

DATED

15<sup>TH</sup> MARCH

1994

THE COUNCIL OF THE CITY OF COVENTRY

-and-

THE METROPOLITAN BOROUGH OF SOLIHULL

-and-

THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED

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SHAREHOLDERS AGREEMENT

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R05043P01

THIS AGREEMENT is made the 15<sup>TH</sup> day of March 1994

BETWEEN:

- (1) THE COUNCIL OF THE CITY OF COVENTRY of the Council House Coventry CV1 5RR (hereinafter called "Coventry");
- (2) THE METROPOLITAN BOROUGH OF SOLIHULL of the Council House Solihull B91 3QS (hereinafter called "Solihull"); and
- (3) THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED whose registered office is at the Waste Reduction Unit Bar Road Coventry West Midlands CV3 4AN and whose registered number is 2690488 (hereinafter called "the Company")

WHEREAS:

- (1) 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 ("the Act") has given a direction to Coventry and Solihull to participate in forming a waste disposal company and to transfer to that company the relevant part of their respective undertakings in accordance with a scheme made in accordance with Schedule 2 to the Act
- (2) Pursuant to such direction Coventry and Solihull have formed the Company which is a private company incorporated under the Companies Act 1985 on 24 February 1992 having an authorised share capital of 1,000 divided into 1000 ordinary shares of £1 each of which one each have been issued to Coventry and Solihull (fully paid up) prior to the date hereof and the rest are unissued

- (3) Coventry and Solihull have agreed to subscribe for shares on the basis set out in this Agreement and to enter into the terms of this Agreement for the purpose of governing the activities of the Company and the relationship between themselves

WITNESSETH as follows:

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:-

"the Act" means the Environmental Protection Act 1990

"the Corporate Plan" means the corporate plan to be prepared in respect of each financial period of the Company, and approved by the Shareholders Panel, in accordance with Clause 17

"the Company" means The Coventry and Solihull Waste Disposal Company Limited

"the Memorandum and Articles of Association" "the Memorandum of Association" and "the Articles of Association" mean the Memorandum and/or (as the case may be) the Articles of Association of the Company for the time being in force

"Board" means the Board of Directors of the Company

"Transfer Scheme" means the Transfer Scheme made by Coventry and Solihull and submitted to and approved (either with or without modifications) by the Secretary of State for the Environment in accordance with Schedule 2 to the Act

"the Vesting Date" means the date on which the property rights and liabilities vest in the Company by virtue of the Transfer Scheme

"the Shareholders" mean Coventry and Solihull and "Shareholder" means one or other as the case may be and any other holder of Ordinary Shares or Preference Shares (or of any other shares in the Company) for the time being to whom Ordinary Shares or Preference Shares (or such other shares) have been transferred pursuant to and in accordance with the provisions of this Agreement

"the 1989 Act" means the Local Government and Housing Act 1989 which expression shall include where the context so requires any regulations issued under that Act

"the Shareholders Panel" means the body of persons whom the Shareholders have appointed to represent the interests of the Shareholders and to undertake the functions set out in this Agreement

"arm's length company", "control", "influence" and cognate expressions shall have the same meaning as in the 1989 Act

"the Proper Officer" means in the case of Solihull the Town Clerk and Chief Executive Officer for the time being of Solihull; in the case of Coventry the City Secretary for the time being of Coventry; and in the case of the Company the Company Secretary and in the case of any other company that becomes a party to this Agreement, the Company Secretary of such company

"A Ordinary Shares" and "B Ordinary Shares" means the Ordinary Shares for the time being respectively having the designations "A" and "B". The "A" Ordinary Shares are to

be issued to Coventry, and the "B" Ordinary Shares are to be issued to Solihull in accordance with clause 5.2 and Schedule 3

"Ordinary Shares" means ordinary shares of £1 each in the capital of the Company for the time being

"Preference Shares" means cumulative redeemable preference shares of £1 each in the capital of the Company for the time being

"A" Preference Shares" and "B" Preference Shares" means the Preference Shares, for the time being respectively having the designations "A" and "B". The "A" Preference Shares and the "B" Preference Shares are to be issued to Coventry and Solihull in accordance with Clause 5.2 and Schedule 3 (but the "B" Preference Shares issued to Coventry will be beneficially owned by Solihull).

"Voting A" Shares" means the "A" Ordinary Shares and those of the "A" Preference Shares carrying for the time being the right to vote in General Meetings.

"Voting B" Shares" means the "B" Ordinary Shares and those of the "B" Preference Shares carrying for the time being the right to vote in General Meetings.

