

DATED

2014

**THE COUNCIL OF THE CITY OF COVENTRY
THE METROPOLITAN BOROUGH OF SOLIHULL
THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED
AND
WARWICKSHIRE COUNTY COUNCIL**

SUPPLEMENTAL SHAREHOLDERS' AGREEMENT

Appendix 2

THIS AGREEMENT is dated

2014

And is made BETWEEN:

- (1) The Council of the City of Coventry** of the Council House, Coventry, CV1 5RR (“Coventry”)
- (2) The Metropolitan Borough of Solihull** of the Council, Solihull, B91 3QS (“Solihull”)
- (3) The Coventry and Solihull Waste Disposal Company Limited** (registered in England number 2690488) having its registered office at Bar Road, Coventry, CV3 4AN (the “Company”)
- (4) Warwickshire County Council** of Shire Hall, Warwick, CV34 4RR (“Warwickshire”)

Together referred to as “the parties”

WHEREAS:

- (1) Pursuant to a direction of the Secretary of State for the Environment in exercise of his powers under section 32(2) and paragraphs 4 and 6(1) of Schedule 2 to the Environmental Protection Act 1990, On 24 February 1992 Coventry and Solihull formed the Company to undertake waste disposal functions;
- (2) Coventry, Solihull and the Company have entered into a Shareholders Agreement dated 15 March 1994, as amended by subsequent agreements dated 31 October 1995, 10 June 1999 and 17 March 2011 (“the Principal Agreement”);
- (3) With effect from [] Warwickshire became a shareholder of the Company;
- (4) The parties have now agreed to vary further the provisions of the Principal Agreement;

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The Principal Agreement shall be deemed to be amended with the consent of the parties with effect from [] as follows.

Parties and Recitals

- (a) Add the details of a new party to the Principal Agreement as follows:
“Warwickshire County Council of Shire Hall, Warwick, CV34 4RR (hereinafter called “Warwickshire”);

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- (b) Insert a new recital as follows: **(3) The parties have agreed that Warwickshire shall become a shareholder in the Company having an authorised share of £1 (fully paid up);**
- (c) Renumber the subsequent recital as **(4)** and after the words “Coventry and Solihull”, add: **“and Warwickshire”**

Definitions

- (d) Under the definition of “the Shareholders”, after the words “Coventry and Solihull” add: **“and Warwickshire”**;
- (e) Under the definition of “the Proper Officer” delete the existing words and replace with: **“in the case of the Metropolitan Borough of Solihull the Director of Resources for the time being thereof in the case of the Council of the City of Coventry the Executive Director- Resources for the time being thereof in the case of Warwickshire County Council the Strategic Director of Resources for the time being thereof (or such successor positions or officers as are nominated by the Local Authorities from time to time) in the case of the Company a director or the company secretary and in the case of any other company that becomes a shareholder, a director or the company secretary of such company**
- (f) Under the definition of “A” Ordinary Shares and “B” Ordinary Shares”, after those words, add the words **“and “C” Ordinary Shares”**, and at the end of that sentence add the words **“and “C””**. In the next sentence, after the word “Solihull”, add: **“and the “C” Ordinary Shares are to be issued to Warwickshire”**
- (g) After the definition of “Voting “B” Shares” add a new definition, as a new sub-clause: **“Voting “C” Shares” means the “C” Ordinary Shares**
- (h) Add a new definition at the end of the definitions section: **“Warwickshire Admission Date” means the date at which Warwickshire becomes a Shareholder of the Company**
- (i) Add a new definition at the end of the definitions section: **“Waste Disposal Contract” means the contract entered into between each Shareholder and the Company providing waste disposal services to the Shareholder**

Clauses of the main body of the Principal Agreement

- (j) At the end of clause 2 (2) substitute the section in parenthesis with the following text: **“(and in the case of Coventry and Solihull and Warwickshire issued under the common seal of Coventry and Solihull and Warwickshire respectively)”**
- (k) Renumber the existing clause 5 as **5.1**.

