcement action as necessary, upon prior approval of the Council.

## **D      Emergency Cover**

DFRA will provide a 24 hour emergency cover in cases of spillages, leaks, explosions or other emergencies involving possible petroleum materials, and to provide specialist gas detection and environmental protection equipment. Council staff will also attend when appropriate.

## **E      Inspection**

In liaison with Council staff, DFRA will inspect 90 (ninety) petrol filling stations during the year, to include all high-risk sites.

DFRA will ensure that a facility is in place to allow Council staff to attend some site inspections, to gain experience by 'shadowing' authorised officers, to facilitate Council staff to make additional inspections.

DFRA will provide the Council with a six monthly report regarding the petroleum inspections undertaken to date.

## **F      Other Duties**

DFRA authorised officers will liaise with the Council, carrying out joint inspections where necessary, to assist in new site developments, refurbishment, and the discharge of any other duties falling within the Council's responsibilities under the Legislation.

The authorised officers will prepare inspection records and statistics and such other reports as may be reasonably required.

## **G      Training**

DFRA will liaise with the Council regarding changes to Legislation and technical developments.

## **3.      TIMESCALE FOR CONTRACT**

The Contract is for one year commencing 1 April 2013 ("The Term").

#### **4. EARLY TERMINATION**

Either party may terminate this Contract:-

(a) By giving the other party at least 6 (six) months' notice in writing to expire at any time from 1 April 2013; or

(b) In the event of either party being in breach of their obligations under this Contract the party not in default shall be able to serve notice in writing on the other party requiring the breach to be remedied within 28 days of the date of service of the notice. In the event of the breach not being remedied within the period or not being capable of being remedied within the period the party not in default shall be able to terminate this Contract with immediate effect but without prejudice to any action for damages for breach of contract.

In respect of any early termination, fees will be based pro rata on the actual service provided under the Contract.

#### **5. QUALITY OF SERVICE**

DFRA to internally audit the quality of service being provided to ensure nationally recognised standards are being met. Additionally, the Council has the right to carry out its own audit procedure at any time including, but not limited to, rights of access to Inspectors, records, sites visits, reports.

#### **6. PERFORMANCE REPORTS**

These will be as set out in 2 (F). Additionally, DFRA will provide any additional report information as may be reasonably required by the Council.

#### **7. CHARGES**

The Council will pay the DFRA a fee of £58,000 in return for the services for the Term. DFRA will invoice the Council for the said fee in instalments of £29,000 on 1 May 2013 and £29,000 on 1 October 2013. Payment will be made within 56 days of issue of the invoice.

DFRA shall be entitled to receive interest on overdue payment at the Co-operative Bank plc's base rate from the date payment is due until payment is made. All sums payable under this Contract are exclusive of VAT and other duties and taxes. Any VAT or other duties or taxes shall be payable in addition to such sums.

All licensing and any other fees received in respect of the petroleum duties will be payable to, and retained by, the Council.

## **8. LIABILITIES AND INDEMNITIES**

Neither Party excludes or limits its liability for:-

- (a) death or personal injury caused by its negligence, or that of its staff;
- (b) fraud or fraudulent misrepresentation by it or its staff; or
- (c) breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

DFRA shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by DFRA, or any other loss which is caused directly or indirectly by any act or omission of DFRA. This clause shall not apply to the extent that DFRA is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or by any circumstances within its or their control.

## **9. CONTRACT PRICE ADJUSTMENT**

The contract price is to be reviewed each year and may be adjusted annually by a percentage that reflects the annual percentage increases in the RPI. The RPI measurement will be taken from the first anniversary of the commencement date. Once the adjustment has been applied to the contract price, the adjusted price shall remain fixed for twelve months from the date that the adjusted contract price become payable.

## **10. DISPUTES**

DFRA and the Council shall endeavour to resolve any dispute relating to this Contract by agreement. If the dispute cannot be resolved either party may elect to terminate the Contract in accordance with Section 4.

## 11. STATUTORY CONTEXT

The Council has a statutory responsibility to administer and discharge functions under the Legislation

This Contract will continue to apply notwithstanding that the Legislation may be amended, extended or replaced during the period of the Contract.

The Health and Safety at Work etc Act 1974 provides for the Council to appoint Inspectors who are members of another authority. In so doing it is necessary for the Council to provide written authorisation to appoint Inspectors to enable them to discharge the functions of the Authority.

Signed for and on behalf of the Derbyshire County Council

Signature: .....

Position: .....

Date: .....

Signed for and on behalf of the Derbyshire Fire and Rescue Service

Signature: .....

Position: .....

Date: .....