2. (1) On or before the Vesting Date the Shareholders and the Company shall procure that the Memorandum and Articles of Association are in the form set out in Schedule 1

- (2) The Shareholders hereby agree that they will not exercise votes in general meetings of the Company to alter the provisions of the Memorandum and Articles of Association unless such alterations are approved by both the Shareholders Panel and all Shareholders such approval

to be evidenced in writing (and in the case of Coventry and Solihull issued under the common seal of Coventry and Solihull respectively)

3. (1) On or before the date hereof the Shareholders shall constitute the Shareholders Panel with the constitution set out in Schedule 2

(2) The Shareholders Panel shall have no power to alter or modify the constitution of the Shareholders Panel except upon a resolution passed by all of the Shareholders and except as referred to in paragraph 1(c) of Schedule 2

4. Each Shareholder agrees with the other not to exercise votes in general meetings of the Company other than in accordance with both a resolution passed by the Shareholders Panel and the terms of this Agreement and to procure that they will exercise their respective votes and powers as required to give effect to any resolution of the Shareholders Panel provided that in the event of the terms of a resolution of the Shareholders Panel being passed which is inconsistent or conflicts in any respect with the terms of this Agreement the provisions of this Agreement shall prevail and the Shareholders shall not be bound to give effect to such resolution

5. As at the Vesting Date Coventry and Solihull shall as a consequence of the vesting in the Company of property rights and liabilities by virtue of the Transfer Scheme be entitled to fully paid Preference shares in the Company as set out in Schedule 3 and:-

(1) the Shareholders will procure that the authorised share capital of the Company is increased to £14,925,099 comprising 99 Ordinary Shares (66 of which will be designated "A" and 33 of which will be designated "B") and 14,925,000 Preference Shares (9,950,000 of which will be

designated "A" and 4,975,000 of which will be designated "B") and shall pass appropriate resolutions authorising the Board to allot and issue the increased share capital;

(2) the Company shall allot and issue to the Shareholders the shares as set out in Schedule 3 (the 97 Ordinary Shares referred to therein to be issued for cash at par against Coventry and Solihull respectively paying to the Company £65 and £32 in respect thereof) and deliver to them duly executed Share Certificates in respect thereof (and in respect of the Subscribers Shares held by them) and shall credit all such shares as fully paid up;

(3) Coventry and Solihull will enter into the agreement entitled "Waste Disposal Agreement" in the form agreed between them;

(4) Coventry and the Company will enter into the lease of premises in the form agreed between them;

(5) Solihull and the Company will enter into the agreement entitled "Loan Agreement" in the form agreed between them;

(6) Solihull and the Company will enter into the agreement entitled "Clawback Agreement" in the form agreed between them;

(7) the Company will execute in favour of Solihull the Debenture in the form agreed between them;

(8) the Company and Coventry will execute the Indemnity in respect of leased assets in the form agreed between them.

(9) the Company and Coventry and Solihull will enter into the Waste Disposal Contract in the form agreed between them.

6. (1) Notwithstanding anything in the Articles of Association the Shareholders hereby agree that the appointment and removal of directors of the Company is only undertaken in accordance with the following provisions:-

(a) A Shareholder or Shareholders from time to time holding a majority in nominal value of the issued Voting "A" Shares shall have power from time to time and at any time to appoint one person as a Director and (subject to sub-clause 6(1)(i)) to remove from office and replace any Director so appointed by them

(b) A Shareholder or Shareholders from time to time holding a majority in nominal value of the issued Voting "B" Shares shall have power from time to time and at any time to appoint one person as Director and (subject to sub-clause 6(1)(i)) to remove from office and replace any Director so appointed by them

(c) Any appointment or removal pursuant to sub-clauses 6(1)(a) or (b) shall be effected by an instrument which shall be in writing signed by the Shareholder or Shareholders making the same or by their duly authorised attorneys (or in the case of a Shareholder being a company or in the case of a Shareholder being a Local Authority signed by its Proper Officer) and shall subject to sub-clauses 6(1)(d), (e) and (i) take effect upon such instrument of appointment or removal being lodged with or otherwise communicated



to the Company at its registered office. The Shareholder or Shareholders removing a Director pursuant to sub-clauses 6(1)(a) or (b) respectively shall indemnify the Company against any loss suffered by it arising out of any claim made by such a Director for loss of office or otherwise in respect of the termination of his employment or office with the Company arising from such removal

- (d) No appointment under sub-clauses 6(1)(a) or (b) shall take effect until notice in the form described in sub-clause 6(1)(c) has also been served on the other Shareholders (such notice to be addressed to the Proper Officer of such Shareholders where applicable)
- (e) before the effective date of any removal or subsequent appointment under sub-clause 6(1)(a) or (b) the Shareholder wishing to remove a Director or appoint a new Director shall notify the other Shareholders and the Board of the proposed removal and appointment and such notification shall (save where the urgency of the matter requires otherwise) be given at least 14 days before such removal or appointment to allow consultation between the Shareholders and the Board provided always that such consultation shall be without prejudice to the Shareholder's right to make such removal or appointment under sub-clause 6(1)(a) or (b)
- (f) the appointment and removal of any directors other than those appointed under sub-clauses 6(1)(a) or (b) shall be effected only by resolution of the Shareholders Panel and, for the avoidance of doubt, the Shareholders Panel shall have no right to remove any Director appointed under sub-clauses 6(1)(a) or (b) and no appointment shall be made by the Shareholders Panel in breach of sub-clause 7.2 or

