

Project Funding Agreement 0\_\_\_\_

“\_\_\_\_”

Between

Water Research Foundation

and

\_\_\_\_\_

This 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, and \_\_\_\_ (hereafter “Sub-recipient”) located at \_\_\_\_.

This PFA is for the provision of research and development as further described in Exhibit A.

The Foundation has selected the Sub-recipient to implement activities as described herein to accomplish a public purpose of support authorized by U.S. federal statutes and regulations. 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-Principal Investigator” is/are defined as the employee(s) of his/her/their respective entities, as specifically designated herein in Section III.C. with primary responsibility for ensuring that all technical and programmatic terms and conditions of this PFA are met along with the Principal Investigator (Section III.B.).
- B.** “Cost Share” is the allocation of goods and/or services to the Project provided by an organization (the Sub-recipient) as dictated by the cost principles detailed in this PFA.
- 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.** “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.
- E.** “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 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.
- F.** “Foundation” is a non-profit corporation 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, affiliates, agents, and related entities of the Foundation.

- G.** “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, circuits and Subject Data, whether or not protectable through patent, copyright, trademark, or mask work and whether produced in any medium now known or hereafter produced or developed.
- H.** “Participant” An individual or organization that provides third-party contributions or other material support to the Foundation research project but does not into a contractual relationship with the Foundation, the sub-recipient or a subcontractor.
- I.** “Principal Investigator” is defined as the Sub-recipient’s employee, as specifically designated herein (Section III.B.), with primary responsibility for ensuring that all technical and programmatic terms and conditions of this PFA are met along with the Co-Principal Investigator, if any, and to whom the Foundation shall give all related Notices (*See XIV.Q.*), including, but not limited to, Notice of insufficiencies.
- J.** “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 Project described within this PFA.
- K.** “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.
- L.** “Project Advisory Committee” or “PAC” is defined as a group of independent volunteers who are not controlled by the Foundation, but who are gathered by the Foundation to provide technical review, assistance, and/or expertise to the parties regarding the Project.
- M.** “Project Managers” are defined as the Foundation’s employee(s), as specifically designated herein, with joint responsibility for all contact with the Sub-recipient and as having authority to communicate all of the Foundation’s decisions concerning the Sub-recipient’s Project.
- N.** “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.
- O.** “Sponsor”, if any is listed in Section III. below, is a qualified sponsoring utility that shows financial and conceptual support to the research for a Project.
- P.** “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 Foundation with primary responsibility for ensuring all terms and conditions of this PFA are met. 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.
- Q.** “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.
- R.** “Subject Data” shall mean all non-patented original and raw research data, notes, computer programs, writings, sound recordings, pictorial reproductions, drawings or other graphical

representations and works of any similar nature originated by the Sub-recipient in performance of this PFA, but specifically excluding Foundation Intellectual Property or Sub-recipient Intellectual Property as defined in Article XII. of this PFA. Subject Data also excludes financial reports, costs analysis, and similar information incidental to contract administration.

S. Additional definitions detailed by 37 CFR 401 et seq. are included in this PFA by reference.

## II. RESEARCH TO BE CONDUCTED

- A. Sub-recipient: Subject to the terms of this PFA, the Sub-recipient agrees to complete the Project 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: Subject to the terms of this PFA, the Foundation will disburse funds as detailed by Exhibits C and D to this PFA for activities detailed by the Project Proposal. The Foundation hereby represents that this PFA is fully funded as of the date of its execution; however, the parties understand that U.S. Federal funding can be withdrawn by the funding agency, the Environmental Protection Agency (EPA), at any time (See XIV.E below).

## III. KEY CONTACTS/MANAGEMENT DECISIONS/TECHNICAL ASSISTANCE

### A. Foundation Key Contacts:

#### **Project Manager**

- \_\_\_\_, Project Manager, Water Research Foundation, 6666 W. Quincy Ave., Denver, CO 80235, Phone: 303- \_\_\_\_, Email: \_\_\_\_@waterresearchfoundation.org.

