

Rapid Response Research Program
Prequalification Terms and Conditions
Between
Water Research Foundation
And
<<Contractor>>

This Prequalification Terms and Conditions (hereafter “PTC”) is between the Water Research Foundation, (hereafter “WaterRF”), a Delaware non-profit corporation whose principal place of business is located at 6666 W. Quincy Ave., Denver, Colorado 80235, and <<Contractor>> (hereafter “Sub-recipient”), whose principal place of business is located at <<contractor address>>. The PTC is for purposes of eligibility to conduct contracted research under the Foundation’s Rapid Response Research (RRR) Program.

Upon execution of this PTC, WaterRF has prequalified said Sub-recipient to receive a WaterRF research and development grant as more specifically detailed in this PTC.

The parties mutually agree as follows:

I. DEFINITIONS

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

- A. “WaterRF” is a non-profit corporation organized to sponsor practical applied research on behalf of the drinking water industry through planning, managing, and 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), affiliates, agents, and related entities of WaterRF.
- B. “Cure Period” is a complete or permanent solution or remedy that is completed in a cycle, a series of events, or a single action.
- C. “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.
- D. “Educational Purpose” is defined as any non-commercial and non-profit use of Intellectual Property including, but not limited to, a WaterRF owned publication or report, as defined by Section I. E. as a research tool and/or reference, or to inform the drinking water community, water utility personnel, or the general public of the outcome of this Project.
- E. “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.

- F. “Participant” An individual or organization that provides third-party contributions or other material support to the Foundation research project but does not enter into a contractual relationship with the Foundation, the Sub-recipient, or a subcontractor.
- G. “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 PTC are met and to whom Notices (See X.II.E), of insufficiencies shall be given by WaterRF.
- H. “Project” is defined as the work to be completed by the Sub-recipient and any Subcontractors pursuant to this PTC and as described more specifically in the Project Proposal and PFA.
- I. “Project Advisory Committee” or “PAC” is defined as a group of independent volunteers who are gathered by WaterRF to provide an independent technical review, assistance, and/or expertise to WaterRF regarding the Project.
- J. “Project Funding Agreement” or “PFA” is defined as the Project-specific agreement between WaterRF and the Sub-recipient to complete the Project. The PFA will fully incorporate the terms and conditions of this PTC.
- K. “Project Manager” is defined as WaterRF’s employee(s), as specifically designated herein, with responsibility for reviewing all actions taken by the Sub-recipient and as having authority to communicate all WaterRF decisions concerning the process, procedure, scheduling requirements, funding requirements, and outcome of the Sub-recipient’s Project.
- L. “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 the PFA.
- M. “Sub-recipient” is defined as the named individual(s) and/or entity(ies) described in the introductory paragraph of the PFA or the party(ies) entering into this PTC and the associated PFA with WaterRF. The singular form of Sub-recipient shall include all individuals and entities detailed in the PFA. The Sub-recipient shall include all officers, directors, employees, affiliates, and agents of the Sub-recipient.
- N. “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. RAPID RESPONSE RESEARCH PROGRAM

- A. Rapid Response Research Program: Only prequalified contractors are eligible for project awards under the RRR Program. Sub-recipient has applied for RRR Program prequalification and is eligible to receive awards under the RRR Program upon execution of this PTC. The mission of the RRR Program is to respond rapidly to urgent or immediate research needs of the drinking water community. The primary objectives of the program are to identify time-sensitive issues, fund research to determine the potential

magnitude of the issues and assess the need for further research, and deliver results to utilities in an expeditious manner for the drinking water community.

III. PFA PERIOD

- A. Period: This Prequalification Terms and Conditions (PTC) shall be effective for three (3) years, the period commencing on ___ and ending on ___. Sub-recipient should verify that their organization's PTC on file is still current prior to submission of a RRR proposal.

IV. FUNDING

- A. Source of Funds: All funds provided come from WaterRF solely or WaterRF in conjunction with other private sources.
- B. Condition for Receipt of WaterRF Funds: Funds provided by WaterRF to the Sub-recipient under any future PFA may not be used by the Sub-recipient as a match or cost-sharing provision to secure Federal monies without prior written approval by WaterRF.

V. STATUTES AND REGULATIONS

- A. Sub-recipient is solely responsible for obtaining, reviewing and understanding all Federal, State, and local ordinances, rules, regulations and statutes applicable to this PTC and the Project, which ordinances, rules, regulations and statutes are hereby included by this reference in this PTC.

