

Project Funding Agreement 0\_\_\_\_  
“\_\_\_\_”  
\_\_\_\_  
between  
Water Research Foundation (“Foundation”),  
the Co-Funding organization(s) (“Co-funders”) detailed on Exhibit C, and  
\_\_\_\_ (“Sub-recipient”)

This Joint Project Funding Agreement (hereafter “PFA”) is between the Water Research Foundation, (hereafter “Foundation”), a Delaware non-profit corporation whose principal place of business is located at 6666 W. Quincy Ave., Denver, Colorado 80235, the organization(s) detailed on Exhibit C of this PFA (hereafter referenced as “Co-funders”), and \_\_\_\_ (hereafter “Sub-recipient”), whose principal place of business is located at \_\_\_\_.

The Foundation and the Co-funders have selected said Sub-recipient to receive a research and development grant as more specifically detailed in this PFA.

The parties mutually agree as follows:

## **I. DEFINITIONS**

For purposes of this PFA, the terms and definitions detailed below, and throughout this PFA shall control:

- A.** “Co-funders” is the entity(ies) as more specifically described on Exhibit C. All entities referenced as Co-funders shall be defined to include all officers, directors, employees, volunteers, independent contractors, affiliates, agents, and related entities of each such Co-funder.
- B.** “Cost Share” is goods or services provided by an organization dictated by the cost principles that are applicable by their cognitive agency.
- C.** “Cure Period” is a complete or permanent solution or remedy that is completed in a cycle, a series of events, or a single action.
- D.** “Co-Principal Investigator” is a Sub-recipient’s employee or a subcontractor as specifically designated herein who works with the Principal Investigator in the scientific development or execution of the Project. A Co-Principal typically devotes a specified percentage of time to the Project.
- E.** “Derivative Work” is defined as a work of authorship that is based on any pre-existing written report, study, test result, or other work of authorship, and that modifies, transforms, or recasts that pre-existing work so as to alter it in any way.
- F.** “Educational Purpose” is defined as any non-commercial and non-profit use of Intellectual Property as defined by Paragraph I.H., including, but not limited to, a Foundation or Co-funders owned publication or report utilized as a research tool and/or reference, to inform the drinking water community, water utility personnel, or the general public of the outcome of this Project.

- G.** “Foundation” is a non-profit organization organized to sponsor practical applied research on behalf of the drinking water industry through funding research and development regarding the subject of drinking water. It shall be defined to include all officers, directors, employees, volunteers, independent contractors with the exception of the Sub-recipient, Subcontractors, and Co-funders), affiliates, agents, and related entities of Foundation.
- H.** “Intellectual Property” is defined as all inventions, innovations, creations, works, reports, figures, tables, processes, designs, methods, formulas, drawings, plans, technical data, specifications, logos, computer programs, computer chips and circuits, whether or not protectable through patent, copyright, trademark, or mask work and whether produced in any medium now known or hereafter produced or developed.
- I.** “Participant” An individual or organization that provides third-party contributions or other material support to the Foundation research project but does not enter in a contractual relationship with the Foundation, the sub-recipient or a subcontractor.
- J.** “Principal Investigator” is defined as the Sub-recipient’s employee, as specifically designated herein, with primary responsibility for ensuring that all terms and conditions of this PFA are met and to whom the Foundation shall give all Notices (*See XIV.P*), including, but not limited to, Notice of insufficiencies.
- K.** “Program Income” is defined as gross income earned by the Sub-recipient that is directly generated by a supported activity or earned as a result of the award.
- L.** “Project” is defined as the work to be completed by the Sub-recipient and any Subcontractors pursuant to this PFA and as described more specifically in the Project Proposal.
- M.** “Project Advisory Committee” or “PAC” is defined as a group of independent volunteers who are not controlled by the Foundation or Co-funders and who are gathered by the Foundation and Co-funders to provide technical review, assistance, and/or expertise to the parties regarding the Project.
- N.** “Project Managers” are defined as Foundation’s employee(s) and the Co-funders’ employee(s), as specifically designated herein, with joint responsibility for all contact with the Sub-recipient and as having authority to communicate all the Foundation and Co-funders’ decisions concerning the Sub-recipient’s Project.
- O.** “Project Proposal” is defined as the initial request by the Sub-recipient for funding and shall include all relevant correspondence and/or other written communications subsequent to that request but prior to the execution of this PFA.
- P.** “Sponsor” is a qualified sponsoring utility that shows financial and conceptual support to the research for a Project.
- Q.** “Sub-recipient” is defined as the named individual(s) and/or entity(ies) described in the introductory paragraph of this PFA or the party(ies) entering into this PFA with the Co-funders.

The singular form of Sub-recipient shall include all individuals and entities detailed herein. The Sub-recipient shall include all officers, directors, employees, affiliates, and agents of the Sub-recipient.

- R. "Subcontractor" is defined as any individual or entity, with whom the Sub-recipient shall separately contract, to complete one or more specific tasks required by the Project.

## II. SERVICES TO BE PROVIDED

- A. Sub-recipient: The Sub-recipient agrees to complete research and prepare written reports as detailed by Exhibit B based upon the Project Proposal attached as Exhibit A. The deliverable schedule for these reports is outlined in Exhibit B to this PFA.
- B. Foundation and Co-funders: Foundation and Co-funders will provide funds as available and as detailed by Exhibit C attached for activities detailed by the Project Proposal. Co-funders will provide all funds designated in full to the Foundation as detailed by Exhibit C; the Foundation shall make all disbursements to Sub-recipient.

## III. KEY CONTACTS

### A. Foundation Key Contacts:

- \_\_\_, Project Manager, Water Research Foundation, 6666 W. Quincy Ave., Denver, CO 80235, Phone: (303) \_\_\_, and Email: \_\_\_@waterresearchfoundation.org
- Peggy Falor, Contract Administrator, Water Research Foundation, 6666 W. Quincy Ave., Denver, CO 80235, Phone: (303) 734-3424, and Email: pfalor@waterresearchfoundation.org.

### B. Sub-recipient Key Contacts:

#### Principal Investigator

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#### Authorized Representative

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#### Accounting Contact

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### C. Co-PI Key Contacts:

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Each party shall provide written Notice of changes in contact persons, addresses, telephone, fax, and email addresses. Changes or substitutions for the Principal Investigator, Co-Principal Investigator, or any other Subcontractor require prior written approval from Foundation as identified in Paragraph XIV.G.

1. The Foundation and Co-funders will make mutually agreed management decisions regarding this PFA and the Project. In the event a disagreement arises and the parties are unable to resolve it between themselves reasonably and in good faith and/or with the advice of the PAC, the Foundation shall have final decision-making authority (*See XIII.A*).

2. The PAC shall be composed of an independent group of volunteers that are technically expert individuals the number which will be determined by Foundation.

