

Report to: Cabinet

Date of meeting: 12 November 2019

By: Director of Communities, Economy and Transport

Title: Deed of Variation to the Integrated Waste Management Services Contract (IWMSC)

Purpose: To approve changes to the Integrated Waste Management Services Contract

RECOMMENDATIONS: Cabinet is recommended to:

- (1) note the report and approve the principle of entering into the Deed of Variation to the Integrated Waste Management Services Contract; and**
 - (2) delegate authority to the Director of Communities, Environment and Transport to agree the final terms of the Deed of Variation to the Integrated Waste Management Services Contract**
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1 Background Information

- 1.1. East Sussex County Council (ESCC) and Brighton & Hove City Council (BHCC) have held a Private Finance Initiative (PFI) contract with Veolia South Downs Ltd since 2003 for the delivery and operation of waste facilities, along with recycling and disposal services for household waste across both authority areas. The contract was extended in 2007 and runs until 2033.
- 1.2. The project is worth £1.1bn and has delivered a number of major pieces of infrastructure including –
 - Newhaven Energy Recovery Facility (ERF)
 - Hollingdean Materials Recovery Facility (MRF)
 - Woodlands In Vessel Composting Facility (IVC)
 - A number of new Waste Transfer Stations (WTSs) and Household Waste and Recycling Sites (HWRSSs)
- 1.3. Veolia financed, designed, built and now operate the additional infrastructure. All of the facilities will be handed over to ESCC and BHCC at the end of the contract and become assets for the authorities.
- 1.4. The total combined annual spend on the contract is £40m per year across ESCC and BHCC. All facilities have been delivered and the contract is well into the operational phase.
- 1.5. On 28 November 2007 a Holding Agreement was entered into by the Councils and Veolia following delays and cost increases since the start of the contract in 2003. Within the Holding Agreement Veolia were given a five year extension to the contract in order

maintain their rate of return. The possibility to extend the contract by 5-10 years was included in the original Official Journal of the European Union (OJEU) notice. A number of other additional issues were also agreed in order to benefit the Councils including, but not limited to, obligations to send waste to energy recovery facilities (until Newhaven ERF was built), royalty payments to the Councils for commercial waste managed by Veolia and electricity income sharing at Newhaven ERF. The contract extension versus the risks associated with not striking a deal with Veolia was reported to both Councils in 2007. The extension was approved and Veolia has since delivered all facilities and the associated services.

- 1.6. The parties' intention at the time of entering into the Holding Agreement was that the principles set out in the Holding Agreement would subsequently be formalised in a more detailed Deed of Variation. In preparing the more detailed Deed of Variation, it became apparent that the principles set out in the Holding Agreement were then interpreted in different ways by both parties. A number of other issues arose since the Holding Agreement was signed. These issues are set out in more detail in agenda item 12.

2 Supporting Information

- 2.1. In early 2018 the Waste Project Board considered taking the unresolved matters to dispute resolution. During the summer of 2018 Veolia agreed to a series of meetings to talk about the issues. An agreement was reached, subject to subsequent agreed drafting of the deed of variation, formal approval at both Councils and scrutiny from the Department for the Environment, Food and Rural Affairs (Defra).
- 2.2. The key areas of the agreement clarify and resolve issues relating to –
 - Newhaven ERF Electricity Income Share
 - Newhaven ERF Property Damage Insurance Clause
 - Landfill Diversion
 - Planned Maintenance
 - Income share from third party recycling
 - Rent payable during the extension period
 - Operational life after the new expiry date
 - Base Case update
- 2.3. The Waste Team are currently liaising with Defra on the Deed of Variation. As Defra part-fund the project, the Councils are obliged to report any changes to the contract in order for Defra to scrutinise and ensure that the changes are acceptable under the terms of the PFI grant funding, and in order for HM Treasury to assess whether there is any impact on how the project is treated. The Waste Team have had verbal feedback to suggest that the changes are acceptable to Defra and that a full business case is not required. However, this is not confirmed until the Councils receive written confirmation from the Head of the Waste Infrastructure Development Programme (WIDP).

3 Conclusion and Reasons for Recommendations

- 3.1. The Councils could have pursued dispute resolution earlier in the negotiations; however, this would have incurred considerable costs for the Councils and may ultimately have been unsuccessful in some or all of the disputes. The agreement reached with Veolia is considered to be positive for the Councils and resolves a number of current contractual and legacy issues dating back to the 2007 Holding Agreement.
- 3.2. The negotiated agreement represents a £10m reduction in contract costs across the life of the contract. Based on the Joint Working Agreement between ESCC and BHCC, the ESCC share of this is £6.9m and BHCC £3.1m. Further detail is provided under a later item on the agenda.
- 3.3. Consequently, it is recommended that Cabinet note the report and approve the principle of ESCC entering into the Deed of Variation and for the Director of Communities, Environment and Transport to be given delegated authority to agree the final terms of the Deed of Variation based on the principles outlined in this report.

RUPERT CLUBB

Director of Communities, Economy and Transport

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LOCAL MEMBERS

All

BACKGROUND DOCUMENTS

None