

Dated

2014

- (1) The Council of
the City of Coventry**
- (2) Warwickshire County
Council**

Sale and Purchase Agreement

relating to

Shares

in

**The Coventry & Solihull Waste
Disposal Company Limited**

Ref: L/RL

**SUBJECT TO CONTRACT
Draft Number: 1
Cov&Solihull-14-rl**

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PARTIES

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry, CV1 5RR ("CCC"); and
- (2) **WARWICKSHIRE COUNTY COUNCIL** of _____ ("WCC")

BACKGROUND

- (A) The Company has an issued share capital of £ _____ divided into 66 'A' Ordinary Shares of £1 each 33 'B' Ordinary Shares of £1 each 1 'C' Ordinary Share of £1 each [_____] 'A' Preference Shares of £1 each and [_____] 'B' Preference Shares of £1 each
- (B) Further particulars of the Company are set out in Schedule 1.
- (C) CCC is the legal and beneficial owner of, or is otherwise able to transfer, the legal and beneficial title to the 'C' Ordinary Share
- (D) CCC has agreed to sell and WCC has agreed to buy the C Share subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business.
Company	The Coventry and Solihull Waste Disposal Company Limited, a company incorporated and registered in England and Wales with company number 02690488 further details of which are set out in Schedule 1.
Completion	completion of the sale and purchase of the 'C' Ordinary Share in accordance with this agreement.
Completion Date	the date of this agreement.
Consideration	£35,000.00.
Director	each person who is a director of the Company, the names of whom are set out in Schedule 1.
Encumbrance:	any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, title, retention or any other security agreement or arrangement.
Warranties	the representations and warranties in clause 5 (Warranties) and Schedule 3 (Warranties).

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it. Provided that, as between the parties, no such amendment or re-enactment made after the date of this agreement shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.7 Documents in **agreed form** are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification.
- 1.8 Words shall not be given a restrictive meaning if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or by reason of the fact that they are followed by particular examples intended to be embraced by those general words.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.10 References to this agreement include this agreement as amended or varied in accordance with its terms.

2. **SALE AND PURCHASE**

- 2.1 On the terms of this agreement, CCC shall sell and WCC shall buy, with effect from Completion, the 'C' Ordinary Share with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to it.

3. **PURCHASE PRICE**

- 3.1 The purchase price for the 'C' Ordinary Share shall be the Consideration.
- 3.2 The Consideration for the 'C' Ordinary Share shall be payable in cleared funds at Completion to CCC in accordance with clause 4.4.

4. **COMPLETION**

- 4.1 Completion shall take place on the Completion Date at the offices of CCC immediately after execution of this agreement;
- 4.2 At Completion CCC shall:
 - 4.2.1 deliver or cause to be delivered the documents and evidence set out in Part 1 of Schedule 2; and
 - 4.2.2 deliver any other documents referred to in this agreement as being required to be delivered by them.

- 4.3 At Completion WCC shall pay:
- 4.3.1 the Consideration by electronic transfer into CCC's nominated bank account details of which are as follows:
- Bank:
- Sort code:
- Account name:
- Account number:
- 4.3.2 payment made in accordance with this clause shall constitute a valid discharge of WCC's obligations under clause 3.

5. **WARRANTIES AND UNDERTAKINGS**

- 5.1 WCC is entering into this agreement on the basis of, and in reliance on, the Warranties.
- 5.2 CCC warrants and represents to WCC that each Warranty is true, accurate and not misleading on the date of this agreement.
- 5.3 Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in this agreement.
- 5.4 WCC and CCC acknowledge and agree that CCC shall have no liability under this agreement in respect of any matter of which WCC has actual or imputed knowledge as at the date of this agreement.