Clause 8 and it is hereby confirmed that for the purposes of observing sub-clause 7.2 and Clause 8 any appointment under sub-clauses 6(1)(a) and (b) shall take priority over any appointment by the Shareholders Panel

(g) Any appointment or removal pursuant to sub-clause 6(1)(f) shall be effected by an instrument which shall be in writing signed by the Chairman or Vice-Chairman of the Shareholders Panel and shall subject to sub-clauses (h) and (i) take effect upon such instrument being lodged with or otherwise communicated to the Company at its registered office

(h) Save where appointment is pursuant to sub-clauses 6(1)(a) or (b) and save where appointment is to replace an outgoing Director or fill a vacancy, no person shall be appointed a Director unless either:-

(i) he is recommended by the Directors; or

(ii) not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting of the Shareholders Panel to consider such appointment, notice signed on behalf of the Shareholders Panel has been given to the Company of the intention to propose that person for appointment, together with notice signed by that person of his willingness to be appointed.

(i) Notwithstanding any other provision of this Agreement any removal of a Director shall not be effective unless and until any requirement of Section 68 of the 1989 Act to obtain the Secretary of State's direction to disregard such removal has been complied with

- (j) the quorum for meetings of the Board shall be three Directors (present in person or by alternate) and must include those nominated under sub-clauses 6(1)(a) and (b) or their alternates (provided that a Shareholder may from time to time waive the right to insist that the Director nominated by that Shareholder be required to form a quorum)
- (k) meetings of the Board shall be held at least once in every successive period of 5 calendar weeks. Any Director or any holder of Shares entitled to exercise the rights contained in sub-clauses 6(a) or 6(b) may convene a meeting of the Board by written notice to the Secretary of the Company for the time being who will proceed to convene a meeting of the Board and notice of any meeting of the Board shall be given in writing by the Secretary of the Company to all the Directors and to Coventry and Solihull stating the date (save in the case where the urgency of the agenda requires, being no earlier than 7 clear days following the date of such notice), the venue, the time and a brief outline of the matters to be discussed at the meeting
- (l) any Director who is interested whether directly or indirectly in any proposed contract transaction or arrangement with the Company must declare such interest and shall not be eligible to vote (or count in the quorum) at the meeting of the Board as regards any part of the business of which includes such proposed contract transaction or arrangement or, unless invited by the Board, to attend that part of such meeting. For this purpose any Director who is appointed under sub-clauses 6(1)(a) or (b) by Coventry or by Solihull shall not be regarded as being interested in any proposed contract transaction or arrangement with Coventry or Solihull respectively

(2) The Directors shall appoint one or both of the Directors appointed under sub-clauses 6(1)(a) and (b) to be the Chairman or joint Chairman of the Board. The Directors may at any time remove such Chairman provided they appoint the other Director appointed under sub-clauses 6(1)(a) or (b) in his place. Such appointment shall be made by majority decision of the Directors (other than those appointed under sub-clauses 6(1)(a) and (b) who shall not vote on such matter). Notwithstanding the foregoing the first Chairman shall be both Directors appointed under sub-clauses 6(1)(a) and (b) who shall act as joint Chairman for six calendar months following the Vesting Date

7. (1) At the date hereof the persons whose names are set out in Schedule 4 are directors of the Company and the first appointees of Coventry and Solihull under sub-clauses 6(1)(a) and (b) are those persons set opposite the names of Coventry and Solihull respectively

(2) After the Vesting Date the Shareholders shall procure that the maximum number of Directors holding office from time to time shall not (except with the written consent of all the Shareholders) exceed five and ensure that no director is appointed or remains a director who is an elected member of Coventry or Solihull and that any officer of Coventry or Solihull who is appointed a Director shall only be appointed by mutual agreement between Coventry and Solihull and no more than one such officer may hold office as a Director at any time while the Company remains controlled for the purposes of the 1989 Act

8. (1) The Shareholders and the Company shall procure that upon the Vesting Date and at all times thereafter as long as the Company be controlled for the purposes of the 1989 Act the Company shall be and remain an arm's length company within the meaning of Section 68(6) of the 1989 Act provided always that the Company's obligation under this

sub-clause 8(1) shall relate only to those matters referred to in Section 68(6) of the 1989 Act to the extent that they are within the legal power of the Company to procure

(2) The Shareholders and the Company hereby agree to undertake such matters as are required to secure compliance by Coventry and Solihull and the Company with any applicable provisions of the 1989 Act relating to controlled and influenced companies and arm's length companies provided always that the Company's obligation under this sub-clause 8(2) shall relate only to those provisions applicable to the extent that they are within the legal power of the Company to procure