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- (l) After the end of clause 5.1, add a new clause: **“5.2 On the Warwickshire Admission Date, Warwickshire and the Company shall enter into the Waste Disposal Contract in the form agreed between them.”**
- (m) After the end of clause 5.2, add a new clause: **“5.3 For the avoidance of doubt the parties agree and acknowledge that the Waste Disposal Contract entered into between each Shareholder and the Company shall each constitute a separate legally binding agreement between the Shareholder and the Company which shall not be capable of amendment or variation by the other Shareholders and a person who is not a party to the Waste Disposal Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract.**
- (n) In sub-clause 6 (1) (k) after the word “Solihull” add: **“and Warwickshire”**
- (o) In sub-clause 6 (1) (j) delete the existing words in their entirety and replace with **“The quorum for meetings of the Board shall be three directors (present in person or by alternate) and must include at least one of those nominated under either sub-clause 6 (1) (a) or sub-clause 6 (1) (b) or their alternates”**
- (p) Delete sub-clause 6 (2).
- (q) In sub-clause 8 (2) after the word “Solihull” add **“and Warwickshire”**
- (r) Add a new sub-clause **“8 (3) The Shareholders and the Company hereby agree to undertake such matters as are required to secure compliance by Coventry and Solihull and Warwickshire and the Company with any applicable provisions of the EC Procurement Directives and related procurement law relating to companies owned by contracting authorities provided always that the Company’s obligation under this sub-clause 8 (3) shall relate only to those provisions applicable to the extent that they are within the legal power of the Company to procure**
- (s) In clause 10 delete the word ‘either’ and replace with ‘any’
- (t) In sub-clause 14 (2) wherever the word “Solihull” appears, add after it: **“and Warwickshire”**
- (u) In sub-clause 15 (1) wherever the word “Solihull” appears, add after it: **“or Warwickshire” and after the word ‘other’ in the penultimate line of the clause add ‘shareholders’**
- (v) In sub-clause 18 (2) (c) after the word “Solihull”, add: **“or Warwickshire County Council”**
- (w) In sub-clause 18 (2) (r) after the word “Solihull”, add: **“and Warwickshire County Council”**
- (x) Add a new sub-clause **“18 (2) (y) the entering into by the Company of a waste disposal contract with a customer on terms which, when taken over the anticipated duration of the proposed contract, are more favourable**

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than those enjoyed by the Shareholders under their respective Waste Disposal Contract

- (y) In sub clause 18(5) delete the words 'from time to time appointed under sub clause 6(2)'
- (z) In sub-clause 26 (2) after the word "Solihull" add: "**or Warwickshire**"
- (aa) In clause 27 after the word "Solihull" in the first line add: "**and Warwickshire**" and in the last line after the word "Solihull" add: "**or Warwickshire**"
- (bb) In clause 29 after the word "Solihull" in the first line add: "**and Warwickshire**" and after the word "Solihull" in the fifth line add: "**and/or Warwickshire**"

Schedule 1 of the Principal Agreement: Memorandum and Articles of Association

- (o) The parties have agreed to vary the Memorandum and Articles of Association to the extent represented by the redline amendments in the document annexed hereto.

Schedule 2 of the Principal Agreement: Constitution of the Shareholders' Panel

- (p) Add a new sub-clause "**1 (a) (iii) one elected member (or their substitute) appointed by the holders of the majority of the Voting "C" Shares**
- (q) In sub-clause 1 (b) at the end of the clause and before the full stop, add: "**and from those appointed under paragraph 1 (a) (iii)**
- (r) In sub-clause 1 (c) delete the words "if both Coventry and Solihull" and replace with: "**if all of Coventry Solihull and Warwickshire**"
- (s) In sub-clause 1 (c) (iii) delete the words "either of Coventry or Solihull or both" and replace with: "**if any or all of Coventry Solihull and Warwickshire**"
- (t) Add a new clause at the end of the section: "**5. The meetings and proceedings of the Shareholders Panel shall be conducted with a view to achieving unanimous resolution of the Shareholders on all matters to be determined at the Shareholders Panel. In the event that a matter cannot be determined by unanimous resolution then provided the matter is not reserved for unanimous resolution elsewhere in this Agreement or otherwise, the matter may be voted on at Shareholders Panel in accordance with the rights conferred by the Voting Shares held by the Shareholders.**"

Schedule 3 of the Principal Agreement

- (u) In the table, below the row marked "Solihull" , add a new row: "**Warwickshire**" and in that row under the corresponding heading "Ordinary Shares" add: "**1**

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“C” and under the corresponding heading “Preference Shares” add: “0”. Amend the Total under the corresponding heading “Ordinary Shares” deleted “97” and replace with: “98”

2. This Agreement may be executed in any number of counterparts by the different parties to it on separate counterparts, each of which when executed and delivered shall constitute an original, but all of which shall together constitute one and the same instrument.
3. Save to the extent expressly varied by the provisions of this Agreement, the Principal Agreement shall remain in full force and effect and shall not be affected by the execution and delivery of this Agreement.

IN WITNESS whereof the parties have respectively executed this deed the day and year first before written.

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THE COMMON SEAL OF)
THE COUNCIL OF THE CITY OF COVENTRY)
Was hereunto affixed)
In the presence of:)

THE COMMON SEAL OF)
THE METROPOLITAN BOROUGH OF SOLIHULL)
Was hereunto affixed)
In the presence of:)

THE COMMON SEAL OF)
WARWICKSHIRE COUNTY COUNCIL)
Was hereunto affixed)
In the presence of:)

EXECUTED AS A DEED)
FOR AND ON BEHALF OF)
THE COVENTRY AND SOLIHULL)
WASTE DISPOSAL COMPANY LIMITED)

.....Director

.....Director