**IV. PFA PERIOD**

- A. Period: This PFA shall be effective for the period commencing on <date> and ending on <date>. Neither the Foundation nor the Co-funders shall have any obligation for payment of services rendered by the Sub-recipient that are not performed within this specified period.
- B. Time of Performance: Sub-recipient shall complete all Project tasks, reports, and other obligations according to the performance schedule detailed in Exhibit B (which may be amended from time to time upon mutual agreement of the parties) in this PFA

**V. FUNDING**

- A. Source of Funds: All funds provided come from the Foundation and Co-funders solely.
- B. Condition for Receipt of PFA Funds: Funds provided to the Sub-recipient under this PFA may not be used by the Sub-recipient as a match or cost-sharing provision to secure U.S. Federal monies or money from any other sources without prior written approval by Foundation.
- C. Maximum Amount Available: The Foundation agrees to provide grant money to the Sub-recipient in an amount not to exceed \_\_\_ US dollars (\$\_\_\_) for the completion of this PFA if not terminated early (*See XIV.E*). Further, the Co-funders agree(s) to provide money to Foundation, as more specifically detailed by Exhibit C, for further distribution to the Sub-recipient in a total amount not to exceed \_\_\_ US dollars (\$\_\_\_) for the completion of this PFA if not terminated early (*See XIV.E*). The Foundation will have sole responsibility for payments to the Sub-recipient as more specifically detailed by Exhibit C. The Sub-recipient agrees to provide \_\_\_ US dollars (\$\_\_\_) cost share and \_\_\_ US dollars (\$\_\_\_) in in-kind contributions as detailed in Exhibit C. For a Project total budget of \_\_\_ US dollars (\$\_\_\_).
- D. Co-funders should submit payment in full upon receipt of signed agreement. If Co-funders require(s) a purchase order please contact the Foundation Accounting at (303) 734-3555. Payment(s) to the Foundation should be made by check and sent to: Water Research Foundation, Accounting, 6666 W. Quincy Ave., Denver, CO 80235, (303) 734-3425. Co-funders accounting contacts for this Project are:

| Co-funders<br>Organization | Contact | Contribution |
|----------------------------|---------|--------------|
|                            |         |              |

## VI. STATUTES AND REGULATIONS

- A. Sub-recipient is solely responsible for obtaining, reviewing and understanding all U.S. Federal, State, and local ordinances, rules, regulations, and statutes applicable to this PFA and Project, which ordinances, rules, regulations and statutes, as amended from time to time, are hereby included by this reference in this PFA.

## VII. PAYMENT TERMS AND CONDITIONS

- A. Advance Payment: An advance of \$\_\_\_ US dollars (10% of the total cash award) shall be paid to the Sub-recipient upon execution of this PFA provided Co-funders have timely provided their share of funds to Foundation. No invoice shall be necessary for such advance. Sub-recipient shall be permitted to use the same for performance of the Project immediately upon the receipt of the same and may not utilize these funds for any other purposes.
- B. Budget: The PFA Budget, attached as Exhibit C, shall constitute the maximum amount available to the Sub-recipient for work performed under this PFA.
- C. Payment of an Invoice: Payments are based on submission and acceptance the Periodic Report to the Foundation and Co-funders each as defined in the Foundation "Proposal Guidelines" or "Guidelines for \_\_\_ Proposals" (depending on the type of proposal submitted) which Guidelines are hereby made part of this PFA by reference <http://www.waterrf.org/Research/Administration/ProposalGuidelines/ProposalDocuments/SolicitedProposalGuidelines.pdf> Payments are based on submission and acceptance the Periodic Report as defined in the Foundation's "Proposal Guidelines." No payment will be disbursed by the Foundation unless and until each Periodic Report is received and accepted by the Foundation (such acceptance not to be unreasonably withheld). The periodic report content and format document has been posted as guidance for PIs on the "Project Guidelines" web page: <http://www.waterrf.org/Research/Administration/ProjectReportGuidelines/Guidelines/SupportingResourceGuidelines.pdf>

An invoice detailing expenses incurred during the reporting period must be submitted to the Foundation every three (3) months in accordance with Exhibit B. The Sub-recipient invoice must also detail all cost-share and third party in-kind (if available) for each reporting period. Each invoice should be displayed according to the budget line items in Exhibit A. All invoices must be submitted using the form shown in Exhibit D and must be on the Sub-recipient's letterhead. Sub-recipient shall be paid as follows:

1. The initial ten percent (10%) advance payment, to be paid to Sub-recipient as detailed in Paragraph VII.A, is to be shown on all invoices as an advance into each reporting period including the final invoice.
2. Ten percent (10%) of the total funding will be held back from Sub-recipient until (a) receipt of an acceptable draft report, as defined on the Foundation's website "Proposal Guidelines." Another ten percent (10%) will be held back from Sub-recipient until Sub-recipient responds to subsequent editor queries on the final report, as defined on the Foundation's website "Proposal Guidelines," and submission of a final invoice detailing final Project costs including cost share and in-kind contributions. All funding is contingent upon actual costs incurred.

3. The payment of an invoice by the Foundation shall not prejudice Foundation's right to object to or question any invoice or matter relating to invoices submitted in accordance with this PFA. Payment by the Foundation shall not be construed as acceptance of any part of the work or service provided.

**D. Unallowable Costs:** The Sub-recipient's invoice shall be subject to reduction for amounts included in any invoice or prior payment made which are determined by the Foundation not to constitute allowable costs on the basis of audits, reviews, or monitoring of this PFA in accordance with Foundation's standards and any applicable Federal Uniform Administrative Requirements applicable to this PFA.

**E. Deductions & Withholdings:**

1. Foundation may deduct amounts or withhold payments invoiced by the Sub-recipient if the Sub-recipient fails to comply with any Foundation standard and/or Federal Uniform Administrative Requirements applicable to this PFA based upon the Sub-recipient's cognitive agency.
2. Funds withheld due to unsatisfactory compliance with any Foundation standard and/or Federal Uniform Administrative Requirements (based on Sub-recipient's cognitive agency) may be restored upon satisfactory correction or completion of the condition that caused the withholding.

## **VIII. STANDARDS FOR FINANCIAL MANAGEMENT**

**A. Financial Management System:**

1. The Sub-recipient will maintain an accounting system and a set of accounting records that, at a minimum, allow for the identification of individual Projects by source of revenue and expenditures related to this PFA.
2. All costs will be supported by source documentation and be made available to the Foundation upon request.
3. The Sub-recipient's accounting records will be the basis for generating financial reports that must reflect accurate and complete data. In addition, financial records must be properly closed out at the end of the PFA period and all reports submitted in a timely manner.

**B. Cost Principles:** Even though no U.S. Federal funds are being provided for this Project, for each type of Sub-recipient organization, there is a set of Federal cost principles for determining allowable costs with which principles the Sub-recipient agrees to comply and which principles are hereby included by this reference in this PFA unless such principles are modified by this PFA. Allowable costs are determined in accordance with the cost principles applicable to the type of organization incurring the costs. The following is a non-exclusive example of a list of organization types and the applicable cost principles to be used:

- State, local or Indian tribal government, OMB Circular A-87.
- Non-profit Organization (NPO), 2 CFR 230.
- Institution of Higher Education, 2 CFR 220.
- Hospitals, 45 CFR 74.

- Commercial (For Profit) and selected Non-Profit Organizations.

**C. Indirect Costs and Allocation of Costs:**

1. If the Sub-recipient charges indirect (overhead) costs to the PFA, an “Indirect Cost Proposal” must be prepared in accordance with the applicable cost principles referenced in Paragraph VIII.B.
2. For payment of indirect costs by the Foundation the Sub-recipient must provide a written statement from an independent certified public accounting firm attesting that the proposal complies with the requirements of the applicable cost principle as required by VIII.B above and which statement provides the basis of the calculated rate.

