

# COPY

**THIS MEMORANDUM OF UNDERSTANDING** is made this 14<sup>th</sup> day of January 2008.

## **BETWEEN**

- (1) WARWICKSHIRE COUNTY COUNCIL of P.O. Box 9 Shire Hall Warwick CV34 4RR ("**WCC**");
- (2) THE METROPOLITAN BOROUGH COUNCIL OF SOLIHULL of Council House, Solihull, West Midlands, B91 9QS ("**SMBC**") and
- (3) COVENTRY CITY COUNCIL of Council House, Earl Street, Coventry, CV1 5RR ("**CCC**")

(together referred to as the "parties and separately as a "party" as the context so requires).

## **WHEREAS**

- A. The Parties are mindful of finding ways of working together on the overall management and disposal of waste in the sub regions and are entering into this Memorandum of Understanding subject to clause 7.
- B. The parties have agreed to work together in the area of waste management inter alia separately or in concert covering the following and with the intention of (i) collaborating over the procurement of long-term waste treatment facilities for the sub-region in general; (ii) collaborating specifically in replacing the existing Energy from Waste (**EfW**) plant in Coventry operated by a Local Authority Waste Disposal Company (**LAWDC**) with a new facility, part funded through Private Finance Initiative (**PFI**) credits (if possible following financial and business appraisals and advantageous to the Parties) to be operational by 2016/17; (iii) collaborating on (a) trading Landfill Allowance Trading Scheme (**LATS**) allowances; (b) provision of in-vessel composting (**IVC**) facilities, (c) provision of transfer stations; (d) long term landfill requirements and (e) facilities for disposal of bottom ash from the existing EfW plant and any future facility in order to maximise the efficiency and effectiveness of the objectives stated in (i) and (ii) and, finally (iv) to collaborate in any other area of waste management beneficial to the parties. (together the **Objectives**).
- C. This Memorandum sets out the obligations each party shall have in connection with the Objectives.
- D. This Memorandum is not intended to be legally binding except as specifically set out below and shall be superseded and have no further application upon the parties entering into legally binding agreements. Nothing in this Memorandum shall have any effect on each party's responsibilities in the determination of planning applications relating to waste management.
- E. Pending entry into the legally binding agreements referred to in Recital D, the terms and conditions set out in this Memorandum shall govern the relationship between the parties.

**Now it is agreed as follows:-**

**2. Term of Memorandum**

This Memorandum of Understanding shall continue in force for a period of 2 years from the date of this Memorandum ("the Term") unless terminated earlier in accordance with these terms.

**3. Negotiation of formal agreements**

3.1 During the Term the parties will negotiate in good faith legally binding agreements with each other and with third parties, (the **Formal Agreements**)

3.2 The Formal Agreements once duly approved and executed shall supersede this Memorandum.

**4. Obligations of the Parties**

4.1 Each of the parties shall comply with its obligations under this Memorandum.

4.2 The parties will be required to commit resources in terms of officer and elected member time (and equivalent) as appropriate to enable the parties to effectively discuss and achieve the Objectives.

4.3 The parties will make their representatives available on reasonable notice for meetings when negotiations concerning the Formal Agreements shall take place.

4.4 The parties will ensure that their nominated representatives have sufficient authority and instructions to enable the parties to progress negotiations concerning the Formal Agreements.

**5. Confidentiality**

5.1 Each party agrees that all information as may be disclosed by any party to another shall be treated as information which is subject to a legally binding duty of confidence (referred to in this Memorandum as "Confidential Information"). Each party acknowledges that any Confidential Information obtained from or relating to any other party, its servants or agents, is the property of that other party and shall upon this Memorandum ceasing to have effect be returned to the party having ownership or shall be destroyed in accordance with the requirements of the owner of the Confidential Information.

5.2 Each party shall :-

(a) treat all Confidential Information as confidential and commercially sensitive and shall ensure that all such Confidential Information is appropriately secured and safeguarded;

(b) not disclose any Confidential Information to any third party without the prior written consent of the party that owns the Confidential Information, except to such persons and to such extent as may be necessary for the performance of this Memorandum; and

- (c) not use any Confidential Information otherwise than for the purposes of this Memorandum.
- 5.3 Nothing in this Clause shall prevent a party from disclosing any Confidential Information which is required to be disclosed by an order of the court or other tribunal or required to be disclosed in accordance with any law (including but not limited to the Freedom of Information Act 2000, the Data Protection Act 1998 and/or the Environmental Information Regulations 2004), statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation.
- 5.4 This Clause 5 shall survive termination of this Memorandum under Clause 9 or expiry of the term of this Memorandum or in the event this Memorandum is frustrated or deemed to be void or for any other reason whatsoever.

## **6. No Partnership**

This Memorandum of Understanding does not constitute a legal partnership under the Partnership Act of 1890 and no party shall hold itself out as being the agent of any of the other parties or as being authorised to enter into any contract on behalf of the other parties or in any way to bind the other parties to the performance, release or discharge of any obligation except as expressly set out in this Memorandum of Understanding.