VI. PAYMENT TERMS AND CONDITIONS

- A. Payments: An invoice detailing expenses incurred during the reporting period must be submitted monthly in accordance with the Project contract deliverables.
- B. Deductions & Withholdings:
 1. WaterRF may deduct amounts or withhold payments invoiced by the Sub-recipient if the Sub-recipient fails to comply with any requirements of this PTC.
 2. Funds withheld due to unsatisfactory performance or failure to comply with the terms and conditions of this PTC may be restored upon satisfactory correction or completion of the condition which caused the withholding.

VII. STANDARDS FOR FINANCIAL MANAGEMENT

- A. Financial Management System:
 1. The Sub-recipient will maintain an accounting system and a set of accounting records that conform to, or exceed industry standards for accounting and, at a minimum, allow for the identification of individual Projects by source of revenue and expenditures related to this PTC.

2. All costs will be supported by source documentation. Unless specifically requested, source documentation is not required to accompany each invoice but must be made available for review and auditing, in accordance with Section IX.
3. The Sub-recipient's accounting records will be the basis for generating financial reports which must reflect accurate and complete data. In addition, financial records must be properly closed out at the end of the Project period as set forth in the PFA and all reports submitted in a timely manner.

B. Cost Principles: Even though no U.S. Federal funds are expected to be provided for RRR Program awards, 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 PTC. 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 organization 48 CFR Part. 31.2.

C. Indirect Costs and Allocation of Costs:

1. If the Sub-recipient charges indirect (overhead) costs to the Project, an "Indirect Cost Proposal" must be prepared in accordance with the applicable cost principles referenced in Section VI.B.
2. For payment of indirect costs by WaterRF, 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 VI.B above and which statement provides the basis of the calculated rate.

VII. PROCUREMENT STANDARDS

A. Procurement Standards:

1. As with Cost Principles (VI.B. above), WaterRF adopts the U.S. Federal standards for procurement as are outlined in the 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 PTC (See VI.A. above).
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 PTC.
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, or agents in contracting with or expending WaterRF 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.

VIII. AUDITS AND MONITORING

A. Audit Procedures: The expenditure of funds under this PTC and the associated PFA may be subject to quarterly or annual audits conducted by WaterRF, or its authorized representatives. The Sub-recipient shall provide to WaterRF and its authorized representatives all technical staff, assistance, and information needed to enable WaterRF to perform its auditing function. This assistance from the Sub-recipient includes, but is not limited to, information about the Sub-recipient's Project in-kind and money grants, expenditures, operation, accounting, and data-base systems.

B. Monitoring: The Sub-recipient may receive an on-site review from WaterRF, or its authorized representatives. Monitoring staff may review Project and/or financial activity relating to the terms of this PTC. Upon request, WaterRF or its authorized representatives shall be given full and complete access to all information related to the performance of the Project to ensure compliance with Project activities and consistently applied costs. The Sub-recipient shall provide to WaterRF and its authorized representatives all technical staff, assistance, and information needed to enable WaterRF to perform its monitoring function. This assistance from the Sub-recipient includes, but is not limited to, information about the Sub-recipient's Project operation, accounting, and data-base systems.

C. Program and Financial Deficiencies:

1. Through audits, reviews, monitoring, or other means, WaterRF may find the Sub-recipient to have program or financial deficiencies in the performance of the Project. 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, WaterRF 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 WaterRF or its authorized representatives. Any

corrective action must be satisfactorily completed within a thirty (30) day “cure period” set forth in the PFA.

2. WaterRF, in its sole discretion, may require Sub-recipient to submit 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 WaterRF in its sole discretion, WaterRF may, at its option, exercise its rights to terminate this PTC and any associated PFA. WaterRF may exercise any of the other rights and remedies available to it at law or in equity.

IX. RECORDS

A. Required Deliverables: Required Project deliverables will be described in the request for proposals for the particular Project and will be set forth in the PFA.

B. Record Retention:

1. Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this PTC and the associated PFA for a period of three years from the date of payment of final invoice.
2. If any litigation, claim, or audit is started before the expiration of the three 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. WaterRF or its authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of the Sub-recipient, in order to perform audits, monitoring reviews or other types of site visits.
2. This right also includes timely and reasonable access to the Sub-recipient's past and present personnel for the purpose of interviewing and disclosing matters related to such documents.
3. The rights of access are not limited to the required retention period, but shall last as long as records are retained.
4. Sub-recipient waives any confidentiality, privacy privilege, or proprietary defenses regarding audits or monitoring.

X. INTELLECTUAL PROPERTY AND PUBLICATION

A. Proprietary Rights to Intellectual Property: WaterRF's primary purpose in funding the Sub-recipient is to further scientific and technological knowledge in the area of research covered by the Project. As such, certain written works created during the course of the Project are to be owned by WaterRF while patentable inventions are to be owned by the Sub-recipient and other created intellectual property are to be owned by the parties jointly as more specifically delineated below.