**IX. PROCUREMENT STANDARDS**

**A. Procurement Standards:**

1. As with Cost Principles (VIII.B above), the parties adopt the U.S. Federal standards for procurement as are outlined in the U.S. Federal Uniform Administrative Requirements applicable to the organization type to which the Sub-recipient belongs; and Sub-recipient’s compliance with those standards is required under this PFA (See VI) except as may be modified by this PFA.
2. These provisions define the standards for use in establishing procedures for procurement of supplies, equipment, and other services which cost is borne in whole or in part as a condition of this PFA.
3. These standards include but are not limited to the following:
  - a. Sub-recipient may use its own procurement policies provided that they adhere to the applicable standards;
  - b. Sub-recipient shall maintain a code of conduct which shall govern the performance of its officers, employees, and agents (including Subcontractors) in contracting with or expending Foundation and Co-funders’ funds; and
  - c. All procurement transactions shall be conducted in a manner so as to provide for maximum open and free competition.

**B. Title to Equipment and Supplies:**

1. Sub-recipient shall assume responsibility for the care and maintenance of all equipment or supplies acquired for use in the Project pursuant to current Sub-recipient policy and manufacturer’s instruction.
2. Title to any equipment and supplies for this Project shall be vested to Sub-recipient.

## **X. AUDITS AND MONITORING|**

**A. Audit Procedures:** The expenditure of funds under this PFA may be subject to quarterly or annual audits conducted by the Foundation on behalf of itself and Co-funders, in Foundation's sole discretion, or by its authorized representatives. The Sub-recipient shall provide to the Foundation and its authorized representatives all technical staff, assistance, and information needed to enable Foundation to perform its auditing function. This assistance includes, but is not limited to, information about the Sub-recipient's Project in-kind and money grants, expenditures, operation, accounting, and database systems.

**B. Monitoring:**

1. The Sub-recipient may receive on-site reviews from the Foundation or its authorized representatives, in addition to review(s) from Federal government personnel. Monitoring staff may review Project and/or financial activity relating to the terms of this PFA. Upon request, Foundation or its authorized representatives shall be given full and complete access to all pertinent information related to the performance of this PFA.
2. The Sub-recipient shall provide to the Foundation and its authorized representatives all technical staff, assistance, and information needed to enable the Foundation or Federal government personnel to perform their monitoring function. This assistance from the Sub-recipient includes, but is not limited to, information about the Sub-recipient's Project operation, accounting, and database systems.

**C. Program and Financial Deficiencies:**

1. Through audits, reviews, monitoring, or other means, the Foundation may find the Sub-recipient to have program or financial deficiencies in the performance of the PFA. Such deficiencies may include, but are not limited to, the areas of accounting, financial controls, budgeting, and/or Project compliance issues. If deficiencies are found, the Foundation may exercise its rights to terminate this PFA or may require the Sub-recipient to take corrective action and to submit a written corrective action plan to address identified deficiencies. All corrective action plans must be accepted by the Foundation or its authorized representatives. Any corrective action must be satisfactorily completed within the 30 (thirty) days "cure period" if such a cure period is provided (*See* XIV.E.1).
2. The Foundation in its sole discretion may require Sub-recipient to submit additional periodic written verification that measures have been taken to implement the corrective action. If the Sub-recipient fails to demonstrate its compliance with the approved corrective action plan within the time constraints set by the Foundation in its sole discretion, the Foundation may exercise its rights to terminate this PFA. The Foundation may also exercise any of the other rights and remedies available to it at law or in equity.

## **XI. REPORTS AND RECORDS**

**A. Required Deliverables:** Required Project deliverables are described in the Foundation "Proposal Guidelines" and are listed in Exhibit B.

1. Sub-recipient will provide Co-funders with a copy of all Periodic, Interim, Draft, and Final Reports arising from the Project. Further, the Foundation will decide who will publish the Final Project Report, who will oversee such publication, and in what language it will be published. The Foundation will decide the mode of publishing (print, electronic, or other). Co-funders will each receive ten (10) copies of the final printed report.
2. In the event the Foundation decides to electronically publish a Report, the Foundation will provide the Co-funders with ten (10) hardcopies each and a complete *PDF* file of the Report in the English language prior to general publication to subscribers or outside third parties. Any additional copies will be at the cost of \$50.00 US dollars each. The parties agree that each may place a *PDF* version of the full Final Report on its own web site, if any, after the Foundation has provided such Report to its subscribers. No drafts shall be published by the Co-funders.

**B. Record Retention:**

1. Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this PFA and the Project referenced herein for a period of three (3) years from the date of payment of final invoice.
2. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

**C. Access to Records:**

1. The Foundation, the Co-funders, and their authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the Sub-recipient upon forty-eight (48) business hours Notice in order to perform audits, monitoring reviews, or other types of site visits during regular operating hours of Sub-recipient.
2. The rights of access to Sub-recipient's records also includes timely and reasonable access to the Sub-recipient's available past and present personnel for the purpose of interviewing and disclosing matters related to such documents.
3. The right of access to Sub-recipient's records is not limited to the required three (3) year period.
4. Sub-recipient waives any confidentiality, privacy privilege, or proprietary defenses regarding audits or monitoring or subject by the Foundation (or its representatives). the Foundation will keep any of Sub-recipient's proprietary technical and/or scientific information confidential if such material is appropriately marked as "Confidential," is not already in the public domain prior to disclosure, is not required to be disclosed as a result of court order, legal process or government action or applicable law of regulation, or was already known to others not under a requirement to maintain its confidentiality.

## **XII. INTELLECTUAL PROPERTY AND PUBLICATION**

- A. Proprietary Rights to Intellectual Property:** The Foundation's and Co-funders' primary purpose in funding the Sub-recipient is to further scientific and technological knowledge in the area of research

covered by this Project. As such, certain written works and copyrightable computer software programs created during the course of this PFA are to be owned by the Foundation and licensed to Co-funders while patented inventions or inventions in the process of being patented, created by the Sub-recipient, including software inventions, made under this PFA shall be owned by the Sub-recipient and other created Intellectual Property are to be owned by all the parties jointly as more specifically delineated below.

**B. Foundation Intellectual Property:** The Parties intend that the Foundation shall own all U.S. and world-wide copyright in the Scope of Work, all Periodic Reports, all Draft Reports, the Final Report, and the Project Profile, all drafts of these works and reports, and all non-patented computer software developed as a deliverable for this Project as defined in the Foundation's "Proposal Guidelines," and in Exhibit A. Such property is hereby assigned to the Foundation (hereafter "Foundation Intellectual Property"). No Foundation Intellectual Property shall be utilized or distributed by the Sub-recipient or Co-funders or any Subcontractor in any manner without Foundation's prior written approval, except for Educational Purposes as defined in I.F. The Sub-recipient shall execute whatever additional documents are necessary in order to comply with this Paragraph (*e.g.*, a U.S. Copyright Office application or other world-wide application for copyright protection, or short form license or assignment agreement(s) for recordation) (*See* Exhibit E Assignment of Copyright).

1. The Foundation hereby grants the Sub-recipient and Co-funders a royalty free, world-wide, nonterminable, nonexclusive license, without the requirement for any accounting, to utilize Foundation's Intellectual Property solely for Educational Purposes as defined in Paragraph I.F above except as restricted by this PFA (*See* XI.A.2).
2. While Sub-recipient and Co-funders may not utilize any Foundation Intellectual Property for other purposes without prior written permission from the Project Manager, reasonable requests to present or publish portions of the Foundation Intellectual Property will be seriously considered as the Foundation is highly interested in the distribution of the information developed through this PFA.