9. The Shareholders and the Company shall procure that the activities of the Company do not exceed those as set out in the Memorandum of Association
10. The Shareholders hereby agree that so long as either of them owns beneficially shares in the capital of the Company each Shareholder will vote against any resolution to increase the authorised share capital of the Company which has not been approved by such other of them
11. The Shareholders hereby agree that they will exercise their voting rights for the time being in the Company and take such other steps as for the time being lie within their power to procure that except for the shares to be allotted pursuant to this Agreement the Company will not issue any shares without first offering to all holders of shares in the capital of the Company such proportion (as nearly as circumstances permit) of the shares to be issued as will enable each of them to maintain a proportionate holding of the issued share capital of the Company

12. (1) The Shareholders and the Company agree that the Company shall, so far as it is lawfully able, distribute its distributable profits to the Shareholders in accordance with the policy set out in the pro-forma Statement of Distributable Reserves in Schedule 7

(2) Notwithstanding any provision in the Articles of Association to the contrary, both Preference Dividends and interim dividends shall be paid quarterly in accordance with this Agreement. For this purpose each respective quarter shall comprise twelve weeks (save that the third quarter in each financial year shall comprise sixteen weeks) with the first such quarter commencing on the first day of each financial year and with the first interim dividend to be payable in respect of the first quarter in which subscription takes place. No later than 3 weeks following the end of the quarter in question the Company shall supply to the Proper Officers of the Shareholders management accounts for that quarter with a completed Statement of Distributable Reserves in the form of the pro-forma in Schedule 7 and a recommendation of the amount of dividend to be declared and paid on the Preference Shares and on the Ordinary Shares in accordance with Schedule 7 and the Company will procure that, save where no dividend is recommended to be paid, such dividend is declared and paid within such period of 3 weeks.

f (3) The Shareholders Panel shall within 2 weeks after receipt of the accounts and recommendation under sub-clause 12(2) notify the Board if they disagree with the recommendation whereafter the Board and the Shareholders Panel shall meet as soon as practicable to attempt to resolve any disagreement.

(4) For the purpose of declaring final dividends in respect of each respective accounting period of the Company the Board shall, no later than 7 weeks after the end of such accounting period (or, in respect of the accounting period in which the Vesting Date falls, no later than 9 weeks) supply to the Proper Officers of the Shareholders draft audited accounts in respect of that period with a completed Statement of Distributable Profits in the form of the pro-forma in Schedule 7 and a recommendation of the amount of final dividend to be declared and paid on the Preference Shares and on the Ordinary Shares in accordance with Schedule 7.

- X (5) The Shareholders Panel shall within 2 weeks after receipt of the draft audited accounts and recommendations under sub-clause 12(4) notify the Board that either:-
- (a) they agree the Board's recommendation whereupon the Board shall forthwith declare and pay such dividend;
  - or (b) they disagree with the recommendation whereafter the Board and the Shareholders Panel shall meet as soon as practicable to attempt to resolve any disagreement provided always that in any event the final dividend will be declared and paid as soon as practicable and in any event no later than 10 weeks after the end of the relevant accounting period (or, in respect of the accounting period in which the Vesting Date falls, no later than 12 weeks)

- Y (6) In making their recommendations under sub-clauses 12(2) and 12(4) the Board shall act in a reasonable and proper manner so as promptly and effectively to implement the policy set out in sub-clause 12(1) and shall, insofar as they are lawfully able, accept the decision of the Shareholders Panel of the amount of dividend to be declared and paid at any time. The Shareholders Panel may (but shall not be obliged to) request the Company's auditors to certify the amount of the Required Distribution which in

their opinion would accord with the Statement of Distributable Reserves in the form in Schedule 7 and the costs of such certification shall be borne by the Company.

(7) For the avoidance of doubt and notwithstanding anything in this Agreement, the provisions of Articles 5(A)(i) and (iv) of the Articles of Association shall apply so that no dividend shall be declared or paid to the holders of Ordinary Shares while any Preference Shares due for redemption remain unredeemed or while any Preference Dividend or interest thereon remains unpaid.

✓ (8)(a) Sub-Article 5(A)(iii)(4) of the Articles of Association shall not operate until a dividend which has become payable under this Clause 12 has fallen due for payment but has not been paid (in which case the rate of increase referred to in Sub-Article 5(A)(iii)(4) shall apply from the date such dividend became payable under this Clause 12).

✓ (b) For the purposes of Sub-Clause 12(8)(a) the date upon which a dividend falls due for payment if Sub-Clause 12(3) applies shall be the seventh day following agreement between the Shareholders Panel and the Board of the amount of dividend payable.

(9) For the purposes of Article 13(a)(i) of the Articles of Association the Preference Dividend shall be in arrear for so long as any accumulated Preference Dividend remains unpaid (whether or not such accumulated Preference Dividend has become payable in accordance with this Clause 12).