#### **Contract Administration**

- 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(s)

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#### Accounting Contact

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#### • Co-Principal Investigator Key Contacts:

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 Section XIV.G.

- C. Management Decisions. The Foundation will make all 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 XIV.A*).
- D. Technical Review. The PAC shall be composed of technical experts in the field of water research or related fields, the number of which will be determined by the Foundation

#### IV. PFA PERIOD

- A. Period: This PFA shall be effective for the period commencing on <date> ending on <date>. The Foundation shall not have any obligation for payments to the Sub-recipient for research or deliverables rendered by the Sub-recipient that are not performed within this specified period. The Sub-recipient may incur pre-award costs ninety (90) calendar days prior to the award date when such costs are related to preparation of the Quality Assurance Project Plan as identified in Section XIV.B. and have been pre-approved by the Project Manager.
- B. Time of Performance: Sub-recipient shall use commercially reasonable efforts to 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:

1. This Project is being funded partially or in full by funds through (\_\_\_\_) No. \_\_\_\_, the full and complete terms and provisions of which are hereby incorporated into this PFA by this reference. This document can be found on the web at \_\_\_\_\_.
2. Federal funds for this Project are identified by the Catalog of Federal Domestic Assistance (CFDA) number 66.\_\_\_\_ Environmental Protection Consolidated Research. This federal funding expires as of \_\_\_\_\_.

B. Condition for Receipt of Foundation 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 the Foundation.

C. Maximum Amount Available: This is a cost reimbursable contract. The Foundation agrees to pay the Sub-recipient a sum not to exceed \_\_\_\_ US dollars (\$\_\_\_\_) for the term of this PFA if not terminated early (*See XIV.E*). The Sub-recipient agrees to provide a Cost-Share amount of \_\_\_\_ US dollars (\$\_\_\_\_), and \_\_\_\_ US dollars (\$\_\_\_\_) in in-kind for a total Project budget of \_\_\_\_ US dollars (\$\_\_\_\_).

D. Subject to Funds Availability: This PFA is fully funded as of the date of execution by Foundation. If the funds become otherwise unavailable or reduced thereafter, the Foundation reserves the right to reduce or terminate this PFA upon written Notice to the Sub-recipient without such action being considered a breach of this PFA (*See XIV.E*). The Foundation will provide the Sub-recipient with Notice of any change in funding as

practicable, but in no event longer than thirty-six (36) business hours after being informed of a change in funding.

## VI. AUTHORIZING STATUTES AND REGULATIONS

**A. Sub-recipient Uniform Administrative Requirements:** For each type of Sub-recipient organization, there is a set of U.S. Federal uniform administrative requirements (“Uniform Administrative Requirements”) that are hereby made part of this PFA by reference. The Sub-recipient agrees to comply with the applicable Uniform Administrative Requirements that are applicable to Sub-recipient’s type of organization, including, but not limited to, requirements for the use and tracking of Program Income generated from funds received. The following list are examples, but are not meant to be exclusive, of applicable Uniform Administrative Requirements:

- For a State, local or Indian tribal government, the applicable Uniform Administrative Requirement is OMB Circular A-102 (including the “Common Rule”).
- For a Non-Profit Organization, Institution of Higher Education, Hospital, or For Profit (Commercial) organization, the applicable Uniform Administrative Requirement is 2 CFR 215.
- The Sub-recipient is solely responsible for obtaining, reviewing and understanding all federal rules, regulations and statutes applicable to federal funding and this Project, which federal rules, regulations and statutes are hereby included by this reference in this PFA. (See <http://www.gpoaccess.gov/cfr/index.html>).
- In accordance with the US Federal funding for this Project, the Sub-recipient must report any and all survey costs related to this Project with each reimbursement request submitted to the Foundation (See Exhibit D). In order to comply with the “Paperwork Reduction Act of 1995”, all survey costs will be disbursed from Foundation funds. ([See http://www.whitehouse.gov/omb/inforeg/print/prarep2.html](http://www.whitehouse.gov/omb/inforeg/print/prarep2.html)).

