

WASTE CREDIT GOVERNANCE COMMITTEE

29 JULY 2016

DEED OF AMENDMENT

Recommendation

- 1. The Chief Financial Officer recommends that the Deed of Amendment agreed during the period under review be noted.**

Introduction

2. The Deed of Amendment corrects three errors contained in the Variation Agreement signed on 21 May 2014:
 - a) In respect of the Annual Discount of £250,000 which did not reflect the intention that the reduction would only be deducted from the planned take-over date and not from the date of financial close. The discount has been taken to date and the Deed states the remedy payment to Mercia (May 2014 – May 2016) and the correct payments going forwards;
 - b) The omission of a copy of CV29, which had led to Mercia not being able to invoice Aggregate Levy costs to the Council. Both the Councils and Mercia Waste agree that this variation should have been included in Annex 4 of the Variation Agreement (Non-EfW Contract Variations). However this was omitted from the formal documentation at Financial Close. Therefore the Deed of Amendment is rectifying this omission and including it in Annex 4 with effect from 21-May 2014, thereby enabling Mercia to make the appropriate claims for any payment due under this variation; and
 - c) A couple of minor referencing errors in respect of the Excess Revenue Sharing arrangements.

Legal Review

3. The Lenders' legal adviser, Ashurst, have reviewed the Deed of Amendment and are content with the document.

Financial Impact

4. Amendments 'a' and 'b' are in favour of Mercia Waste and therefore from a Lenders' perspective only improve the position in terms of Mercia Waste meeting the quarterly cash flow test. The amendments also bring the contract into line with the financial model.

Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Chief Financial Officer) there are no background papers relating to the subject matter of this report.