MERSEY WASTE HOLDINGS LTD
WDA/08/15

Recommendation

That:

1. The Authority approves the financial strategy for the company as set out at paragraph 3.7 of the report.

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MERSEY WASTE HOLDINGS LTD
WDA/08/15

Report of the Treasurer

1. Purpose of the Report

1.1 The recent changes to the Authority's Governance arrangements for its wholly owned company, Mersey Waste Holdings Ltd require significant decisions considered by the Board of the company to be approved by the Authority before they are implemented. The Authority is requested to consider and approved the proposals from the company regarding its medium term financial strategy.

2. Background

2.1 The Authority has a wholly owned company, Mersey Waste Holdings Ltd (MWHL), through which it is provided access to long term and financially beneficial land fill contracts. The contracts are between FCC, the provider, and MWHL and may not be novated (or transferred) to the Authority if the financially beneficial terms are to be retained.

2.2 In a previous structure, up to 2009, the company also provided a range of services for the Authority. Many of those services are now provided via the Waste Management and Recycling Contract (WMRC) which is operated for the Authority by its contractor Veolia ES. At the time the contract was established a significant number of the employees of MWHL were transferred under TUPE transfer terms to the new contractor Veolia. As a part of the transfer many of the pension responsibilities of the company MWHL were retained by the company, and these are subject to regular review and annual costs from the pension providers.

3. Medium Term financial plan

3.1 In order to fulfil its waste disposal obligations at least cost, the Authority requires access to the waste disposal contracts operated by the company. Each month the landfill provider invoices the company for landfill services provided to the company, the company provides the services to the

Authority and the company bills the Authority in the same amount. In other words the Authority pays the company bills.

3.2 A similar arrangement is in place to ensure that where pension invoices require payment, they are paid by the company and then the company's costs are billed to the Authority. The Authority is also required to pay for the costs of the administration of the company. The effect of all of this is that the company costs are cash backed by the Authority.

3.3 In order to enable the company to meet its costs, the company has been operating for some time with a cash balance at the bank of between £4.8M and £5M. This amount enables the company to meet one month of Landfill contract payments, and pension and administration costs, but is not sufficient for it to be certain of meeting two months of those payments. While the prospect for the company being unable to meet its liabilities is remote, as the Authority is required to make the payment to the company as the company bill falls due for payment, there is a small risk that that, on occasion, there may be a holdup or error in the Authority's payment to the company. While the risk is small, the impact of such an event would be very significant, and so it has been important for the company to retain a balance of this amount.

3.4 The company and the Authority were in dispute with the landfill provider, in a case referred to as the 'full cost' case. The case was lost two years ago and the company paid the amounts owed in settlement to the provider. The Authority had made provision to meet its share of the costs some time ago and the monies were set aside to pay to the company when the company requested payment.

3.5 The company has, properly, according to both its duty and its right, requested payment of the settlement amount owing to the company by the Authority. The Authority has the funds set aside, properly, in a provision, and so in mid-January 2015 a payment of £6.97M has been made from the Authority to the company.

3.6 The effect of the payment by the Authority to the Company is to take the cash balance held in the company to between £11.8M and £12M.

3.7 As a consequence of the prospect of a larger than normal cash balance the Company Board meeting of 2nd December 2014 proposed that:

- The cash balance held by the company for operational purposes should be increased to £6M; allowing a two month payment balance and therefore providing more financial security for the company;

- A Development Fund of £1M be set aside as seed corn money for projects to be developed by the company that are designed to support both the Authority and the wider waste partnership and city region in achieving their ‘green’ objectives while at the same time achieving a rate of return that would be used to mitigate the impacts of the Authority’s Levy on the Districts; and
- Agreed to return £4M of the company’s funds, now deemed to be ‘surplus’, back to the shareholder (the Authority) in the most tax efficient way.

3.8 If the development fund initiative is supported by the Authority the terms of the revised Articles of Association of the company require any significant initiatives that include large commitments against the fund to be approved by the Authority in advance of the commitment being finalised.

3.9 At the same time it was also recognised by the Board that in the medium term, when the Resource Recovery Contract (RRC) is in place, the Authority will no longer require such access to the landfill as it does currently. At that point, when the RRC is fully operational, the bulk of the remaining funds in the company may then be considered surplus and are likely to be returned to the Authority by a future decision of the company. At that point the Authority may wish once again to consider the future of its holdings in the company and the strategy for the company going forward.

3.10 The Authority is asked to endorse the position of the company Board, as set out above, so that the decisions can be implemented.

4. Risk Implications

4.1 The Authority requires access to the landfill contract provided by the company. The Authority is also required to pay the pension and administration costs of the company. The proposal put forward by the company Board provides assurance that the company will continue to be able to provide landfill and its liabilities will be met by the Authority.

4.2 For the Authority, the risk of failure to secure continued landfill would be likely to significantly increase the costs of waste disposal in the medium term. Failure to meet pensions liabilities would mean the Authority was in breach of its duties to former employees.

4.3 The company’s revised Articles of Association require prior approval by the Authority of significant decisions. This process provides the Authority with the opportunity to scrutinise decisions of the company before they are enacted, which has strengthened the governance of the company by the Authority.

5. HR Implications

5.1 There are no direct HR implications associated with this report, but if the Authority does not meet its pension obligations in respect of former employees the prospect of dispute with both the employees and the pension provider would be almost certain.

6. Environmental Implications

6.1 There are no direct environmental implications associated with this report, although the purpose of the Waste Development Fund is to support both the Authority and the wider waste partnership and city region in achieving their ‘green’ objectives.

7. Financial Implications

7.1 The Authority is meetings its legal obligations to the company through the release of a provision that has previously been provided for.

7.2 It is the company Board’s view that the proposals referred to above place the company on a more sound financial footing, and allow for the development of opportunities that should provide a financial rate of return.

7.3 The immediate prospect for the Authority is of the return of £4M in the shorter term with the possibility of a larger amount being returned to the Authority over the medium term when the RRC is in place and access to the company’s landfill contract is no longer as significant to the Authority.

8. Legal Implications

8.1 The revised articles of association of the company require approval by the Authority of significant decisions before they are implemented. This report provides the Authority with the opportunity to consider the Board’s proposals before they are implemented.

9. Conclusion

9.1 The Authority is asked to approve the financial strategy for the company, where, in light of its revised financial position it sets aside £6M for its ongoing business, establishes a £1M Development Fund and returns £4M to the Authority in the most tax efficient way.

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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.