

Subject:	Deed of Variation to the Integrated Waste Management Services Contract
Date of Meeting:	5 December 2019
Report of:	Executive Director for Environment, Economy and Culture
Contact Officer:	Name: Elizabeth Culbert
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Ward(s) affected:	(All Wards);

FOR GENERAL RELEASE.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report outlines proposed arrangements for a Deed of Variation to the Integrated Waste Management Services Contract between East Sussex County Council and Brighton and Hove City Council and Veolia South Downs Ltd.

2. RECOMMENDATIONS:

That the Policy & Resources Committee:-

- 2.1 Approves the principle of entering into the Deed of Variation to the Integrated Waste Management Services Contract as set out in the report;
- 2.2 Delegates authority to the Executive Director for Environment, Economy and Culture, following consultation with the Executive Lead Officer for Strategy Governance and Law, to agree the final terms and enter into the Deed of Variation to the Integrated Waste Management Services Contract.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 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.
- 3.2 The project 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 (HWRSS)

- 3.3 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.
- 3.4 The councils receive £4.5m per year in grant funding from Defra. The total combined annual spend on the contract is approximately £40m per year across ESCC and BHCC. All facilities have now been delivered and the contract is well into the operational phase.
- 3.5 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 OJEU notice. A number of other additional issues were also agreed in order to benefit the Councils including 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 was approved by both Councils in 2007 and Veolia has since delivered all facilities and the associated services.
- 3.6 The parties' intention at the time of entering into the Holding Agreement was that the principles set out in the Holding Agreement would be formalised in a more detailed Deed of Variation. In preparing the more detailed Deed of Variation, it became apparent that some of the principles set out in the Holding Agreement were interpreted in different ways by both parties. A number of additional issues also arose following the Holding Agreement being entered into. These issues are set out in more detail in a further item on the agenda.
- 3.7 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 resulting in agreement, subject to subsequent agreed drafting of the deed of variation, formal approval at both Councils and scrutiny from Defra.
- 3.8 The key areas of agreement now 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
- 3.9 The Waste Team are currently liaising with Defra for confirmation that the proposals on the Deed of Variation are acceptable to them. 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. Defra have confirmed that the proposals are acceptable to them.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The Councils could have pursued formal dispute resolution earlier in the negotiations; however, this would have incurred considerable costs for the Councils and may ultimately have been unsuccessful in relation to some or all of the areas disputed. The agreement now 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.
- 4.2 The negotiated agreement represents an anticipated £10.032m 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 £6.922m and BHCC £3.110m. Further detail is provided under a later item on the agenda.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 In view of the contractual arrangement in place, community engagement would not be appropriate.

6. CONCLUSION

- 6.1 It is recommended that Committee note the report and approve the principle of BHCC entering into the Deed of Variation and for the Executive Director of Economy, Environment and Culture to be given delegated authority to finalise the terms of the Deed of Variation based on the principles outlined in this report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The costs to BHCC of the Integrated Waste Management Services Contract are funded from revenue budgets within the City Environmental Management service. The council also maintains a Waste PFI Project reserve to ensure future contract costs can be met. As set out in the main body of the report, it is estimated that the Deed of Variation would result in a reduction in costs to BHCC at current prices of £3.110m, which represents a combination of historic claims, ongoing contract savings, and future cost avoidance.
- 7.2 The value of historic claims to 31 March 2019 will be deducted from the next unitary payment once the final terms of the deed are agreed. This will result in unbudgeted income of £0.926m in 2019/20 which will be transferred to the Waste PFI reserve. The adequacy of the reserve level to meet future contract costs will be reviewed as part of the 2020/21 budget setting process, and any release from the reserve to support the TBM position or invest in services will be made by Members as part of the 2020/21 budget setting process.
- 7.3 It is estimated that the ongoing contract savings will be the equivalent of £0.129m per year over the remaining life of the contract. It is anticipated that this will

contribute to 2020/21 service budget savings, subject to approval as part of the budget setting process.

Finance Officer Consulted: Steven Bedford

Date: 30/10/19

Legal Implications:

- 7.2 The legal implications are addressed in the body of the report.

Lawyer Consulted: Elizabeth Culbert

Date: 24th October 2019

Equalities Implications:

- 7.3 There are no equalities implications arising from this report.

Sustainability Implications:

- 7.4 The Deed of Variation includes a new obligation for Veolia to divert 10,000 tonnes of bulky waste from landfill each year. As well as providing significant financial benefits to both Councils for the remainder of the contract term, this will result in an increase in environmental performance achieved by the contract.
- 7.5 This requirement will move 10,000 tonnes of waste up the waste hierarchy from 'disposal', which is at the bottom of the hierarchy, to 'other recovery'. The environmental impact of waste management is improved as it is moved up the hierarchy.