13. The Shareholders hereby agree that unless otherwise agreed in writing between them the Company shall not capitalise any amount standing to the credit of any reserve or profit and loss account of the Company or otherwise reorganise the share capital of the Company



14. It is agreed that each of the Shareholders shall:-

(1) through duly authorised representatives and auditors have free access to all of the Company's records and books during normal business hours (subject to such representatives and auditors undertaking to maintain their confidentiality) for the purposes of ensuring compliance with any provision of the 1989 Act or other legal obligation; and

(2) be entitled to any information reasonably requested from the Company by the Shareholders of a nature relevant to their investment in the Company or to ensuring compliance with the terms of this Agreement provided always that if following such request by any Shareholder or Shareholders the Company refuses to supply such information the Shareholder or Shareholders may instruct a firm of Chartered Accountants (other than the auditors of the Company) which firm (and its representatives) shall (during normal business hours) have access to the records and books of the Company for the purpose of obtaining the information so requested (subject to such firm and its representatives maintaining the confidentiality of such information by not disclosing any such information to any person other than to the Shareholder in question including, in the case of Coventry and Solihull, to elected members, officers or professional advisers of either Coventry or Solihull). The costs of any firm so appointed shall be borne by the Company.

15. (1) Save as required by law or the regulations of the Stock Exchange, each of the Shareholders and the Company undertakes to each other severally that it will not (and, for the avoidance of doubt, that no elected member or officer of Coventry or Solihull respectively will) at any time hereinafter use, divulge or communicate to any person any confidential information concerning the business

accounts finances or contractual arrangements or other dealings transactions or affairs of the Company or a Shareholder which may come to its knowledge provided that if a Shareholder is required by law or the regulations of The London Stock Exchange to make or issue an announcement or circular, that Shareholder shall consult with the other as to the form and content thereof

(2) The provisions of sub-clause 15(1) shall not apply to confidential information used divulged or communicated:-

(a) in relation to the Company on the instructions of the Board; or

(b) to officers, shareholders, elected members, employees and advisers of any Shareholder whose province it is to know the same provided for the avoidance of doubt that it shall not be the province of any officer or elected member of either Coventry or Solihull to know any confidential information for the purpose of or directly relating to the performance of the waste disposal contract to be entered into between them and the Company on the Vesting Date

(3) The parties acknowledge the obligations of employees and officers of the Shareholders to disclose information to Shareholders, members, elected members, other employees and officers and advisers of the Shareholders whose function requires such disclosure

(4) Each Shareholder agrees that its officers, Shareholders, elected members and employees will not, without prior consultation with the other Shareholder disclose information of a confidential or sensitive nature to any person other than its Shareholders, elected members, officers, employees and advisers and that, when disclosing

any such information to such persons, its officers will make it clear to them the information is of a sensitive nature, that it is confidential, that it should not be disclosed to any person other than Shareholders, elected members, officers, employees and advisers of the relevant Shareholder whose function requires such disclosure and that it will or may be damaging to the Company if it is so disclosed

16. Save as required by law or the regulations of The London Stock Exchange, each of the Shareholders and the Company undertakes to each other that it will not at any time hereafter divulge or communicate to any third party (save to their respective officers, Shareholders, elected members, employees and advisers whose province it is to know the same) any information relating to this Agreement or any other agreement between all or any of them

17. (1) The Company will procure, and the Shareholders will use their respective reasonable endeavours to ensure that the Company will, in each year, prepare a draft Corporate Plan in respect of the immediately following financial period of the Company. The draft Corporate Plan will be prepared by the Board for presentation to the Shareholders Panel for discussion no later than three calendar months before the commencement of the financial period to which the draft Corporate Plan relates

p (2) The draft Corporate Plan will contain:

(a) for the financial period to which it relates;

(i) details of the business objectives to be met;  
and

- (ii) a full financial forecast including a budgeted end of year balance sheet and dividend forecast and budgeted profit and loss accounts and working capital requirements divided into quarterly periods and all assumptions contained therein; and
  - (iii) details of the staffing structure to be adopted by the Company and the salaries or wages (including bonuses or other additions or benefits) to be paid; and
- (b) for the following four years;
- (i) forward forecasts of profit and loss accounts balance sheets and working capital requirements and all assumptions contained therein; and
- (c) such other details as the Board consider to be appropriate or the Shareholders Panel shall reasonably require
- ✓ (3) The Corporate Plan will highlight for the approval of the Shareholders Panel those matters shown in Clause 18(2) for which such approval is required and any key principles initiatives or material changes in corporate plans or financial provisions and estimates of which the Shareholders Panel should be aware to facilitate their effective approval of matters to be delegated to the Board.
- ✓ (4) The Shareholders Panel will specify to the Board within one month of receipt of the draft Corporate Plan containing the information referred to in sub-clause 17(2) any amendments to be made thereto and the Shareholders Panel and the Board will discuss and negotiate the contents of the draft Corporate Plan in good faith provided always

that no draft Corporate Plan will be adopted by the Board unless it receives the written approval of the Shareholders Panel who will endeavour to agree the contents of the draft Corporate Plan by no later than six weeks before the commencement of the financial period to which it relates

(5) The Shareholders Panel may approve a draft Corporate Plan notwithstanding that it does not contain sufficient detail of any matter referred to therein but on the condition that the Board will as soon as possible thereafter produce such further detail as the Shareholders Panel may request.