**C. Sub-recipient's Intellectual Property:** All patented inventions and improvements (or in the process of being patented) shall be considered Sub-recipient's Intellectual Property, including, but not limited to, the right to file for patent registration. The Sub-recipient shall be responsible for any and all disclosures required to the U.S. Government. If the Sub-recipient intends to, or does, abandon its rights to any of Sub-recipient's Intellectual Property, Sub-recipient shall notify the Foundation of the same and assign to the Foundation those rights upon timely request. Sub-recipient shall not withhold any findings based on Sub-recipient Intellectual Property, patentable or otherwise, from works and reports, as defined in the Foundation's "Proposal Guidelines," and in Exhibit A. The Sub-recipient shall have the burden of demonstrating the existence of confidential information and/or trade secrets should it designate information as such by legend. If the Sub-recipient is using an existing patent or pre-existing patented material owned by another party, the Sub-recipient must have mentioned the same in Sub-recipient's Project Proposal as attached as Exhibit A and must obtain written permission to use the patent on this Project. Copies of any permission or licenses granted shall be provided to the Foundation upon execution. All permission must be provided to the Foundation prior to completion of any Draft of the Final Report. The Sub-recipient hereby grants the Foundation and its subscribers a nonterminable, world-wide, nonexclusive license to utilize such Intellectual Property for non-

commercial (i.e., non-profit or educational) purposes, without royalty, and without the requirement of an accounting to Sub-recipient for any such use. Should Sub-recipient wish seek patent protection for any such Intellectual Property, neither the Foundation nor its subscribers shall be held responsible in any manner for Sub-recipient's failure to timely protect its patent rights or the patentability of any Intellectual Property.

- D. Jointly Owned Intellectual Property:** For the purpose of allowing Foundation, Co-funders, and the Sub-recipient to make full use of all Intellectual Property developed during the course of this Project that is not defined above as owned by either party solely; certain Intellectual Property shall be considered Jointly Owned Intellectual Property.
1. Jointly Owned Intellectual Property is defined as (a) all Intellectual Property developed during the term of, and pursuant to, this PFA which is not defined above as Foundation Intellectual Property, Sub-recipient's Intellectual Property, or as U.S. Government Intellectual Property, if applicable, (b) all scientific information and data reported such as innovations, creations, processes, designs, methods, formulas, plans, technical data, and specifications; and (c) the Project Proposal, excluding the statement of qualification and resumes.
  2. The Sub-recipient hereby assigns to the Foundation and Co-funders an undivided equal share to such Jointly Owned Intellectual Property, including the right to apply for copyright registration with the U.S. Copyright Office or similar official repositories throughout the world. The Foundation, Co-funders, and the Sub-recipient may each utilize such property, without royalty to the other, for any and all purposes throughout the world without any requirement of an accounting. Further, the Sub-recipient and Co-funders hereby grants to the Foundation's subscribers a nontransferable, nonterminable, and nonexclusive license, without royalty, and without any requirement for an accounting, to utilize Jointly Owned Intellectual Property throughout the world. The Sub-recipient shall execute whatever documents are required in order to comply with this Paragraph, including, but not limited to, assignments as necessary for any world-wide copyright protection (*See Exhibit E*).
- E. Pre-existing Intellectual Property:** In the event Sub-recipient owns Intellectual Property that was developed prior to this PFA and that pre-existing Intellectual Property is utilized for this Project, such Intellectual Property shall remain the property of Sub-recipient; however, the Foundation, its subscribers, and Co-funders are granted a nonterminable, world-wide, nonexclusive license, without royalty, and without the requirement of an accounting to Sub-recipient, to utilize such information for non-commercial (i.e., non-profit or educational) purposes. In the event Sub-recipient utilizes Intellectual Property owned by another in this Project (including any Foundation Intellectual Property), Sub-recipient shall obtain all appropriate permissions on Foundation's and Co-funders's behalf for the publication of such materials in any form or format, including, but not limited to, compilations without the requirement of any royalty or accounting. Agreements detailing such permissions shall be approved by, and completed documents shall be provided to the Foundation.
- F. Publication of Intellectual Property:** The Foundation encourages the Sub-recipient and Co-funders to publish Jointly Owned Intellectual Property based on this Project and to utilize the Foundation's Intellectual Property for Educational Purposes. Any publication of Foundation Intellectual Property

must comply with the requirements of this PFA. The Sub-recipient agrees to comply with the following steps prior to such distribution, presentation, or publication:

1. The Sub-recipient and Co-funders hereby agree to provide to the Foundation copies of any publication or presentation of Jointly Owned Intellectual Property or Foundation Intellectual Property approved for publication/presentation at least three (3) weeks prior to submission of such publication or presentation.
2. Each party agrees and understands that it shall not dispose of or injure another's rights to Jointly Owned Intellectual Property or the Foundation's rights to Foundation Intellectual Property, including, but not limited to, any computer software by any presentation or publication of such property and shall take all steps necessary to preserve the owner's rights. This Paragraph shall not prevent the Sub-recipient, Co-funders, or the Foundation from transferring its own undivided but equal share of ownership of Jointly Owned Intellectual Property to a publication without any requirement of royalty or accounting to the others.
3. In the event the Sub-recipient or Co-funders publishes Jointly Owned Intellectual Property and is required by the publisher to assign its copyright ownership to the work, the Sub-recipient and Co-funders agree to include the following or similar language on any copyright assignment: *The submitted manuscript [publication] [presentation] has been made possible through funding from the Water Research Foundation, [Sub-recipient], and [Co-funders]. The information contained herein is based upon Intellectual Property that is jointly owned by [Sub-recipient], [Co-funders], and the Water Research Foundation. The Water Research Foundation, [Sub-recipient], and [Co-funders] retain their rights to publish or produce the Jointly Owned Intellectual Property in part or in its entirety.*
4. Sub-recipient agrees to acquire appropriate permission(s) to use any third-party copyrighted materials utilized in any manner in connection with the Project (See XII.E. above). The permission needs to cover both print and electronic versions of a report that will be published by Foundation and/or third party. Reference the Foundation's Format-Style Guide Chapter 4: Use of Copyrighted Material. The Sub-recipient shall utilize a form to request permission to use Foundation materials that are a result of the Project deliverables located at <http://www.waterrf.org/thefoundation/legal>

Sub-recipient agrees to provide full ownership and license information for any such materials; and the Foundation agrees to include appropriate acknowledgements for all original sources in published Foundation Intellectual Property.

- G. Student Thesis:** In the event a college or graduate student is employed by Sub-recipient to work on the Project contemplated by this PFA and that student completes a thesis, dissertation, or report relating to this Project, solely for Educational Purposes, the student shall own the copyright in that thesis or report, to the extent necessary for publication while not injuring the Foundation's or Co-funders' rights, and such rights shall be reserved to the student in any assignment document or form subsequently executed. In the event a portion of the Foundation Intellectual Property or Jointly Owned Intellectual Property is included in that thesis or report, the Foundation and Co-funders hereby grant the student a nonexclusive license to utilize that the Foundation Intellectual Property for the specific thesis or report for Educational Purposes.

- H. Copyright Notice:** Any Jointly Owned Intellectual Property, or Derivative Works thereof, utilized by the Sub-recipient, Co-funders, or the Foundation shall include a United States' copyright notice of ownership as detailed below:

Copyright [year of publication], Water Research Foundation, [Sub-recipient], and [Co-funders]  
ALL RIGHTS RESERVED.

No part of this article may be copied, reproduced, or otherwise utilized without permission.

- Any Foundation Intellectual Property must contain the following copyright notice:

Copyright [year of publication], Water Research Foundation  
6666 W. Quincy Avenue, Denver, CO 80235  
ALL RIGHTS RESERVED.

No part of this article may be copied, reproduced, or otherwise utilized without permission.