6. **LIMITATIONS ON CLAIMS**

- 6.1 The definitions and rules of interpretation in this clause apply in this agreement.
- Claim** a claim for breach of any of the Warranties.
- 6.2 Nothing in clause 6 applies to a Claim that arises or is delayed as a result of fraud or wilful misconduct by CCC.
- 6.3 The liability of CCC for all Claims when taken together shall not exceed the Consideration.
- 6.4 CCC is not liable for a Claim unless WCC has given CCC notice in writing of the Claim, summarising as far as is known to WCC the nature of the Claim and the amount claimed within the period of 12 months beginning with the Completion Date.

7. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 7.1 CCC undertakes to WCC to keep confidential and not to use other than for the purposes of this agreement the contents of this agreement.
- 7.2 WCC undertakes to CCC to keep confidential and to use only for the purposes of this agreement the contents of this agreement.
- 7.3 A party does not have to keep confidential or restrict its use of:

- 7.3.1 knowledge of the existence of this agreement (as distinct from its contents) after Completion;
- 7.3.2 information that is or becomes public knowledge other than as a direct or indirect result of a breach of this agreement; or
- 7.3.3 information that it receives from a source not connected with the party to whom the duty of confidence is owed that it acquires free from any obligation of confidence to any other person.
- 7.4 Any party may disclose any information that it is otherwise required to keep confidential under clause 7:
 - 7.4.1 to such of its professional advisers, consultants and employees or officers as are reasonably necessary to advise on or in relation to this agreement, if the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party; or
 - 7.4.2 to confirm that the sale has taken place, and the date of the sale (but without otherwise revealing any other items of sale or making any other announcement);
 - 7.4.3 in the case of information regarding CCC, with CCC's prior written consent.
- 7.5 Clause 7 shall not prohibit disclosure of information to the extent that the disclosure is required:
 - 7.5.1 by law including, without limitation, pursuant to a request made under the Freedom of Information Act 2000; or
 - 7.5.2 by the Council or Cabinet of CCC to the extent required by law;
 - 7.5.3 by the Council or Cabinet of WCC to the extent required by law;
 - 7.5.4 by a regulatory body, Taxation Authority or securities exchange; or
 - 7.5.5 to make any filing with, or obtain any authorisation from, a regulatory body, taxation authority or securities exchange; or
 - 7.5.6 to protect the disclosing party's interest in any legal proceedings,
 - 7.5.7 but the disclosing party shall use reasonable endeavours to consult the other party and to take into account any reasonable requests they may have in relation to the disclosure pursuant to any of clauses 7.5.1 to 7.5.6 before making it; or
 - 7.5.8 to enable the auditors of CCC to undertake a proper review of the affairs of CCC;
 - 7.5.9 to enable the auditors of WCC to undertake a proper review of the affairs of WCC.
- 7.6 This clause shall continue to have effect for the period of twelve (12) years from Completion Date.

8. **FURTHER ASSURANCE**

8.1 CCC shall (at their expense) promptly execute and deliver all such documents, and do all such things, as WCC may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

9. **ASSIGNMENT**

9.1 No party may assign, or grant any Encumbrance or security interest over, any of its rights under this agreement or any document referred to in it.

10. **WHOLE AGREEMENT**

10.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

10.2 This agreement together with all documents entered into or to be entered into pursuant to its provisions constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, understandings and discussions between the parties, other than representations made fraudulently.

10.3 Each of the parties acknowledges that it is not relying on any statements or warranties given or made by the others in relation to the subject matter of this agreement, save those expressly set out in this agreement and other documents referred to above and that it shall have no rights or remedies with respect to such subject matter otherwise than under this agreement (and the documents executed at the same time as it or entered into pursuant to it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

11. **VARIATION AND WAIVER**

11.1 Any variation of this agreement shall be in writing and signed by or on behalf of the parties.

11.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

11.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

11.4 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

11.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

12. **COSTS**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

13. **NOTICES**

13.1 A notice given under this agreement:

13.1.1 shall be sent for the attention of the person, and to the address specified in clause 13 (or such other address or person as each party may notify to the other in accordance with the provisions of clause 13); and

13.1.2 shall be:

13.1.2.1 delivered personally; or

13.1.2.2 sent by pre-paid first-class post or recorded delivery; or

13.1.2.3 (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

13.2 Any notice to be given to or by CCC under this agreement is deemed to have been properly given if it is given to or by CCC's representatives named in clause 13.3.1.

