

MULTILATERAL NON-DISCLOSURE AGREEMENT (NDA)

DOE Project Award No. DE-EE0007969

HYPOWERS:

Hydrothermal Processing of Wastewater Solids

To protect certain Protected Data and Proprietary Information, this Agreement is entered into by and between the WATER ENVIRONMENT AND REUSE FOUNDATION (WE&RF) under Cooperative Agreement No. DE-EE0007969 with the U.S. Department of Energy; Genifuel Corporation; MicroBio Engineering; Merrick; Brown and Caldwell, Inc.; Battelle Memorial Institute, Pacific Northwest Division (“BATTELLE”), under the authority of Contract No. DE-AC05-76RL01830 for the management and operation of the Pacific Northwest National Laboratory for the U.S. Department of Energy located at 902 Battelle Blvd., MSIN K1-53, Richland, WA 99354; American Water; Central Contra Costa Sanitary District; City of Calgary; City of Orlando; City of Santa Rosa; Clean Water Services; Eastman Chemical Company; Emerson; Great Lakes Water Authority; Louisville and Jefferson County Metropolitan Sewer District; Metro Vancouver; Metropolitan Water Reclamation District of Greater Chicago; Metropolitan Sewer District of Greater Cincinnati; Metro Wastewater Reclamation District; Toho Water Authority; Silicon Valley Clean Water; Southern California Gas Company; Tesoro; Unity Water; and Victor Valley Wastewater Reclamation Authority. All of the above hereinafter referred to individually as “Member” or collectively as “Members” hereby agree:

1. Disclosing Member/Receiving Member: Proprietary Information and Protected Data may be mutually shared by the Members, which may include subcontractors and affiliates to the Members.
2. “Employee” includes, principal investigators, utility operators, etc., trainees, support services contractors, and staff employees.
3. “Award” means WE&RF’s agreement with the U.S. Department of Energy for this HYPOWERS project.
4. “Proprietary Information” means Limited Rights Data and Restricted Computer Software, which are defined as follows: Limited Rights Data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. Restricted Computer Software means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software including modifications of such computer software.
5. “Protected Data” is defined as technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal Member, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a Member to the award.

6. Protected Data and Proprietary Information disclosed hereunder, may not be used by any Member other than the Disclosing Member for any purpose other than as stated herein.
7. Receiving Member shall protect only Disclosing Member's Protected Data and Proprietary Information, which is either:
 - a. disclosed in writing or other tangible form and plainly marked as the Disclosing Member's Protected Data or Proprietary Information.
 - b. disclosed in another manner and identified as business sensitive or proprietary at the time of disclosure, and summarized and designated business sensitive or proprietary in a written memorandum delivered to Receiving Member within thirty (30) days of the disclosure; in which case the information contained in the summary (not information contained solely in the non-tangible disclosure) shall be subject to the restrictions herein.
8. Receiving Member shall:
 - a. protect the Disclosing Member's Protected Data and Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, as Receiving Member uses to protect its own Protected Data and Proprietary Information of a like nature.
 - b. not disclose the Disclosing Member's Protected Data or Proprietary Information to any third party without the written consent of the Disclosing Member.
 - c. restrict disclosure of the Disclosing Member's Protected Data and Proprietary Information to employees or contractors who have a need to know the same and who have been advised of Receiving Member's obligations under this Agreement.
 - d. not remove the restrictive markings from any of the Disclosing Member's Protected Data or Proprietary Information.
9. The Members acknowledge that U.S. Government employees have the right to inspect all written Protected Data and Proprietary Information provided to any Management & Operating Contractor for a National Laboratory or Federally Funded Research and Development Center upon reasonable notice and that such information shall be protected against further disclosure by U.S. Government employees under 18 USC 1905.
10. The obligations of nonuse and nondisclosure set forth in this Agreement shall not apply to any information which:
 - a. is or becomes part of the public domain otherwise than as a consequence of breach of obligations under this Agreement;
 - b. was already known to the Receiving Member prior to receipt from the Disclosing Member;
 - c. is lawfully disclosed by the Disclosing Member to a third party without restriction;
 - d. is disclosed by a third party to the Receiving Member without restriction and otherwise than as a consequence of breach of obligations of a nondisclosure Agreement; or