## **7. Non-binding Memorandum**

- 7.1 Unless and until the Formal Agreements are approved and executed between the parties this Memorandum is not intended to and shall not create any legal obligations between all three parties and there is no legal obligation on any party to enter into the transactions anticipated in the Formal Agreements. All negotiations and correspondence shall be subject to contract.
- 7.2 Clauses 5, 6 and 8 are intended to be legally binding and to create obligations between the parties with immediate effect.

## **8. Costs and Expenses**

- 8.1 Each Party shall be responsible for bearing its own costs in relation to the preparation and execution of this Memorandum, the Formal Agreements and any other related contracts or documentation.
- 8.2 In the event that the parties determine that it is desirable or necessary to incur joint expenditure in pursuance of the objectives of this Memorandum, the parties shall agree in advance in writing the extent of expenditure required and the proportions in which the expenditure shall be borne.

## **9. Immediate termination for breach**

Any party may terminate this Memorandum by notice in writing with immediate effect if any other party is in material breach of any of the terms of this Memorandum and such breach remains un-remedied 14 calendar days after receipt of notice from the terminating party that the other party is in breach.

## **10. Miscellaneous**

### **10.1 Assignment**

10.1.1 This Memorandum is personal to the parties and, subject to clause 10.1.2 below, neither this Memorandum nor any rights, licences or obligations under it may be assigned by any party without the prior written approval of the other parties.

10.1.2 Notwithstanding the foregoing, a party may assign this Memorandum to any acquirer of all or of substantially all of such party's assets, undertaking or business or to any entity controlled by, that controls, or is under common control with a party to this Memorandum. Any attempted assignment in violation of this clause will be void and without effect.

### **10.2 Entire agreement**

10.2.1 This Memorandum embodies the entire understanding and agreement between the parties in connection with the subject matter of this Memorandum.

10.2.2 All parties warrant and represent that they have not relied upon any representations, promises, terms, conditions or obligations oral or written express or implied other than those contained in this Memorandum.

### **10.3 Liability**

10.3.1 Each party shall use reasonable endeavours to ensure that information it supplies relating to the Objectives or pursuant to its obligations hereunder, is accurate. No party shall be responsible or liable to any other party for the contents or accuracy of such any information.

10.3.2 All warranties, representations, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Memorandum.

10.3.3 No party seeks to exclude liability for fraudulent or grossly negligent misrepresentation.

10.3.4 No party shall have liability to any other party or to any third party for any direct or indirect losses, costs, fees, expenses, or charges.

### **10.4 Waiver**

No delay, neglect or forbearance on the part of any party in enforcing against any other party any term or condition of this Memorandum shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Memorandum. No right, power or remedy in this Memorandum conferred upon or reserved for any party is exclusive of any other right, power or remedy available to that party.

### **10.5 Amendment**

This Memorandum may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an

instrument in writing signed by a duly authorised officer or representative of each of the parties.

## **10.6 Headings**

The clause headings in this Memorandum are for reference purposes only and are not intended to be taken into account when interpreting the clauses.

## **11. Notices**

11.1 All notices under this Memorandum shall be in writing.

11.2 Notices shall be deemed to have been duly given:

11.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

11.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

11.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

11.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid;

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **12. Proper law and jurisdiction**

12.1 This Memorandum and all matters of interpretation arising from it and any matter of dispute resolution shall be governed by and construed in accordance with English law.

## **13. Third Parties Rights**

The terms and effects of the Contracts (Rights of Third Parties) Act 1999 and 2001 shall be excluded under this Memorandum and any third party has no rights under this Memorandum.

## **14. Severance**

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

14.2 If any invalid, unenforceable or illegal clause would be valid, enforceable or legal if some part of it were deleted, that clause shall apply with whatever modification is necessary to make it valid, enforceable and legal.

## **15. Force Majeure**

- 15.1 A party shall have no liability to any other party under this Memorandum if it is prevented from or delayed in performing its obligations under this Memorandum or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, picketing, lock-outs or other industrial disputes (whether or not involving the party's workforce), failure of a utility service or supplier, transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, breakdown of any computer systems, networks, software programs, fire, flood, storm.

## **16. Dispute Resolution**

The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Memorandum of Agreement within 30 days of either party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Chief Executive Officer (or equivalent) of each party.

## **17. Statutory Powers**

CCC and SMBC have entered into this Memorandum only in their capacity as shareholders in LAWDC. Nothing contained or implied in this Memorandum will prejudice or affect the parties' rights powers duties and obligations in the exercise of its functions as Local Authority, Local Planning Authority, Agent for the Highway Authority or for any other statutory body or public utility or otherwise under any public or private statute by-laws orders and regulations all of which rights powers duties and obligations may be as fully and effectively exercised in relation to the matters contained in this Memorandum if the Council had not entered into it

**Signed by the duly authorised representatives of the parties on the date written above.**

**Warwickshire County Council**

Signature D. Pywell

Name DAVID PYWELL

Date 18/01/2008

**Solihull Metropolitan Borough Council**

Signature Jim Harte

Name J. HARTE

Date 14/1/08

**Coventry City Council**

Signature C. T. West

Name C. T. WEST

Date 17/1/08