13.3 The address for service of notice upon CCC (unless otherwise notified to WCC by notice in writing) is:

13.3.1 CCC's representative:

Address: Council House, Earl Street, Coventry CV1 5RR

For the attention of: Executive Director of Resources

13.4 The address for service of notice upon WCC (unless otherwise notified to CCC by notice in writing) is:

Address: []

For the attention of: []

13.5 A notice is deemed to have been received:

13.5.1 if delivered personally, at the time of delivery; or

13.5.2 in the case of pre-paid first class post or recorded delivery two Business Days from the date of posting; or

13.5.3 if deemed receipt under the previous paragraphs of clause 13.5 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

13.6 To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

14. **SEVERANCE**

14.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. **AGREEMENT SURVIVES COMPLETION**

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

16. **THIRD PARTY RIGHTS**

This agreement and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and save as otherwise provided herein (including clause 5.5) are not intended to benefit, or be enforceable by, anyone else.

17. **SUCCESSORS**

The rights and obligations of CCC and WCC under this agreement shall continue for the benefit of, and shall be binding on, their respective successors and assigns and in the case of individuals their respective estates.

18. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

19. **GOVERNING LAW AND JURISDICTION**

19.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

PARTICULARS OF THE COMPANY

The Company

Name:	The Coventry and Solihull Waste Disposal Company Limited
Registration number:	02690488
Registered office:	The Waste to Energy Plant Bar Road Coventry West Midlands CV3 4AN
Issued share capital	£ divided into: []
Registered shareholders (and number of Sale Shares held):	<ul style="list-style-type: none">• The Council of the City of Coventry - 66 'A' Ordinary Shares [] 'A' Preference Shares 1 'C' Ordinary Share• Solihull Metropolitan District Council - 33 'B' Ordinary Shares [] 'B' Preference Shares
Directors	Mr Richard Gray Mr Christopher Penson Mr Nigel Basford Mr Geoffrey Honeywell Mr David Wilson
Secretary	
Debentures	Seven registered

SCHEDULE 2

COMPLETION

Part 1. What CCC shall deliver to WCC at Completion

1. At Completion, CCC shall deliver or cause to be delivered to WCC the following documents and evidence:
 - 1.1 transfer of the 'C' Ordinary Share executed by CCC as registered holder in favour of WCC;
 - 1.2 the share certificate for the 'C' Ordinary Share in the name of the registered holder or an indemnity for any lost certificate;
 - 1.3 the waivers, consents and other documents required to enable WCC to be registered as the holder of the 'C' Ordinary Share;
 - 1.4 an irrevocable power of attorney in agreed form given by CCC in favour of WCC to enable the beneficiary (or its proxies) to exercise all voting and other rights attaching to the 'C' Ordinary Share before the transfer of the 'C' Ordinary Share is registered in the register of members of the Company;

**SCHEDULE 3
WARRANTIES**

1. POWER TO SELL

- 1.1 CCC has all requisite power and authority to enter into and perform this agreement and the other documents referred to in it in accordance with their respective terms.
- 1.2 This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on CCC in the terms of the agreement and such other documents.
- 1.3 Compliance with the terms of this agreement and the documents referred to in it shall not breach or constitute a default under any of the following:
 - 1.3.1 any agreement or instrument to which CCC is a party or by which it is bound; or
 - 1.3.2 any order, judgment, decree or other restriction applicable to CCC.

Signed by C. Forde
for and on behalf of
**THE COUNCIL OF THE CITY
OF COVENTRY**

.....
Authorised Signatory

Signed by
for and on behalf of
**WARWICKSHIRE COUNTY
COUNCIL**

.....
Authorised Signatory