- B. WaterRF Intellectual Property: The Parties intend that WaterRF shall own all U.S. and world-wide copyright in the Project. All drafts of these works and reports, and all non-patentable computer software developed as a deliverable for a Project. Such property will be assigned to WaterRF (hereafter “WaterRF Intellectual Property”) under the PFA.
- C. Sub-recipient’s Intellectual Property: All patentable inventions and improvements shall be considered Sub-recipient’s Intellectual Property, including, but not limited to, the right to file for patent registration.
- D. Jointly Owned Intellectual Property: For the purpose of allowing both WaterRF and the Sub-recipient to make full use of all Intellectual Property developed during the course of the Project which 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, the Project which is not defined above as WaterRF Intellectual Property or Sub-recipient’s Intellectual Property; (b) all scientific information and data reported in WaterRF Intellectual Property 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.

XII. STANDARD TERMS AND CONDITIONS

- A. Indemnification: The responsibilities detailed by this PTC in order to protect the parties' Intellectual Property rights shall continue throughout this PTC and shall survive the termination of this PTC. Further, in addition to the responsibilities detailed elsewhere in this PTC and the associated PFA, each of the parties shall have the responsibilities detailed below:
 - 1. Responsibilities of WaterRF. If the Sub-recipient experiences any problems relating to the completion of the Project from third parties, including, but not limited to, liabilities, obligations, damages, losses, costs, claims, lawsuits, causes of action, or demands, WaterRF’s sole obligation will be to provide evidence of the PFA and the grant provided. WaterRF will be responsible only for proven direct damages caused directly by its then current insured actions or omissions in breach of the PFA and not special, consequential, or other damages, or any attorneys’ fees or costs, whether known or not.
 - 2. Responsibilities of the Sub-recipient. At all times, all obligations performed by the Sub-recipient or by any Subcontractors pursuant to the 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 WaterRF and its 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 of 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 the 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.

3. **Responsibilities of Public Entities.** In the event the Sub-recipient is a public entity or quasi-public entity which, by state statute, is not permitted to indemnify other, Sub-recipient agrees to be responsible, to the fullest extent available under the law, for its actions or omissions. Further, Sub-recipient agrees to ensure that all individuals or entities involved in the completion of the PFA may indemnify others are required to so indemnify WaterRF and its publisher, if any, through a written agreement acceptable to WaterRF.
 4. **Insurance.** The Sub-recipient shall maintain a financially sound program of self-insurance or purchased commercial liability insurance covering unfair competition claims and all reckless, intentional, and negligent actions or omissions of any and all of Sub-recipient's officers, directors, employees, agents, independent contractors and/or Subcontractors in the amount of one million dollars (\$1,000,000.00). WaterRF shall be listed on any such insurance as a third party insured. Proof of such insurance shall be presented to WaterRF pursuant to the schedule detailed in the PFA and clearly specify the Project by number and title.
 5. **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 WaterRF pursuant to the schedule detailed in the PFA.
- B. Required Approvals:** The individuals executing this PTC 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 PTC on behalf of the entity for which they sign below.
- C. WaterRF Right of Approval:** WaterRF shall have the right, in its 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 WaterRF work location, or to provide services to WaterRF or its clientele pursuant to the PFA. Such right refusal shall not be considered a breach of the PFA.
- D. Federal Compliance:** The Sub-recipient shall comply with all applicable Federal, State and local statutes, laws, rules, and regulations in the performance of the Project, whether included specifically in this PTC and the associated PFA or not.
- E. Notices:** Any notice, request, demand, or communication required under this PTC ("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.

- F. Captions for Convenience:** All captions used in this PTC are for convenience only and shall have no meaning in the interpretation or effect of this PTC.
- G. Security Interest:** The Sub-recipient will not grant any security interest in, or allow any lien or encumbrance of any nature upon, any WaterRF Intellectual Property or Jointly Owned Intellectual Property. The terms of this paragraph will survive the termination of this PTC.
- H. Waiver:** Waiver of any provision of this PTC must be in writing to be effective. Waiver by WaterRF of any breach by the Sub-recipient of any provision of this PTC 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 WaterRF.
- I. Applicable Law/Venue:** This PTC 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 federal or state laws exist which govern Sub-recipient exclusively; this PTC shall be construed and interpreted in accordance with such laws. Any action against WaterRF must be brought in a Colorado State Court or U.S. Federal District Court located in Denver, Colorado. The terms of this paragraph will survive the termination of this PTC.

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

Water Research Foundation

«ContractorName»

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

By: _____
Title: _____

Date:_____

Date:_____

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 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.