- I. Sub-recipient's/Co-funders's Acknowledgement:** Any public presentation or publication by the Sub-recipient or Co-funders, including a student writing a thesis, dissertation, or report, based on the parties' Jointly Owned Intellectual Property, Sub-recipient's Intellectual Property, or any portion of Foundation Intellectual Property, shall include the following, or a similar, statement acknowledging the Foundation and Co-funders, as appropriate, for providing financial and administrative support:  
*"[Sub-recipient] gratefully acknowledges that the Water Research Foundation, [Co-funders] are co-owners of certain technical information upon which this publication [manuscript] [presentation] is based. [Sub-recipient] thanks the Water Research Foundation, [Co-funders] for their financial, technical, and administrative assistance in funding the project through which this information was discovered."*
- J. Disclaimer:** Any publication and presentation by Sub-recipient or its students utilizing the Foundation Intellectual Property or the Jointly Owned Intellectual Property shall include the following disclaimer:  
*The comments and views detailed herein may not necessarily reflect the views of the Water Research Foundation, its officers, directors, affiliates or agents. Every Project Report shall contain (a) the Foundation logo and Co-funders logo, (b) an acknowledgment that the Foundation and Co-funders are co-sponsors of the publication, material, and its underlying research, and (c) a disclaimer which states: "This document was reviewed by a panel of independent experts selected by the Foundation. The Foundation, [Co-funders] assume no responsibility for the content of the research study reported in this publication or for the opinions or statements of fact expressed in the report. Mention of trade names or commercial products does not constitute the Foundation's, [Co-funders] endorsement or recommendations for use. Similarly, omission of products or trade names indicates nothing concerning Foundation's, [Co-funders] position regarding product effectiveness or applicability. This report is presented solely for informational purposes."*
- K. Return of Intellectual Property:** The Sub-recipient shall provide to Foundation legible copies of all the Foundation's Intellectual Property and shall provide to Foundation and Co-funders legible copies of all Jointly Owned Intellectual Property and licensed pre-existing Intellectual Property within thirty (30) days of receiving a Notice of termination (including source and object code of any computer software program) whether or not a cure period is provided. Further, at the same time, Sub-recipient shall provide copies and originals where the Sub-recipient has abandoned, or otherwise lost, its rights to patentable inventions or discoveries, as provided by 37 CFR 401 et.seq. Such information shall be

provided in whatever medium is reasonably designated by the Foundation. No final payments will be made without proper provision of such Intellectual Property.

- L. Originality:** The Sub-recipient shall verify and ensure that it, and its Subcontractors, are the sole creator(s) and originator(s) of all Foundation Intellectual Property, Sub-recipient's Intellectual Property, pre-existing Intellectual Property, and Jointly Owned Intellectual Property as defined herein; none of those rights have been bargained, sold, or conveyed in any other manner to any person or entity except as detailed and permitted by this PFA. Further, the Sub-recipient shall use its best efforts to ensure that no portion of this Project, including any portion completed by Subcontractors, infringes upon the Intellectual Property rights of any other person or entity or violates the common law or statutory right, title, or interest of any person or entity.
- M. Background Intellectual Property.** This PFA shall not be construed as implying that either party hereto shall have the right or license (express or implied) to use background Intellectual Property of the other in connection with this Project except as otherwise provided hereunder or required by Federal government regulations. Background Intellectual Property includes property and the legal right therein of either party developed before or independent of this PFA or the Project including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets, know-how and any information embodying proprietary data such as technical data and computer software.
- N. Other Research.** The Foundation understands that Sub-recipient may be involved or become involved in similar or related research on behalf of itself and others. Subject to any confidentiality and Intellectual Property sections of this PFA, nothing contained in this PFA shall be construed to limit or impair the freedom of Sub-recipient or its researchers neither to conduct research for itself or third-parties nor to grant the Foundation any right to such other research or Intellectual Property, created as a result of the same.
- O.** The terms of this Section XII shall survive the termination of this PFA.

### **XIII. DISPUTE RESOLUTION**

- A.** In the event Foundation and Co-funders are unable to resolve a dispute between themselves relating to the Sub-recipient, the Sub-recipient's actions or omissions, or the procedure, process, or research concerning the Project, Foundation shall be empowered to make the final determination after reasonably consulting with the PAC.
- B.** In the event Sub-recipient and the Foundation or Sub-recipient and Co-funders have a dispute between themselves relating to this PFA, the Project, or a party's actions or omissions not related to the enumerated matters in Paragraph XIII.A, and if the parties involved are not able to resolve their dispute within sixty (60) days of Notice of the dispute being provided by a party to the others, the parties involved in the dispute agree to submit their dispute to mediation.
- C.** In the event mediation is required, the parties shall jointly choose a single mediator located in Denver County, Colorado U.S.A. who is skilled in the subject matter of their dispute. In the event they are unable to jointly choose a mediator, the disputing parties shall each choose a mediator, which two mediators shall jointly choose a third mediator – also located in Denver County - who will hear and decide the dispute.

- D. All parties will pay equally for the mediators' services.
- E. A mediator shall be chosen and mediation shall be scheduled no later than forty-five (45) days after the Notice of dispute is received. Mediation shall be completed no later than ninety (90) days after the Notice of dispute is received. During the period of dispute, no party shall take any action that which would injure the interests of another party or delay the Project.
- F. Mediation shall last no longer then four (4) business days unless agreed upon in writing by the parties. During the mediation period, documents submitted to the mediator and statements made during the mediation, including proposed settlement terms, are for settlement purposes only and shall remain confidential. However, evidence otherwise admissible or discoverable shall not be rendered inadmissible or undiscoverable because of its use in the mediation.
- G. If the parties are unable to reach a reasonable business decision on their own with the assistance of the mediator by the end of the mediation session, the mediator shall choose an Arbitrator located in Denver, Colorado U.S.A. to hear the parties' dispute. The Arbitrator's decision shall be binding on both parties. During this arbitration process,
  - 1. The Arbitrator shall have subpoena powers.
  - 2. The American Arbitration Association ("AAA") and Colorado Civil Procedure Rules, where not in conflict with the AAA Rules, which are in effect at the time the Notice of dispute is received shall apply.
  - 3. Any final binding determination issued by the Arbitrator shall be in writing within thirty (30) days of the final mediation session.
  - 4. Such written decision may be entered as an Order of the Court with proper jurisdiction.
- H. This Section XIII shall survive the termination of this PFA.

#### **XIV. STANDARD TERMS AND CONDITIONS**

- A. Standard terms, which by their nature and intent may continue beyond the termination of the PFA, shall survive the termination of this PFA.
- B. Accuracy of Testing/Quality Assurance: The Sub-recipient shall use its best efforts to ensure that all data and test results developed during the course of this PFA and included, or relied upon, in the Final Report are accurate to the best of its knowledge, information, and belief. In the event the Sub-recipient obtains any data, test results, information derived from such data or test results, or other information to be included in the Project from water utilities or any Subcontractor, the Sub-recipient will utilize reasonable and customary efforts to ensure the accuracy of the information obtained.
- C. **Co-funders Review**: The Sub-recipient shall (a) grant the Co-funders the right to review the Project's use and conclusions concerning that organization's data and/or test results, if any, and (b) provide the Co-funders with the reasonable opportunity to correct, or if correction will take an unreasonably long time, to respond to any problems or difficulties uncovered by the data, information, or test results, all of which must occur prior to the publication or use of such information. This

provision shall apply to each Co-funder in any manner with the Project, including, but not limited to, providing services, data, materials for testing, test results, and/or documentation. The Sub-recipient shall be responsible for providing letters for review and execution by each Co-funder confirming that they have been made aware of the nature of the cooperative relationship and have reviewed all applicable data, information, or results as described in this Paragraph. Letters of confirmation, signed by a representative for and each Co-funder, must be received by Foundation with submittal of the Final Report (Exhibit B). If the Sub-recipient has made reasonable efforts but is not able to obtain a Letter of Confirmation with the signature of a representative for the Co-funders, the Principal Investigator may submit a signed letter stating this fact and further stating that the Co-funders were provided reasonable opportunity to correct or respond to any problems or difficulties as stated above.

