



## Confidentiality Plan

With respect to confidentiality of proprietary information, it is Contractor's policy to comply with all applicable laws, regulations and policies and not knowingly infringe upon the intellectual property rights of others; protect third-party information that is subject to a confidentiality obligation in accordance with the terms of such obligation(s); and require that subcontractors agree to adhere to any confidentiality obligations imposed by Contractor.

In accordance with our policy and capabilities, Contractor intends to manage Business Sensitive Information related to the Study on the Economic Impacts of Recycling in a manner that is aimed at protecting sensitive, confidential, trade secret, and proprietary information from disclosure contrary to executed confidentiality agreements, except as required by applicable law. All collected data will remain the exclusive property of the entity providing such data for the project (hereinafter "Responding Party").

Business Sensitive Information shall include any facility or operation information related to any survey results concerning amounts of recyclable materials, economic or financial data, or solid wastes processed, managed, or directed by a Responding Party.

Business Sensitive Information shall not include information that was in the public domain at the time of its release or which becomes a part of the public domain through no fault of Contractor; information that is released with the written approval of the disclosing firm; information that is released by a Responding Party after five (5) years from the receipt of the information; or information that must be released pursuant to the provisions of a court order. Contractor will protect such Business Sensitive Information with the same degree of care that Contractor uses to protect its own proprietary or confidential information.

Contractor will take the following steps during the course of this project aimed at keeping Business Sensitive Information confidential:

- Contractor will execute a confidentiality agreement with each subcontractor engaged on this project (Attachment 1);
- Contractor will offer to execute a confidentiality agreement with any Responding Party that completes a survey (Attachment 2);

- Contractor will require each employee engaged on the project to sign a statement acknowledging their understanding and acceptance of the confidential nature of data associated with this project;
- Contractor employees not engaged in this project will not be allowed access to confidential project files;
- To address the confidential nature of individual Responding Parties' data, Contractor will aggregate confidential data received from the Responding Parties for presentation to the public, Client, or the Recycling Industry Committee;
- Contractor will not release raw, company-specific data, or Responding Party proprietary or confidential information (unless directed to do so under order of law, which is defined as pursuant to a court order, governmental proceeding, or applicable law, including rulings by the Attorney General under the Public Information Act, Government Code Chapter 552, in which case we will notify Client and the Responding Party).

Contractor makes no representation that data collected will not be subject to state or federal open records laws or regulations or the Freedom of Information Act, as information subject to such rules is governed by the applicable statute/rule. Contractor has no control over the disclosure of such information by court order or as required by applicable law and shall not be held liable for the release of the information as required by law.

Attachments:

1. Subcontractor Non-Disclosure Agreement (MSC-8)
2. Mutual Non-Disclosure Agreement (MSC-9)

**ATTACHMENT 1- SUBCONTRACTOR NON-DISCLOSURE AGREEMENT (NDA)**



**SUBCONTRACTOR NON-DISCLOSURE AGREEMENT (NDA)  
(Doc. No. MSC-8)**

This AGREEMENT is made as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called "SUBCONTRACTOR") and Burns & McDonnell Engineering Company, Inc., a Missouri corporation (hereinafter called "BME"). BME has entered into an agreement with The Texas Commission on Environmental Quality (hereinafter called the "CLIENT") for services related to reporting the amounts of recyclable materials, economic, or financial data or solid wastes processed, managed, or directed (the "Project"), and the CLIENT has required that BME and its subcontractors maintain the confidentiality of certain data and information which CLIENT has provided to BME, or which BME has or will develop or obtain related to the Project (the "Confidential Information"). It is the intent of this Agreement that SUBCONTRACTOR agrees to likewise maintain the confidentiality of such Confidential Information.