18. (1) Approval by the Shareholders Panel of a Corporate Plan in which any matter shown in Clause 18(2) has been highlighted as required by Clause 17(3) shall constitute consent for the purposes of Clause 18(2) and accordingly the Company may transact all and any matters specifically allowed for in that Corporate Plan (which, for the avoidance of doubt, shall not include any matter merely contained in the forward forecasts prepared pursuant to sub-clause 17(2)(b)) provided that such matter occurs in the period to which such Corporate Plan relates and in accordance with its description in that Corporate Plan.

✓ (2) Each of the Shareholders and the Company undertakes that it will procure to the extent of its respective rights for the time being and that (in the case of each of the Shareholders) it will vote as a shareholder so that without the prior consent of the Shareholders Panel (or of any committee or person to whom the Shareholders Panel may delegate such powers) or, where any such proposed matter as follows (except as mentioned in sub-clause 18(2)(r)) may reasonably be regarded as not material having reference to the business of the Company as a whole (and subject to

sub-clause 18(5)), without the prior consent of both Directors nominated under sub-clauses 6(1)(a) and (b) none of the following will occur:-

- (a) the acquisition or formation of any subsidiary by the Company or any other investment in or acquisition of another company, a partnership, consortium or joint venture
- (b) the adoption of a new head office for the administration of the Company, or of a new registered office
- (c) the acceptance of any contracts for the disposal of waste the consequence of which is or may be that any waste to be disposed of for Coventry or Solihull is diverted away from the waste reduction unit operated by the Company at London Road, Coventry
- (d) the early repayment of any finance owed to any Shareholder
- (e) any total capital expenditure or revenue commitment (save in relation to any unforeseen and necessary expenditure or commitment required to be undertaken by the Company not exceeding in aggregate in any financial year £50,000 and which shall go to reduce any capital expenditure or revenue commitment which was specifically allowed for in the Corporate Plan)
- (f) the Company entering into any contract where expenditure exceeds £20,000 and which is for a fixed term of 12 months or more which cannot be terminated by notice expiring within 12 months of its commencement

- (g) the Company entering into any contract where expenditure exceeds £20,000 and which cannot be terminated by 12 months' notice or less
- (h) the acquisition or disposal of any freehold or leasehold property or parts thereof or the granting or surrendering of a lease in respect thereof by the Company
- (i) the acquisition or disposal of assets by the Company (other than in the ordinary course of business) where the item to be disposed of is a capital item the net book value of which exceeds £1,000
- (j) any loan or advance by the Company or the granting of any guarantee or indemnity of the obligation of any person, firm or company by the Company (other than an advance against expenses or salary which is repayable on the next due date for payment of such salary and other than in the ordinary course of business)
- (k) the increase of remuneration drawings fee and benefits in kind of any Director of the Company
- (l) any transaction, arrangement or agreement with or for the benefit of a shareholder or any Director of the Company or any subsidiary or any person "connected" with any such Shareholder or Director (as defined by Section 839 Income and Corporation Taxes Act 1988)
- (m) the making of any charitable or political contributions or gifts by the Company
- (n) the factoring of the Company's debts

- (o) the making of any release to the press or media from time to time other than in accordance with guidelines made by the Company and approved by the Shareholders Panel
- (p) creating or allowing to subsist any incumbrances over the Company's assets
- (q) commencement of any legal or arbitration proceedings (other than routine debt collection) or the settlement or compromise of any material claims made by or against the Company
- (r) the Company shall not enter into any loan leasing arrangement bond or contract which is or is likely to be defined as a credit arrangement or otherwise restricted under the 1989 Act and which is likely to result in a call against the credit approvals of Coventry or Solihull
- (s) the adoption of or change in accounting policies or practices employed in the preparation of the management accounts or audited accounts of the Company other than or from those referred to in Schedule 6 or of a new accounting reference date (the current accounting period to end on 31st March 1994 and subsequent periods on 31st March in each year thereafter) or the preparation of any accounts which (by writing off any asset or creating provision or reserve for any liability or otherwise) thereby show distributable profits lower than would be shown had such accounts insofar as lawfully permitted not included such item.



- (t) the approval, signing or filing at Companies House of any audited accounts of the Company and for this purpose the Board will supply to the Shareholders Panel draft audited accounts no later than 7 weeks after the end of the accounting period to which they relate, (or, in respect of the period ending 31st March 1994, no later than 9 weeks)
  - (u) the cessation or material reduction of the Company's business or any change in the nature of the Company's business or activities
  - (v) the engagement of any employee on a salary (including any bonus), or the increase of any employee's salary (including any bonus) other than in accordance with the staffing structure referred to in sub-clause 17(2)(a)(iii)
  - (w) the payment of compensation on the termination of employment of any employee other than minimum statutory redundancy liability or by order of a Court or Tribunal
  - (x) the appointment of new auditors to the Company (the current auditors being Ernst & Young)
- (3) The provisions in this Clause shall also apply to the subsidiaries of the Company from time to time as if reference therein to the Company included specific reference to each subsidiary
- x (4) The Shareholders Panel may delegate authority to any officer or officers of either of the Shareholders to approve any matter under sub-clause 18(2)

(5) The Chairman of the Board from time to time appointed under sub-clause 6(2) shall regularly report to the Shareholders Panel any consent granted pursuant to sub-clause 18(2) by the Directors appointed under sub-clauses 6(1)(a) and (b) ("the Nominated Directors"). The Shareholders Panel may override a decision made by the Nominated Directors where it appears to the Shareholders Panel that such decision concerned a material matter which ought properly to have been referred to the Shareholders Panel for consideration.