- D. Responsibilities:** The responsibilities detailed by this PFA in order to protect the parties' Intellectual Property rights shall continue throughout this PFA and shall survive the termination of this PFA. Further, in addition to the responsibilities detailed elsewhere in this PFA, each of the parties shall have the responsibilities detailed below:
1. Responsibilities of Foundation. If the Sub-recipient experiences any problems relating to the completion of this Project or PFA from third parties, including, but not limited to, liabilities, obligations, damages, losses, costs, claims, lawsuits, causes of action, or demands, including any attorneys' fees and costs, the Foundation's sole obligation will be to provide evidence of this PFA and the grant provided. the Foundation will be responsible only for proven direct damages caused directly by its then current insured actions or omissions in breach of this PFA and not special, consequential, or other damages, or any attorneys' fees or costs, whether known or not. In no event shall any damages exceed the amounts actually provided to Sub-recipient by the Foundation, exclusive of Co-funders' monies, through this PFA.
  2. Responsibilities of Co-funders. If the Sub-recipient experiences any problems relating to the completion of this Project or PFA from third parties, including, but not limited to, liabilities, obligations, damages, losses, costs, claims, lawsuits, causes of action, or demands, including any attorneys' fees and costs, Co-funders' sole obligation will be to provide evidence of this PFA and the grant provided. Co-funders will be responsible only for proven direct damages caused directly by its then current insured actions or omissions in breach of this PFA and not special, consequential, or other damages, or any attorneys' fees or costs, whether known or not. In no event shall any damages exceed the amounts agreed to be provided to Sub-recipient by Co-funders, exclusive of Foundation monies, through this PFA.
  3. Responsibilities of the Sub-recipient. At all times, all obligations performed by the Sub-recipient or by any Subcontractors pursuant to this PFA shall be performed in a manner consistent with or exceeding the professional standards governing such services. Further, the Sub-recipient shall be responsible for, and shall hold harmless and indemnify the Foundation, Co-funders, and their officers, directors, affiliated organizations, employees, agents, volunteers, and publisher, if any, from any and all liability, obligation, damage, loss, cost, claim, lawsuit, cause of action, or demand whatsoever of any kind or nature, including, but not limited to, attorneys' fees and costs, arising from any actions taken by, or omissions of, the Sub-recipient, its officers, directors, Subcontractors, employees independent contractors, agents, or other related entities or individuals arising from (i) any actions or omissions of the Sub-recipient or its Subcontractors, (ii) any use or misuse of Intellectual Property claimed to be owned by another, or (iii) any material breach of this

PFA. Such indemnification shall be in proportion and to the extent liability, obligation, damage, loss, cost claim, lawsuit, cause of action, or demand are caused by or result from the reckless, intentional, or negligent acts or omissions of the Sub-recipient, its officers, directors, Subcontractors, employees independent contractors, agents, or other related entities or individuals.

4. Public Entities. In the event the Sub-recipient or any Subcontractor is a public entity or quasi-public entity that, by state statute, is not permitted to indemnify others, Paragraph XIV.D. 3 are modified to the extent detailed by this Paragraph. Instead, Sub-recipient agrees to be responsible, and will hold all public or quasi-public entity Subcontractors equally responsible, to the fullest extent available under the law, for any and all liability, obligation, damage, loss, cost, claim, lawsuit, cause of action, or demand whatsoever of any kind or nature, including but not limited to, attorney's fees and costs, arising from any actions taken by, or omissions of, the Sub-recipient its officers, directors, Subcontractors, employees, independent contractors, agents or other related entities arising from (i) any use or misuse of Intellectual Property claimed to be owned by another, or (ii) any material breach of this PFA by Sub-recipient. Such fiscal responsibility shall be in proportion and to the extent of liability, obligation damage, loss, or cost claim, lawsuit or action, or demand are caused by or result from the reckless, intentional, or negligent acts or omissions of the Sub-recipient, its officers, directors, Subcontractors, employees, independent contractors, agents, or other related entities or individuals. Further, Sub-recipient agrees to ensure that all individuals or entities or individuals involved in the completion of this PFA that/who may indemnify others are required to so indemnify the Foundation and the Co-funders through a written agreement acceptable to Foundation and the Co-funders.
5. Insurance. The Sub-recipient shall maintain a financially sound program of self-insurance or commercially purchased liability insurance covering unfair competition claims and all reckless, intentional, knowing, and negligent actions or omissions of any and all of Sub-recipient's officers, directors, employees, agents, and independent contractors and/or Subcontractors in the amount of one million dollars (\$1,000,000.00). Proof of such insurance shall be presented to Foundation pursuant to the schedule detailed by Exhibit B and to the Co-funders upon request. The proof of insurance document shall clearly specify the Project by number and title on the insurance certificate.
6. Worker's Compensation. The Sub-recipient and all Subcontractors shall maintain Worker's Compensation Insurance which complies with the applicable state laws. Proof of such insurance shall be presented to Foundation pursuant to the schedule detailed by Exhibit B and to the Co-funders upon request.

**E. Termination**: This PFA, except for those provisions which, by their own terms, extend beyond the life of this PFA, shall terminate upon the Foundation providing Notice to the Sub-recipient, in writing, that all terms have been completed. The termination date shall be the date upon which all scheduled events have occurred, including the final accounting, and no further work remains to be completed pursuant to this PFA. The PFA, however, may be terminated earlier for the following reasons:

1. If the Foundation after consultation with the Co-funders and the PAC reasonably determines that the Sub-recipient, or any Subcontractor, is progressing unsatisfactorily, including, but not limited to, failing to comply with this PFA, the Foundation may so Notify the Sub-recipient in writing at any time of the problems/breach and may allow Sub-recipient a chance to cure the problems

identified. If the Sub-recipient fails to eliminate problems detailed by the Foundation, or fails to cure a breach of this PFA when and if the Foundation provides a cure period, within thirty (30) days of the Foundation's Notice, this PFA shall terminate. The termination date shall be the date on which the thirtieth (30th) day falls.