**B. Statutes and Program Regulations:** For each U.S. Federal grant program there are applicable Federal statutes and/or codified Federal program regulations and applicable administrative and policy rules that Foundation is authorized and obligated to implement as the Pass-Through-Entity (PTE) for which Sub-recipient is also solely responsible and which are hereby included by this reference in this PFA whether or not specifically referenced herein. This information is to be used by the Sub-recipient to determine the manner in which the work is performed under 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. 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 of the Periodic Report to the Foundation 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.

Such acceptance will not be unreasonably withheld. The periodic report content and format document has been posted as guidance for the Principal Investigator(s) on the "Project Guidelines" web page:

<http://www.waterrf.org/Research/Administration/ProjectReportGuidelines/Guidelines/SupportingResourceGuidelines.pdf>

1. 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. All invoices should be sent to the Project Manager named in Article III.A. Sub-recipient shall be paid as follows:  
The initial ten percent (10%) advance payment, to be paid to Sub-recipient as detailed in Section VII.A, is to be reflected on all invoices as an advance into each reporting period including the final invoice.
2. Ten percent (10%) of the total funding will be withheld and not disbursed to the Sub-recipient until receipt of an acceptable draft report as defined on the Foundation’s website “Proposal Guidelines.” Another ten percent (10%) will be withheld until (a) Sub-recipient responds to subsequent editor queries on the final report as defined on the Foundation’s website “Proposal Guidelines,” and (b) Sub-recipient submits a final invoice detailing final Project costs including Cost Share and in-kind contributions. All payments are based on incurred costs and non-cancellable, completed commitments.
3. The payment of an invoice by the Foundation shall not prejudice the 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 the budget in Exhibit A and all applicable Federal Uniform Administrative Requirements (based upon Sub-recipient’s cognitive agency) applicable to this PFA.

E. Deductions & Withholdings:

1. The Foundation may deduct amounts or withhold payments invoiced by the Sub-recipient if the Sub-recipient fails to comply with any of the Foundation’s standards and the Federal Uniform Administrative Requirements (based upon Sub-recipient’s cognitive agency) applicable to this PFA.
2. Funds withheld due to unsatisfactory compliance with any of the Foundation’s standards and/or Federal Uniform Administrative Requirements (based upon 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 will be made available to the Foundation at the Foundation's 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 pursuant to the deliverable schedule (*See* Exhibit B).

### B. Cost Principles: For each type of Sub-recipient organization, there is a set of U.S. 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. 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) 48 CFR Part 31.2 and selected Non-profit Organizations.

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

1. If the Sub-recipient charges indirect (overhead) costs to the PFA, the Sub-recipient must provide an "Indirect Cost Proposal" in accordance with the applicable cost principles from the applicable U.S. Federal agency.
2. The Sub-recipient must comply with one of the three (3) following criteria for payment of in-direct costs by Foundation.
  - a. An approved "Indirect Cost Negotiation Agreement" from the cognizant Federal agency if the Sub-recipient is a direct recipient of Federal grants;
  - b. An approved "Indirect Cost Negotiation Agreement" from a state or local government agency that has agreed to review and approve the Sub-recipient's in-direct cost proposal; or
  - c. A written statement from an independent certified public accounting firm attesting that the proposal complies with the requirements of the applicable cost principle and provides the basis of the calculated rate.

## IX. PROCUREMENT STANDARDS

### A. Procurement Standards:

1. Standards for procurement are outlined in the U.S. Federal Uniform Administrative Requirements that are applicable to the organization type to which the Sub-recipient belongs. Sub-recipient's compliance with those standards is required under 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 by the Sub-recipient 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 U.S. Federal 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/or U.S. Federal 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 and 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 with rights reserved by the U.S. government pursuant to applicable U.S. Federal Uniform Administrative Requirements.