In consideration of the promises contained herein and other good and valuable consideration which the Parties deem adequate, the Parties hereby agree as follows:

1. BME or the CLIENT may supply SUBCONTRACTOR with data or information regarding the Project, and such data or information, which is confidential or proprietary, and shall be deemed to be Confidential Information as discussed in this Agreement. Oral information related to the Project which is said to be confidential or proprietary at the time of disclosure shall likewise be deemed to be Confidential Information. SUBCONTRACTOR EXPRESSLY AGREES THAT UNLESS DATA OR INFORMATION PROVIDED IS MARKED AS "NOT CONFIDENTIAL" OR FALLS WITHIN THE CATEGORIES MENTIONED IN SECTION 2, BELOW, ALL INFORMATION PROVIDED TO THE SUBCONTRACTOR RELATING TO BME, THE CLIENT OR TO THE PROJECT SHALL BE DEEMED TO BE, AND SHALL BE TREATED AS, CONFIDENTIAL INFORMATION.

2. Information shall not be deemed to be Confidential Information where: (i) it is or becomes public information or otherwise generally available to the public through no act or fault of SUBCONTRACTOR; or (ii) it was, prior to the date of this Agreement, already in the possession of the SUBCONTRACTOR and was not received by SUBCONTRACTOR directly or indirectly from the CLIENT or BME; or (iii) it is hereafter rightfully received by the SUBCONTRACTOR from a third person who did not receive the same directly or indirectly from the CLIENT or BME; or (iv) it is at any time independently developed by employees or subcontractors of SUBCONTRACTOR who have not had access to Confidential Information in the possession of the SUBCONTRACTOR. The SUBCONTRACTOR shall bear the burden of proof that such employees or subcontractors have not had access to Confidential Information. Specific information shall not be deemed to be within the exceptions of subparts (i) - (iv) merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions merely because the individual features are within such exceptions.

3. SUBCONTRACTOR agrees that any Confidential information which has been or will be disclosed directly or indirectly to it by or on behalf of the CLIENT or BME shall be maintained in confidence, and shall not be disclosed to any third person without BME's prior express written consent. The Confidential Information shall not be used by SUBCONTRACTOR to compete against BME or the CLIENT.

4. SUBCONTRACTOR may disclose Confidential Information to any governmental or regulatory authority requiring such disclosure under order of law, provided that: (i) the SUBCONTRACTOR notifies the governmental or regulatory authority that the materials are Confidential Information; (ii) the SUBCONTRACTOR, at the time of submission of such materials to the governmental or regulatory authority, requests such confidential treatment of such materials as may be available under applicable law; and (iii) prior to such disclosure, BME is given prompt notice of the required disclosure so that it or the

CLIENT or BME may take whatever action either deems appropriate, including intervention in any proceeding and the seeking of an injunction or other order to prohibit such disclosure.

5. SUBCONTRACTOR agrees that it will not make use of any Confidential Information received pursuant to this Agreement except for the limited purposes expressly given without the express prior written consent of BME.

6. This Agreement shall not be construed as a license or authorization to the SUBCONTRACTOR to utilize the Confidential Information for any purpose other than directly related to the Project.

7. This Agreement does not establish a joint venture, partnership, or other type of business entity between the Parties, and in no event shall the Parties represent to other persons that a joint venture, partnership, or other type of business entity has been formed. In addition, this Agreement alone shall not be construed as authorizing the order or purchase of engineering or construction services or equipment related to the Project.

8. This Agreement is for the benefit of CLIENT and BME and, without prejudice to the rights and remedies otherwise available to them, either CLIENT or BME shall be entitled to equitable relief by way of injunction if the SUBCONTRACTOR breaches or threatens to breach any of the promises of this Agreement, and to any other remedies provided by law, including attorney's fees and costs.

9. This Agreement shall be interpreted, governed, and construed under the laws of the state of Missouri as if executed and to be performed wholly within the state of Texas, and that venue for any such action shall be Travis County, Texas.

10. This Agreement: (i) contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement; (ii) supersedes in its entirety all previous communications between the Parties on this topic (including all previous versions of this Agreement); and (iii) shall only be modified in writing by the Parties, signed by a representative of each.

11. Upon completion of the performance of services by SUBCONTRACTOR, or a termination of any Project subcontract between BME and SUBCONTRACTOR, and upon written request of BME, the SUBCONTRACTOR shall return to BME all Confidential Information including copies thereof, in all media as practically can be obtained and returned, or otherwise destroyed as agreed to by BME.

