|  |
| --- |
| Dated 2024 |
| 1. **Cambridgeshire County Council** 2. **together “the parties**.” |
| Confidentiality Agreement | Non-Disclosure Agreement |

**Contents**

1 Interpretation

2 Confidential Information

3 Confidentiality obligations

4 Permitted disclosures

5 Mandatory disclosures

6 Return or destruction of Confidential Information

7 Reservation of rights and acknowledgement

8 Inadequacy of damages

9 No obligation to continue discussions

10 Ending discussions and duration of confidentiality obligations

11 No partnership or agency

12 General

**Date: 2025**

**Parties**

1. Cambridgeshire County Council of New Shire Hall, Emery Crescent, Alconbury Weald, Cambs, PE28 4YE
2. together “the parties.”

**Introduction**

1. The parties intend to enter discussions relating to the Purpose which will involve the exchange of Confidential Information between them.
2. The parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

**Agreed terms**

# Interpretation

## Definitions:

|  |  |
| --- | --- |
| **Business Day** | a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business. |
| **Confidential Information** | has the meaning given in clause 2. |
|  |  |
| **Councillors**  **Discloser** | means members of the Cambridgeshire County Council elected by the voters of each electoral division in accordance with a scheme drawn up by the Electoral Commission and approved by the Secretary of State  a party to this agreement when it discloses its Confidential Information, directly or indirectly, to any other party. |
| **Information** | means:  (a) in relation to FOIA the meaning given under section 84 of FOIA; and  (b) in relation to EIR the meaning given under the definition of “environmental information” in section 2 of EIR. |
| **Purpose** | the NDA’s purpose is to allow open discussion and information sharing about commercially sensitive matters relating to waste management (including, but not limited to, reduction, reuse, recycling, collection, disposal, and related matters such as contracts, strategies, carbon assessments, research, and analysis between the parties). |
| **Recipient:** | a party to this agreement when it receives Confidential Information, directly or indirectly, from any other party |
| **Representative(s)** | in relation to each party: its officers and employees that need to know the Confidential Information for the Purpose.its professional advisers or consultants who are engaged to advise that party in connection with the Purpose.its Councillors.its contractors and sub-contractors engaged by that party in connection with the Purpose; andany other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose. |
| **Request for Information**  **Waste Management PFI Contract** | a request for information or an apparent request under FOIA or EIR.  the contract between Cambridgeshire County Council and Thalia WB SPV Limited (formerly Donarbon Waste Management Limited) dated 11 March 2008, as amended from time to time |

## Interpretation.

### A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

### Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### A reference to writing or written includes email.

### Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

# Confidential Information

## “Confidential Information” means all confidential information relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives before, on or after the date of this agreement. This includes:

### the fact that preparations, discussions and negotiations are taking place concerning the Purpose and the status of those preparations, discussions and negotiations.

### the existence and terms of this agreement.

### all confidential or proprietary information relating to:

#### Cambridgeshire County Council’s Waste Management PFI Contract.

* + - 1. the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Discloser; the operations, processes, product information, know-how, market experience, technical information, designs, trade secrets or software of the Disclosers.

### any information, findings, data, or analysis derived from Confidential Information; and

### any other information that is identified as being of a confidential or proprietary nature upon agreement of all the parties.

but excludes any information referred to in clause 2.2.

## Information is not Confidential Information if:

### it is, or becomes, available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this agreement.

### it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser.

### it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information.

### it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser.

### the parties agree in writing that the information is not confidential.

# Confidentiality obligations

## In return for making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

### keep the Confidential Information secret and confidential.

### not use or exploit the Confidential Information in any way except for the Purpose.

### not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement.

### not disclose to any person the fact that it is in possession of Confidential Information, except as expressly permitted by, and in accordance with this agreement.

### not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser; and

## The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

# Permitted disclosure

## Disclosure to Representatives.

### The Recipient may disclose the Confidential Information to its Representatives on the basis that it:

#### informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and

#### procures that those Representatives comply with the confidentiality obligations in clause 3.1 as if they were the Recipient.

### The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

# Mandatory disclosure

## Subject to the provisions of this clause 5, a party may disclose Confidential Information to the minimum extent required by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.

## Before a party discloses any Confidential Information pursuant to Clause 5.1 it shall, to the extent permitted by law, give the other party as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this clause 5.2, the party shall take into account the reasonable requests of the other party in relation to the content of this disclosure.

## If a party is unable to inform the other parties before Confidential Information is disclosed pursuant to clause 5.1 it shall, to the extent permitted by law, inform the other parties of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

5.4 The parties acknowledge that they are each subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (“FOIA”) and/or the Environmental Information Regulations 2004 (“EIR”) and that they each may be under an obligation to provide Information subject to a Request for Information (“RFI”).

5.5 Each party shall be responsible for determining at its absolute discretion whether information is:

5.5.1 exempt from disclosure in accordance with the provisions of FOIA or EIR; and/or

5.5.2 to be disclosed in response to an RFI.

5.6 The parties acknowledge that a Discloser may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under FOIA or EIR to disclose Information:

5.6.1 without consulting with the other parties; or

5.6.2 following consultation with another party and having taken its views into account

provided always that where clause 5.6.2 applies a Discloser shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give another party advanced notice, or failing that, to draw the disclosure to the other party’s attention after any such disclosure.

# Return or destruction of Confidential Information

## If so, requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall:

### destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Discloser’s Confidential Information.

### erase all the Discloser’s Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.

### to the extent technically and legally practicable, erase all the Discloser’s Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and

### certify in writing to the Discloser that it has complied with the requirements of this clause 6.1.

## Nothing in clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this clause 6.2.

# Reservation of rights and acknowledgement

## Each party reserves all rights in their Confidential Information. The disclosure of Confidential Information by one party does not give any other party or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

## Except as expressly stated in this agreement, none of the parties makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

## The disclosure of Confidential Information by the parties shall not form any offer by, or representation or warranty on the part of that party to enter into any further agreement with the other party in relation to the Purpose.

# Inadequacy of damages

Without prejudice to any other rights or remedies that each party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by any other party. Accordingly, each party shall be entitled to the remedies of injunctions, specific performance, or other equitable relief for any threatened or actual breach of this agreement.

# Ending discussions and duration of confidentiality obligations

## If any party decides not to continue to be involved in the Purpose, it shall notify the other parties in writing immediately.

## Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to clause 9.1, each party's obligations under this agreement shall continue in full force and effect for a period of three years from the date of this agreement.

## The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which any party is entitled.

# No partnership or agency

## Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Each party confirms it is acting on its own behalf and not for the benefit of

## any other person.

# General

## Assignment and other dealings

## No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

## Entire agreement

### This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

### Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## Variation

## No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## Waiver

## No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## Severance

### If any provision or part-provision of this agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

### If any provision or part-provision of this agreement is deemed deleted under clause 11.5.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## Notices

### Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

#### delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

#### sent by email to the address specified below:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

### Any notice or communication shall be deemed to have been received:

#### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address.

#### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or, if applicable, at the time recorded by the delivery service; and

#### if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

### This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## Third party rights

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## Governing law

## This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## Jurisdiction

## Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been signed by the parties on the date stated at the beginning of it.

Signed by ………………………………

on behalf of Cambridgeshire County Council

Signed by

on behalf of