**X. AUDITS AND MONITORING**

**A. Audit Procedures:** The expenditure of funds under this PFA may be subject to the annual audit requirements of the U.S. Federal government (e.g., the Single Audit Act of 1984, Public Law 98-502, the Single Audit Act Amendments of 1996, Public Law 104-156, and the Office of Management and Budget audit requirements implemented in OMB Circular A-133). In addition, the expenditure of funds under this PFA may be subject to quarterly or annual audits in the Foundation's sole discretion. Such auditing shall be conducted by the Foundation 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 the 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 U.S. Federal government personnel. Monitoring staff may review Project and/or financial activity relating to the terms of this PFA. Upon request, the Foundation or its authorized representatives shall be given full and complete access (during normal business hours) to all pertinent information related to the performance of this PFA to ensure compliance with Project activities and

consistently applied costs in the PFA. The Foundation will provide the Sub-recipient with 48 hours notice of any on-site review, which review shall take place during regular business hours.

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 functions. 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.

**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. The Foundation or its authorized representatives must accept all corrective action plans. Any corrective action must be satisfactorily completed within the thirty (30) day "cure period" if such a cure period is provided (*See XIV.E.1 and 2.*)
2. The Foundation, in its sole discretion, may require Sub-recipient to submit additional periodic written verification that measures have been taken to implement any 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, at its option, 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's "Project Guidelines" and are listed in Exhibit B.

**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 or from the date of the publication of the Final Report, whichever is later.
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.
3. Records for equipment acquired through any funding provided to Sub-recipient through this Agreement shall be retained for three (3) years after final disposition.

**C. Access to Records:**

1. The Foundation staff, its representatives, or the EPA and its Inspector General, Comptroller General of the United States, Non-Federal (A-133) Auditors, or any other duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the Sub-recipient relating to this PFA or the underlying Project, upon forty-eight (48) business hours Notice in order to perform audits, monitoring reviews, or other types of site visits, which visits shall also take place during Sub-recipient's regular operating hours.
2. The right 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. The Sub-recipient will work with the Foundation or any other authorized representatives to locate any relevant past personnel.
3. The right of access is not limited to the required three (3) year period.
4. In any audit or monitoring situation conducted by the Foundation or its representatives, the Sub-recipient waives any confidentiality, privacy, privilege, or proprietary defenses regarding audits or monitoring subject by Foundation (or its representatives), or the Federal agency. The Foundation will keep any of Sub-recipient's proprietary business, 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 or regulation, or is 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 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 computer software programs created during the course of this PFA as deliverables are to be assigned to the Foundation, while inventions (whether patented or not) created by the Sub-recipient, including software and software related inventions, are to be owned by the Sub-recipient and licensed to the Foundation and its Subscribers, subject to the provisions of 2 CFR 215; and 37 CFR 401 which are made part of this PFA by reference, except where superseded by this Section XII. or the U.S. Federal Grant Agreement.
- B. Foundation Intellectual Property:** The parties intend that the Foundation and the U.S. Federal awarding agency shall own all U.S. and worldwide copyright in the Scope of Work, all Periodic Reports, all Draft Reports, and the Final Report, all drafts of these works and reports, and all non-patented computer software developed as a deliverable for this Project as defined on the Foundation's website "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 any Sub-contractor in any manner without the Foundation's prior written approval (unless use is by the U.S. Federal government or use is for Educational Purposes). 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 worldwide application for copyright protection) (See Exhibit E Assignment of Copyright).