(6) Subject to sub-clause 18(2) any decision which falls to be made by or on behalf of the Company concerning the employment or terms of employment of any executive Director of the Company shall fall to be made by the non-executive Directors of the Company acting as a committee of the Board and no meeting of such committee shall be quorate unless at least those Directors appointed under sub-clauses 6(1)(a) and (b) are present in person or by alternate.

19. The Company shall not (save with the prior written consent of the Shareholders Panel) fail to observe and comply with the policies from time to time agreed by the Shareholders Panel on the manner in which tenders are to be invited and the matters to which the Company shall have regard when making contracts for the supply of goods and materials or for the supply of services to, or for the execution of work for the Company (the current applicable policies being contained in Schedule 5 hereto).

20. (1) The Company shall not be entitled to assign its rights or obligations under this Agreement whatsoever

(2) No Shareholder shall be entitled to assign its obligations or (save in accordance with Clause 20(4)) its rights under this Agreement without the prior written consent of the other Shareholders

(3) No Shareholder shall sell, transfer, assign, pledge or otherwise encumber or dispose of its legal or beneficial interest in any Shares in the Company other than in accordance with the Articles of Association

(4) Any Shareholder who wishes to transfer any of its shareholding in the Company to any transferee shall not transfer any Shares to such transferee until such transferee (if not already a Shareholder and a party to this Agreement) has first entered into an agreement supplemental hereto as a Deed whereby the transferee undertakes to be bound by all the provisions of this Agreement in the same capacity as the transferring Shareholder provided always for the avoidance of doubt that the transferee shall be entitled to exercise any of the rights of the transferor but the transferor shall not be discharged of any of its obligations under this Agreement unless the consent of the other Shareholders has been obtained under sub-clause 20(2) above

(5) In any case where a Shareholder transfers part only of its holding of Ordinary Shares or Preference Shares sub-clause 20(4) shall apply but the rights of the transferor hereunder shall be exercised by the transferor and the transferee jointly in such manner as they may between them agree

21. Any dispute arising out of this Agreement shall, insofar as such dispute is not resolved by the parties thereto, be referred to a single arbitrator in accordance with the provisions of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment of such Acts for the time being in force

22. Any notice given pursuant to this Agreement shall be in writing and shall be sufficiently given to any party if sent in a prepaid letter by ordinary post addressed to that party at the party's last known address or registered office marked, for the attention of the relevant Proper Officer as defined in Clause 1. Any notice to be given to the Shareholders Panel shall be addressed to the Proper Officer of the Shareholders holding for the time being the majority of the Voting "A" Shares at the time of service of such notice. Any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would have been delivered in the ordinary course of post
23. This Agreement shall endure unless and until all the parties to this Agreement shall in writing agree to terminate this Agreement.
24. No variation of this Agreement shall be effective unless it is in writing signed by a Proper Officer of each party provided that any waiver by any party of any right hereunder shall be effective if in writing from such party alone
25. If at any time any provision of this Agreement shall become of no effect or unenforceable whether by operation of law or otherwise, this shall not affect the validity of any remainder of this Agreement which shall remain in full force and effect and, without prejudice to the generality of the foregoing, any provision herein stated to bind the Shareholders and the Company shall remain binding on the Shareholders even if such provision or any part thereof is found to be unenforceable against the Company

26. (1) The Shareholders will (without prejudice to their local authority functions and in particular, but not limited to, their duties and responsibilities as waste disposal authorities) use their best endeavours to promote the continued viability of the Company and not do anything which has the effect of hindering that objective
- (2) So far as lawful the Company shall not do anything or permit anything to be done which may prejudice fetter or otherwise interfere with the discharge by Coventry or Solihull of their local authority functions
27. Any obligation of Coventry and Solihull under this Agreement shall be subject to any necessary governmental consents being obtained and remaining in force so far as necessary to authorise the performance of any relevant obligation of Coventry or Solihull
28. In the event of any conflict or inconsistency between the Articles of Association and the provisions of this Agreement, the provisions of this Agreement shall prevail
29. Each of Coventry and Solihull undertakes with the other that it shall not exercise (or refrain from exercising) its rights or votes to prevent the Company from taking any appropriate action for breach of any contract between the Company and Coventry and/or Solihull or for breach of warranty, or under any indemnity, referred to or contained in the Transfer Scheme or under the Deed containing warranties and indemnities made on the date hereof by the parties hereto
30. Each of Coventry and Solihull undertakes and warrants to the other that:-