- e. is at any time developed by Receiving Member independently without the use of Disclosing Member Protected Data or Proprietary Information.
11. No license to a Member, under any patent, trademark, copyright, mask work or any other intellectual property right, is either granted or implied by the conveying of Protected Data or Proprietary Information to such Member. None of the Protected Data or Proprietary Information which may be disclosed or exchanged by the Members shall constitute any representation, warranty, assurance, guarantee or inducement by a Member to any other Member of any kind, and, in particular, with respect to the non-infringement of patents or any other intellectual property rights, or other rights of third persons or of the Members hereto.
 12. Neither this Agreement nor the disclosure or receipt of Protected Data or Proprietary Information shall constitute or imply any promise or intention to make any purchase of products or services by any Member, or any commitment by any Member with respect to the present or future marketing of any product or service.
 13. Upon termination or expiration of this Agreement as to any Member, such Member will, within a reasonable period of time thereafter and upon receipt of a written request to do so by the Disclosing Member, return to such Disclosing Member all Protected Data and Proprietary Information received from that Disclosing Member under this Agreement and copies made thereof, or certify by written memorandum that all such Protected Data and Proprietary Information has been destroyed; provided, however, that the terminating Member may retain an archival copy to be used only in case of a dispute concerning this Agreement.
 14. The Receiving Members hereunder acknowledge that they will not export or disclose to any non-resident foreign person or entity, any technical data without first complying with U.S. Government export control laws and regulations such as the International Traffic Arms Regulations and the Export Administration Regulations, including requirements for obtaining export licenses, regardless of whether the transfer occurs within the United States or abroad. Each Receiving Member further agrees that it will not export, directly or indirectly, any Protected Data or Proprietary Information it receives under this Agreement without the written consent of the Disclosing Member. Notwithstanding the foregoing, no Member will provide to or accept from any Member export controlled data, information or items in the performance of this Agreement.
 15. This Agreement shall be in full force and effect for as long as the HYPOWERS project period exists. Each Member may terminate their continued participation in this Agreement by giving thirty (30) days' prior written notice to the other Members. However, the obligations undertaken by a Receiving Member with respect to specific items of Proprietary Information received hereunder shall survive until the passage of five (5) years after the date of disclosure regardless of the expiration of the Agreement.
 16. The obligations undertaken by a Receiving Member with respect to specific items of Protected Data received hereunder shall survive until the passage of five (5) years after the date of disclosure, or the date upon which the data are no longer protected under the Award, whichever comes sooner, regardless of the expiration of the Agreement or the

exercise of the right to terminate upon thirty-days' written notice by a Member hereto.

17. Addition of new Members: If a new Member is proposed to be added to the HYPWOWERS project and this Agreement, WE&RF shall transmit an abstract via fax or electronic mail regarding the new Member to all current Members to the Agreement for a comment and consent period not to exceed 30 days from the date the abstract is transmitted. WE&RF shall collate and disseminate to all Members all comments regarding the addition. All Members shall make a good-faith effort to resolve any issues regarding the addition, and shall not unreasonably withhold their consent to the addition. If the Members are unable to reach unanimous consent, WE&RF shall send the abstract together with all comments regarding the proposed addition to the cognizant DOE program official, who will make a final decision regarding the proposed new Member's addition. Upon unanimous consent of the Members or final decision by DOE, WE&RF shall provide the Agreement for the new Member's signature. Members will not be required to re-circulate the Agreement for signing by all Members when a new Member is added. Upon addition of a new Member, WE&RF shall send a courtesy copy to all Members of the Agreement reflecting the addition.
18. This Agreement will be binding on Members, and their principal investigators, utility operators, support services contractors, and staff employees.
19. All notices and/or correspondence hereunder, shall be mailed, emailed or hand-delivered and addressed to the parties identified in the signature blocks below.
20. This Agreement shall be construed in accordance with the laws of the United States of America.
21. The Members acknowledge that, with respect to Pacific Northwest National Laboratory, this Agreement and all information received hereunder by the Members, may be transferred to their respective successor contractors.
22. This Agreement contains the entire understanding of the Members regarding the treatment of Protected Data and Proprietary Information. Any previous agreements or understanding regarding the Protected Data and Proprietary Information, whether written or oral, are superseded. The waiver, amendment or modification of this Agreement will not be effective unless in writing signed by authorized representatives of all of the Members. Amendments and modifications as discussed in this Paragraph do not include the addition of new Members, which will be conducted pursuant to Paragraph 17.
23. Reproduction of this agreement, with all signatures affixed, shall be deemed a duplicate executed original of this agreement. The parties fully acknowledge that facsimile or electronic signatures are fully binding and constitute a legal method of executing this Agreement.
24. The effective date of this agreement shall be the signature date of the last of the Members to sign this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the Members have executed this Agreement as set forth below.

PRIME AWARDEE:

WATER ENVIRONMENT AND REUSE FOUNDATION

By: _____

Name: _____

Title: _____

Date: _____

SUBAWARDEES:

BROWN AND CALDWELL

By: _____

Name: _____

Title: _____

Date: _____

GENIFUEL CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

MERRICK

By: _____

Name: _____

Title: _____

Date: _____

MICROBIO ENGINEERING

By: _____

Name: _____

Title: _____

Date: _____

DOE PARTICIPATING LABORATORY:

**BATTELLE MEMORIAL INSTITUTE
PACIFIC NORTHWEST DIVISION**

By: _____

Name: _____

Title: _____

Date: _____

COST SHARE PARTICIPANTS:

AMERICAN WATER

By: _____

Name: _____

Title: _____

Date: _____

**CENTRAL CONTRA COSTA
SANITARY DISTRICT**

By: _____

Name: _____

Title: _____

Date: _____

CITY OF CALGARY

By: _____

Name: _____

Title: _____

Date: _____

CITY OF ORLANDO

By: _____

Name: _____

Title: _____

Date: _____

CITY OF SANTA ROSA

CLEAN WATER SERVICES

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EASTMAN CHEMICAL COMPANY

EMERSON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

GREAT LAKES WATER AUTHORITY

**LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER
DISTRICT**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**METROPOLITAN SEWER DISTRICT OF
GREATER CINCINNATI**

METRO VANCOUVER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

METRO WASTEWATER RECLAMATION DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

By: _____

Name: _____

Title: _____

Date: _____

SILICON VALLEY CLEAN WATER

By: _____

Name: _____

Title: _____

Date: _____

SOUTHERN CALIFORNIA GAS COMPANY

By: _____

Name: _____

Title: _____

Date: _____

TESORO

By: _____

Name: _____

Title: _____

Date: _____

TOHO WATER AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

UNITY WATER

VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

DRAFT