1. The Foundation hereby grants the Sub-recipient a royalty free, worldwide, irrevocable, nonexclusive license, without royalty or any requirement of accounting, to use, reproduce, distribute and prepare Derivative Works to Foundation Intellectual Property solely for Educational Purposes as defined in section I.E. above. Sub-recipient agrees to notify the Foundation of any such use (*See* XII.F below).
  2. While Sub-recipient may not utilize any the Foundation's Intellectual Property without prior written permission from the Project Manager, except as granted in Section XII.B.1 above, reasonable requests to present or publish portions of Foundation Intellectual Property will be seriously considered as the Foundation is highly interested in the distribution of the information developed through this PFA.
  3. The U.S. Government is granted those Intellectual Property rights detailed by any and all applicable federal rules and regulations unless waived by the EPA, including, but not limited to, those requirements of 2 CFR 215.36, 37 CFR 401, and OMB Circular A-102.
  4. The Foundation will decide the mode of publishing (print, electronic, or other). 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). If the Foundation produces a published Final Project Report it will provide to the Sub-recipient ten (10) hardcopies and an electronic PDF copy. Any additional hardcopies will be at a cost of \$50.00 US dollars each.
- C. Sub-recipient's Intellectual Property: Except as otherwise detailed by Section XII.B or D, or as limited by the applicable U.S. Federal statute, regulation, or rule, or any U.S. Federal Grant and/or Cooperative Agreement, all inventions and improvements (whether patented or not) 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 will assign to the Foundation those rights upon timely request that do not accrue to the United States Government under 37 CFR 401. Sub-recipient shall not withhold any findings based on Sub-recipient Intellectual Property, patentable or otherwise, from deliverables described in this PFA as defined in the Foundation "Guidelines for Solicited Proposals" and in Exhibit A.
1. The Sub-recipient shall have the burden of demonstrating the existence of confidential information and/or trade secrets if it designates information as such by legend and the U.S. Government questions that designation.
  2. Sub-recipient hereby grants to the Foundation and its Subscribers a royalty-free, worldwide, irrevocable, nonexclusive license without royalty or any requirement of accounting to use, reproduce, distribute, and/or prepare Derivative Works to Sub-recipient Intellectual Property for non-commercial research, internal business purposes (for the benefit of Subscribers and their customers), and/or Educational Purposes.
  3. Should the 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.

4. While the Foundation and its Subscribers may not utilize any of the Sub-recipient's Intellectual Property for other purposes without prior written permission from the Sub-recipient, reasonable requests to present or publish portions of Sub-recipient's Intellectual Property will be seriously considered as the Sub-recipient is highly interested in the distribution of the information developed through this PFA.

**D. Jointly Owned Intellectual Property/Subject Data:** For the purpose of allowing both the Foundation 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, the following Intellectual Property shall be considered Jointly Owned Intellectual Property.

- All Intellectual Property developed during the term of, and pursuant to, this PFA which is not defined above as the Foundation's Intellectual Property, Sub-recipient's Intellectual Property, or as U.S. Government's Intellectual Property (if applicable),
- All Subject Data, and
- The Project Proposal, excluding the statement of qualification and resumes.

The Sub-recipient hereby assigns to the Foundation an undivided equal share to such 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, it's Subscribers, and the Sub-recipient may all utilize such property, without royalty, or any requirement of accounting, to the other, for any and all purposes 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 worldwide copyright protection (*See Exhibit E*).

**E. Pre-existing Intellectual Property:**

1. Sub-recipient ownership. 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 Sub-recipient shall grant the Foundation and its Subscribers a royalty free, worldwide, irrevocable, nonexclusive license, without royalty or any requirement of accounting, to use, reproduce, distribute, and/or prepare Derivative Works of such pre-existing Intellectual Property for non-commercial research, internal business purposes (for the benefit of Subscribers and their customers), and/or Educational Purposes.
2. Outside ownership. In the event Sub-recipient utilizes Intellectual Property owned by another in this Project, Sub-recipient shall obtain written licenses (worldwide, royalty free, irrevocable, nonexclusive license(s) without any requirement of an accounting) on the Foundation's and its Subscribers' behalf for the publication of such materials in any form or format, including, but not limited to, compilations. All agreements detailing such permissions shall be provided to the Foundation.
  - a. 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 its publications.