2. Foundation may terminate this PFA without thirty (30) days Notice if the Foundation after consultation with the Co-funders and the PAC reasonably believes the Project is no longer technically feasible or if Sub-recipient failed to comply with the terms and conditions of this PFA. The termination date shall be the date on which the Notice is received. Such termination shall not be considered a breach of this PFA and shall not require a cure period.
3. Co-funders may terminate this PFA on ninety (90) days Notice if Sub-recipient or the Foundation materially breaches this PFA. In such event, an accounting of expended funds shall be submitted by the Sub-recipient promptly after receiving Notice and all unspent non-cancellable funds shall be submitted to the Foundation. -shall distribute all remaining non-cancellable and unspent funds among the Foundation and Co-funders in proportion to their original funding levels. In the event the Foundation and Co-funders disagree as to whether a Sub-recipient or Subcontractor's actions or omissions are unsatisfactory or a breach of this PFA, the Foundation shall make the final determination. Such determination shall not be considered a breach of this PFA.
4. Upon receipt of the written Notice of termination by Foundation without a right to cure, the Sub-recipient shall cease all work associated with the PFA. If the Foundation issues a Notice of termination with a right to cure, the Sub-recipient shall continue all work, first applying itself to curing the deficiencies noted.
5. The Sub-recipient may terminate this PFA upon thirty (30) days Notice to the Foundation if circumstances beyond its control completely preclude continuation of the research. Notification of termination of research by the Sub-recipient shall be in writing. Sufficient effort will be made by the Sub-recipient to consult with the Foundation's PAC to explore options for continuation of the Project that are acceptable to both parties. An accounting of expended funds shall be submitted by the Sub-recipient and all remaining unspent funds, at the time of Notice, will be returned to the Foundation. The Foundation will return to the Co-funders unspent funds on a pro rata basis in accordance to their contributions.
6. Any change in U.S. Federal statutes, rules or regulations or Sub-recipient's local statutes, rules or regulations which materially alter Sub-recipient's required activity, or any change in the availability of funds shall be viewed as binding and shall warrant good faith renegotiation of the provisions of the PFA that are affected. This change in circumstance includes suspension or termination of this PFA, or a reduction in granted funds. Such alterations or termination shall not be considered a breach of this PFA and shall not require a thirty (30) day advance Notice or cure period.
7. If termination occurs, under this Section XIV, the Sub-recipient shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date, provided funds are available (i.e., a reduction in granted funds per Paragraph XIV.6 above).

8. UPON TERMINATION FOR ANY REASON, THE SUB-RECIPIENT AND CO-FUNDERS SHALL HAVE NO RIGHT TO RECOVER FROM THE FOUNDATION ANY GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF ANY DESCRIPTION OR AMOUNT, INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS PFA.

**F. Required Approvals:** The individuals executing this PFA on behalf of their respective parties hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this PFA on behalf of the entity for which they sign below.

**G. Modifications:** This PFA may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed by all parties.

1. Examples of items requiring Foundation's prior written approval include, but are not limited to, the following:

- Deviations from the Project plan.
- Change in scope or objective of the Project.
- Change in a key person specified in the application.
- The absence for more than three months or a 25% reduction in time by the principal investigator.
- Need for additional funding.
- Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
- Any changes in budget line item(s) as described in Exhibit A of greater than ten percent (10%) of the total.

2. No changes are to be implemented by the Sub-recipient until a written Notice of approval is received from Foundation.

**H. Transferability or Assignment of PFA:** This PFA shall not be assignable by the Sub-recipient without the prior written authorization of Foundation.

**I. Sub-Contracting:** The Sub-recipient shall not enter into a subcontract for any of the work performed under this PFA without obtaining the prior written approval of Foundation.

1. Sub-recipient shall require any and all Subcontractors to comply with all applicable and material terms of this PFA prior to working on the Project in any manner. All obligations of the Sub-recipient apply equally to the Subcontractor(s).
2. Payment for services of any and all Subcontractors shall be the Sub-recipient's sole obligation and responsibility. The Sub-recipient hereby indemnifies and holds the Foundation and Co-funders harmless for any liability concerning such payment. In the event Sub-recipient or any Subcontractors are public or quasi-public entities not empowered to indemnify others, Sub-recipient agrees to ensure that the Foundation and Co-funders are not responsible or liable for any

such payments or any Subcontractor actions or omissions through appropriate language included in any and all agreements between Sub-recipient and Subcontractors.

**J. Completeness:**

1. This PFA is complete and contains the entire understanding between the parties relating to this PFA.
2. This PFA supersedes all prior understandings, representations, negotiations, and PFAs between the parties whether written or oral.

**K. Severability:** The provisions of this PFA shall be deemed severable, and the invalidity, illegality or unenforceability of any provision of this PFA shall not affect the validity or enforceability of any other provisions. In the event any provision of this PFA is found to be invalid, illegal, or unenforceable, the parties shall endeavor to modify that clause in a manner which gives effect to the intent of the parties in entering into this PFA.

**L. Foundation Right of Approval:** The Foundation and Co-funders shall have the right, in their sole discretion, to refuse to permit any employee of the Sub-recipient, or employee of an approved agent, assignee, or subcontractor of the Sub-recipient, to be located at a Foundation or Co-funders work location, or to provide services to the Foundation, Co-funders or their clientele pursuant to this PFA. Such right of refusal shall not be considered a breach of this PFA.

**M. Exhibits:** All Exhibits attached to or made part of this PFA are incorporated and agreed upon by the parties. In the event a conflict occurs between the terms of an Exhibit and this PFA, the terms of this PFA shall control.

**N. Federal Compliance:** The Sub-recipient shall comply with all applicable Federal, State and local statutes, laws, rules, and regulations in the performance of this PFA, whether included specifically in this PFA or not.

**O. Foundation and Co-funders Liability:** The Foundation and Co-funders shall not have any liability except as specifically provided in this PFA. In no event shall any judgment against the Foundation exceed the amount of funds provided by the Foundation; nor any of the amounts of funds provided by Co-funders to Sub-recipient under this PFA (excluding in-kind grants).

**P. Notices:** Any notice, request, demand, or communication required under this PFA (“Notice”) shall be in writing and shall be deemed sufficiently given upon delivery, if delivered by hand (signed receipt obtained), or three (3) days after posting if properly addressed and sent certified mail return receipt requested. These Notices shall become effective on the date of receipt or the date specified within the Notice, whichever comes later.

**Q. Captions for Convenience:** All captions, fonts, underlining, or footers used in this PFA are for convenience only and shall have no meaning in the interpretation or effect of this PFA.

**R. Construction:** This PFA, and any and all amendments to it, shall not be construed against the drafter.

- S. Force Majeure: None of the parties hereto will be liable for damages for any delay or default in performance during the term hereof if such delay or default is caused by conditions beyond its control, including, but not limited to, acts of God, Government restrictions, continuing domestic or international problems such as wars, threats of terrorism, or insurrections, strikes, fires, floods, work stoppages and embargoes; provided, however, that any party will have the right to terminate this PFA “without breach” upon thirty (30) days prior written Notice if another party's delay or default due to any of the above-mentioned causes continues for a period of two (2) months.
- T. Security Interest: No party will grant any security interest in, or allow any lien or encumbrance of any nature upon, any Intellectual property in which another party has an interest (i.e., the Foundation Intellectual Property or Jointly Owned Intellectual Property). Breach of this Paragraph may, at the Foundation’s or Co-funders’ option, require the repayment of all grant monies provided by the funding party to Sub-recipient under this PFA. The terms of this Paragraph will survive the termination of this PFA.
- U. Waiver: Waiver of any provision of this PFA must be in writing to be effective. Waiver by the Foundation or Co-funders of any breach of any provision of this PFA on any occasion shall not constitute or operate as a waiver of breach of such provision on any other occasion nor a waiver of any breach of other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision hereof by the Foundation or Co-funders.
- V. Applicable Law/Venue: This PFA is written and shall be construed in accordance with and governed by the laws of Colorado unless U.S. Federal law applies. However, if legal action is taken against Sub-recipient and U.S. Federal or state laws which exist that govern Sub-recipient (as a quasi public or public entity) exclusively, this PFA shall be construed and interpreted in accordance with such laws. Any action against the Foundation must be brought in a Colorado State Court or U.S. Federal District Court located in Denver, Colorado in the event the mediation/arbitration provisions of this Agreement are modified. The terms of this Paragraph will survive the termination of this PFA.
- W. Signatures. This PFA may be executed on separate originals or copies and shall be valid as if all parties had executed the same document. Facsimile or electronic signatures shall be valid as written signatures. Foundation will maintain all signed documents for three (3) years after the termination of this PFA and will provide signature pages to all parties upon full execution.