(1) it has neither taken nor procured nor is aware of any action whereby the Company has incurred or will incur any liability whatsoever;

(2) it is not in breach of any warranty given by it to the Company as referred to in the Transfer Scheme and nor is it aware of any circumstances that may give rise to a claim under any of the warranties or indemnities given by it referred to in the Transfer Scheme;

(3) the issued share capital of the Company is £2 of which 1 Ordinary Share is held by each of Coventry and Solihull and which is paid up

31. Each of the parties to this Agreement hereby confirms with each other (but without thereby accepting any legal obligation) that they intend to negotiate in good faith any amendment to the terms of this Agreement as may be appropriate or necessary as a result of the provisions of Clause 25 or of any change or introduction of any legal provision

IN WITNESS whereof the parties hereto have respectively executed this instrument as their Deed in the presence of the persons mentioned below on the day and year first before written :-

## SCHEDULES

1. Memorandum and Articles of Association
2. Constitution of Shareholders Panel
3. Share allotments
4. First directors
5. Tendering Policies (Clause 19)
6. Accounting Policies and Practices (Clause 18(2)(s))
7. Statement of Distributable Reserves (Clause 12)

SCHEDULE 1

MEMORANDUM AND ARTICLES OF ASSOCIATION



K13043P01

Company Number 2690488

The Companies Act 1985 to 1989

PRIVATE COMPANY LIMITED BY SHARES

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MEMORANDUM  
AND ARTICLES  
OF ASSOCIATION

THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED

Incorporated the 24th February 1992

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THE COMPANIES ACTS 1985 to 1989

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION OF

THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED

1. The Company's name is The Coventry and Solihull Waste Disposal Company Limited.
2. The Company's registered office is to be situated in England and Wales.
3. The Company's objects are:-
  - (a) (i) To acquire and take over the relevant part of the undertaking of each of the Council of the City of Coventry and the Metropolitan Borough of Solihull transferred to the Company by and in accordance with a transfer scheme made in accordance with Schedule 2 to the Environmental Protection Act 1990 and the property, rights or liabilities transferred to and vested in the Company by or pursuant to that transfer scheme.

(ii) to carry on all or any of the activities of the disposal, keeping or treatment of waste and any activities incidental or conducive to or calculated to facilitate such activities but excluding the collection of waste (and insofar as any such word used in this sub-clause 3(a)(ii) is defined in the Environmental Protection Act 1990 such word shall bear the same meaning herein).

None of the objects set out in any paragraph of sub-clause 3(a) shall be restrictively construed but the widest interpretation shall be given to each such object, and none of such objects shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such paragraph, or by reference to or inference from the terms of any other paragraph or the name of the Company; and none of the paragraphs of sub-clause 3(a) and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such paragraph, and the Company shall have as full a power to exercise each and every one of the objects specified in each such paragraph as though it contained the objects of a separate company.

In furtherance of or in connection with the above objects and any of them but not further or otherwise the Company shall have the following powers:-

- (b) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.
- (c) To apply for, register, purchase or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks,

designs protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.

- (d) To acquire or undertake the whole or any part of the business, goodwill, and assets of any person, firm, or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter in to partnership or into any arrangement for sharing profits, or for co-operation, or for the mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- (e) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- (f) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investment made.

- (g) To lend and advance money or give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the foregoing any such holding company, subsidiary, fellow subsidiary or association company as aforesaid).
- (h) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.
- (i) To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (j) To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which

may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.

- (k) To enter into any arrangements with any government or authority (supreme, municipal, local, or otherwise) that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and concessions.
- (l) To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.
- (m) To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administration, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.

- (n) To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- (o) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any company purchasing the same.
- (p) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.
- (q) To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.
- (r) To distribute among the Members of the Company in kind any property of the Company of whatever nature.
- (s) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares or other securities of the Company.

(t) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Company or its directors or employees, or may be connected with any town or place where the Company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Directors of, or who are or have been employed by or who are serving or have served the Company, or any company which is a subsidiary of the Company or the holding company of the Company or a fellow subsidiary of the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance including insurance for any Director, officer or Auditor against any liability as is referred to in Section 310(1) of the Act; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the Company or of any such subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.

(u) Subject to and in accordance with a due compliance with the provisions of Sections 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give, whether directly or indirectly, any kind of financial assistance (as defined in Section 152(1)(a) of the Act) for any such purposes as is specified in Section 151(1) and/or Section 151(2) of the Act.



- (v) To procure the Company to be registered or recognised in any part of the world.
- (w) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contracts or otherwise and either alone or in conjunction with others.
- (x) To do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

AND so that:-

- (1) The word "Company" in this Clause, except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.
- (2) In this Clause the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

4. The liability of the Members is limited.

\*5. The Company's share capital is £1,000 divided into 1,000 shares of £1 each.

\* By Written Resolutions passed on [ ] 1994 the share capital was increased to 99 Ordinary Shares of £1 each and 14,925,000 Cumulative Redeemable Preference Shares of £1 each.

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