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

13. This Agreement is effective as of the date fully executed by both Parties and shall terminate five (5) years thereafter. With regard to BME's financial information (if any is disclosed), there shall be no termination date as to the SUBCONTRACTOR's obligation to maintain confidentiality of the same.

**SUBCONTRACTOR:**

**Burns & McDonnell Engineering Company, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 2- MUTUAL NON-DISCLOSURE AGREEMENT (NDA)**



**MUTUAL NON-DISCLOSURE AGREEMENT (NDA)  
(Doc. No. MSC-9)**

This AGREEMENT is made as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called "Responding Party") and Burns & McDonnell Engineering Company, Inc., a Missouri corporation (hereinafter called "BME"). Each of the parties hereto, including their affiliates or subsidiaries, if any, is hereinafter designated as a "Party" or as the "Parties".

The Parties hereby agree as follows:

1. The Responding Party may supply BME with data or information regarding the amounts of recyclable materials, economic, or financial data or solid wastes processed, managed, or directed (the "Transaction"), and such data or information, which is confidential or proprietary, and shall be deemed to be "Confidential Information" as provided for in this Agreement. Ownership of the data will remain with the Responding Party. Oral information related to the Transaction which is said to be confidential or proprietary at the time of disclosure shall likewise be deemed to be Confidential Information. THE PARTIES EXPRESSLY AGREE THAT UNLESS DATA OR INFORMATION PROVIDED IS MARKED AS "NOT CONFIDENTIAL", ALL INFORMATION PROVIDED TO THE RECIPIENT PARTY RELATING TO THE DISCLOSING PARTY OR TO THE TRANSACTION OR FALLS WITHIN THE CATEGORIES MENTIONED IN SECTION 2 BELOW SHALL BE DEEMED TO BE, AND SHALL BE TREATED AS, CONFIDENTIAL INFORMATION.

2. Information shall not be deemed to be Confidential Information where: information that was in the public domain at the time of its release or which becomes a part of the public domain through no fault of Consultant; information that is released with the written approval of the disclosing firm; information that is released by a Responding Party after five (5) years from the receipt of the information; or information that must be released pursuant to the provisions of a court order or as required by law.

3. Each Party agrees that any Confidential information which has been or will be disclosed directly or indirectly to it by or on behalf of the other Party shall be maintained in confidence, and shall not be disclosed to any third person without the other Party's prior express written consent. The Confidential Information shall not be used by either Party to compete against the other Party.

4. BME may disclose Confidential Information to any governmental or regulatory authority requiring such disclosure under order of law, provided that (i) BME notifies the governmental or regulatory authority that the materials are Confidential Information; (ii) BME, at the time of submission of such materials to the governmental or regulatory authority, requests such confidential treatment of such materials as may be available under applicable law; and (iii) prior to such disclosure, the Responding Party is given prompt notice of the required disclosure so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of an injunction to prohibit such disclosure.

5. The Parties agree that they will not make use of any Confidential Information received pursuant to this Agreement except for the purpose relating to the Transaction without the express prior written consent of the Responding Party.

6. This Agreement does not establish a joint venture, partnership, or other type of business entity between the Parties, and in no event shall the Parties represent to other persons that a joint venture, partnership, or other type of business entity has been formed.

7. In no event will either Party be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased costs, loss of revenue or profit, lost

production, claims by customers, or governmental fines or penalties. The Parties waive and release each other from any claims, liability, or damages arising out of or relating to the Transaction or this Agreement.

8. This Agreement shall be interpreted, governed, and construed under the laws of the state of Texas as if executed and to be performed wholly within the state of Texas, and that venue for any such action shall be Travis County, Texas.

9. This Agreement: (i) contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement; (ii) supersedes in its entirety all previous communications between the Parties on this topic (including all previous versions of this Agreement); and (iii) shall only be modified in writing by the Parties, signed by a representative of each.

10. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

11. This Agreement is effective as of the date fully executed by both Parties and shall terminate five (5) years thereafter.

**RESPONDING PARTY:**

**Burns & McDonnell Engineering Company, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_