## **XV. INDEPENDENT SUB-RECIPIENT**

### **A. Relationship:**

1. The relationship of all the parties to each other will be that of Independent Contractors and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this PFA. Nothing in this PFA shall be construed as creating an agency, partnership, joint venture, or franchise relationship between any the parties. No party shall have any right or authority to assume or create any obligation, commitment or responsibility for or on behalf of the others except as the other may expressly authorize in writing. No party shall be eligible to participate in another’s benefit program.

2. Sub-recipient shall be solely responsible for selecting, supervising, and compensating individuals employed pursuant to the terms of this PFA.
3. Sub-recipient shall be exclusively responsible for the payment to its employees and Subcontractors of all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, compliance with the wage and hour law, and all other employment laws.

IN WITNESS WHEREOF, the parties have caused this PFA to be signed and dated as shown below.

**Water Research Foundation**

**[Sub-recipient Organization]**

\_\_\_\_\_  
By: Robert C. Renner, P.E., D.E.E.  
Title: Executive Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Water Research Foundation**

**[Sub-recipient Organization]**

\_\_\_\_\_  
By:  
Title: Project Manager

\_\_\_\_\_  
By:  
Title: Principal Investigator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Above signed has read and understands the terms, conditions, and deliverables of this PFA.

Above signed has read and understands the terms, conditions, and deliverables of this PFA.

**Signature Page Instructions**

1. Review document and have a duly authorized representative sign this page.
2. Only this signature page is required to be returned back to the Foundation.
3. Please return the executed signature page using **one** of the choices below:
  - a. **Email** a scanned PDF to [pfalor@waterresearchfoundation.org](mailto:pfalor@waterresearchfoundation.org) or,
  - b. **Fax** a copy back to Peggy Falor at (303) 730-0851 or,
  - c. **Mail** a copy back to Peggy Falor at Water Research Foundation, 6666 W. Quincy Ave., Denver, CO 80235, phone: (303) 734-3424
4. Do not return the entire agreement, only this signature page.
5. Please return no later than three (3) weeks from receipt.
6. The Foundation will email a PDF of this fully executed agreement to you for your files.

**Title:**

**CO-FUNDERS**

**[Sub-recipient Organization]**

**[Sub-recipient Organization]**

\_\_\_\_\_  
By:  
Title: (Authorized Representative)

\_\_\_\_\_  
By:  
Title: (Project Contact)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Above signed has read and understands the terms, conditions, and deliverables of this PFA.

Above signed has read and understands the terms, conditions, and deliverables of this PFA.

**Signature Page Instructions**

1. Review document and have a duly authorized representative sign this page.
2. Only this signature page is required to be returned back to the Foundation.
3. Please return the executed signature page using **one** of the choices below:
  - a. **Email** a scanned PDF to [pfalor@waterresearchfoundation.org](mailto:pfalor@waterresearchfoundation.org) or,
  - b. **Fax** a copy back to Peggy Falor at (303) 730-0851 or,
  - c. **Mail** a copy back to Peggy Falor at Water Research Foundation, 6666 W. Quincy Ave., Denver, CO 80235, phone: (303) 734-3424
4. Do not return the entire agreement, only this signature page.
5. Please return no later than three (3) weeks from receipt.
6. The Foundation will email a PDF of this fully executed agreement to you for your files.

**Exhibit A**  
**Project 0**

**NOTE**– EXHIBIT A WILL CONSIST OF THE PROJECT PROPOSAL IN THE FINAL DOCUMENT, IT IS NOT INCLUDED IN THE DRAFT DOCUMENT]

**Title:**

Project proposal, & all subsequent correspondence.

**NOTE**– EXHIBIT B SHOWN IS THE STANDARD DRAFT SCHEDULE, ACTUAL SCHEDULE WILL BE MUTUALLY DECIDED UPON BETWEEN THE PM AND PI AT FINAL AGREEMENT STAGE.

**Title:**

| <b><u>TASK</u></b>  | <b><u>DUE DATE</u></b>       |
|---|------------------------------|
| Begin Project   | Start date                   |
| Scope of Work   | 30 days after start date     |
| Participant presents Proof of Insurance(s) or Certificate of Self Insurance & Worker’s Compensation Insurance | 30 days after start date     |
| Periodic 1 Report & Invoice   | 3 months after start date    |
| Periodic 2 Report (incl.Technical Summary & Web Update) & Invoice   | 6 months after start date    |
| Periodic 3 Report & Invoice   | 9 months after start date    |
| Periodic 4 Report (incl.Technical Summary & Web Update) & Invoice   | 12 months after start date   |
| Periodic 5 Report & Invoice   | 15 months after start date   |
| Periodic 6 Report (incl.Technical Summary & Web Update) & Invoice   | 18 months after start date   |
| Periodic 7 Report & Invoice   | 21 months after start date   |
| Periodic 8 Report (incl.Technical Summary & Web Update) & Invoice   | 24 months after start date   |
| Draft Report & Invoice  | 27 months after start date   |
| Final Report & Final Compensation   | 5 months after draft report  |
| Letters of Confirmation for participating utilities   | 5 months after draft report  |
| Complete & Submit Exhibit E – Assignment of Copyright   | 5 months after draft report  |
| Project End & Foundation Publication Date   | 12 months after draft report |

**Note:** Final payment will be disbursed subsequent to PI’s response to editor queries on the final report, as defined in the Foundation’s “Guidelines for \_\_\_ Proposal,” and submission of a final invoice detailing final Project costs including cost share and in-kind contributions. Please submit one electronic copy of each Periodic Report, Draft & Final Report in MSWord format. Note # of copies shown for each report. For each report an invoice must be submitted for payment using Exhibit D – printed on your company letterhead.

**BUDGET SUMMARY**

**Exhibit C**  
**0\_\_**



Contractor: [Sub-recipient]

| <b>ORGANIZATION</b>              | <b>Award Amount</b> | <b>Cost Share</b> | <b>In-Kind Amount</b> |
|----------------------------------|---------------------|-------------------|-----------------------|
| <b>Co-funders</b>                |                     |                   |                       |
|                                  | \$0.00              | \$0.00            | \$0.00                |
| <b>Participants</b>              |                     |                   |                       |
|                                  | \$0.00              | \$0.00            | \$0.00                |
| <b>Sub-recipient</b>             |                     |                   |                       |
|                                  | \$0.00              | \$0.00            | \$0.00                |
| <b>Water Research Foundation</b> | \$0.00              | \$0.00            | \$0.00                |
| <b>TOTALS</b>                    | <b>\$0.00</b>       | <b>\$0.00</b>     | <b>\$0.00</b>         |
| <b>Total Project Budget \$</b>   |                     |                   |                       |

**Award Amount: \$**\_\_

**Amount due upon acceptance of draft report: \$**\_\_

**Amount due upon acceptance of final report and final invoice: \$**\_\_

**Project Advance: \$**\_\_

**Title:**

**Exhibit D – Invoice Form**

For access to the Water Research Foundation website please see:

<http://www.WaterRF.org>

To download Exhibit D – Invoice Form please see the Foundation’s website:

<http://www.WaterRF.org/Research/Administration/contractmaterials/>

The invoice form was created under MS Excel and is a protected worksheet. Please fill in the yellow highlighted areas.