- b. 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. All permission must be provided to the Foundation prior to completion of any Draft or the Final Report.
3. No sublicense available. Sub-recipient has clearly identified any third-party owned Intellectual Property in the Project Proposal that will be used in this Project, but may not be sublicensed to the Foundation and/or its Subscribers (prior to the Foundation approving this Project) in an effort to permit the Foundation to determine whether that Intellectual Property is required to make this PFA and its described Project possible.
- F. Limitation:** This PFA shall not be construed as implying that either party hereto shall have the right or license (express or implied) to use Intellectual Property of the other generally except as provided hereunder or required by U.S. Federal government regulation.
- G. Publication of Intellectual Property:** After the Foundation has published the Final Report to its Subscribers, the Foundation encourages the Sub-recipient to publish based on this Project. Any publication of the Foundation's 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 hereby agrees to provide to the Foundation an electronic copy of any such publication(s) or presentation(s) based upon the Project at least three (3) weeks prior to submission of such publication or for a presentation and further agrees to provide the Foundation with the date of publication/presentation.
  2. The Foundation shall be granted a limited license to distribute Sub-recipient publications to its Subscribers, ensuring appropriate copyright notices are in place, after initial publication by the author.
  3. Each party agrees and understands that it shall not dispose of or injure the other party's rights to its Intellectual Property and shall take all steps necessary to preserve the owner's rights.
  4. In the event the Sub-recipient publishes the results of research ("Subject Data and is required by the publisher to assign its copyright ownership to the work, the Sub-recipient agrees 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 and \_\_\_\_\_. The information contained herein is based upon Intellectual Property that is jointly owned by these entities, who each retain their rights to publish or produce the Jointly Owned Intellectual Property in part or in its entirety.*
  5. 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 may utilize Subject Data, but may not use any written materials that are

substantially similar to Foundation Intellectual Property. Such thesis may be published prior to the issuance of the Final Report if necessary to complete a course of study. The student must comply with all requirements of Section XII.F. above except as modified herein. The student must obtain proper authorization from the U.S. government, where necessary, to utilize any Intellectual Property owned by the Federal government pursuant to any applicable federal statute, regulation or rule (e.g., 2 CFR 215.36 and OMB Circular A-102.34 subpart C and 37 CFR 401).

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

Copyright [year of publication], Water Research Foundation & \_\_\_\_  
ALL RIGHTS RESERVED  
No part of this article [presentation] 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  
Material published with permission. No part of this article [presentation] may be copied, reproduced, or otherwise utilized without permission.

7. Disclaimer/Additional Requirements. Every publication shall also include: (a) the Foundation logo and, if required by the Cooperative Agreement, the EPA logo, and (b) a disclaimer which states: *"This document was reviewed by a panel of independent experts selected by the Water Research Foundation, however, no independent testing has been conducted to verify the research. The Water Research Foundation does not assume any 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 Water Research Foundation's endorsement or recommendations for use. Similarly, omission of products or trade names indicates nothing concerning the Water Research Foundation's position regarding product effectiveness or applicability. This report is presented solely for informational purposes."*
8. Sub-recipient's Acknowledgement: Any public presentation or publication by the Sub-recipient, 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:

*«ContractorName» gratefully acknowledges that the Water Research Foundation is the joint owner of the [certain] technical information upon which this publication [manuscript] [presentation] is based and owner of certain written materials included in this publication [presentation]. «ContractorName» thanks to the Foundation and for use of its copyrighted materials as well as its financial, technical, and administrative assistance in funding and managing the project through which this information was discovered.*

*The research on which this report is based was also funded, in part, by «grantno» No. «grantno» with the Environmental Protection Agency (EPA). Unless an EPA logo appears on the cover, this report is a publication of the Foundation, not the EPA. Funds awarded under the Cooperative Agreement cited above were not used for editorial services, reproduction, printing, or distribution.*

*This document is for informational purposes only. Mention of trade names or commercial products does not constitute the Foundation or EPA endorsement or recommendations for use. Similarly, omission of products or trade names indicates nothing concerning the Foundation's or the EPA's positions regarding product effectiveness or applicability.*

- H. Intellectual Property Provided to the Foundation:** The Sub-recipient shall provide to the Foundation legible and usable copies of all Foundation's Intellectual Property, Jointly Owned Intellectual Property, and licensed or Sub-recipient owned pre-existing Intellectual Property that is utilized in the Project with each report due pursuant to this PFA or within thirty (30) days of receiving a Notice of termination, whichever occurs earlier (including source and object code of any computer software program) and 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 Foundation. No final payments will be made without proper provision of such Intellectual Property. The Sub-recipient agrees to incorporate a similar or more stringent requirement for the originality of works of this nature in any subcontract issued hereunder.
- I. Originality:** The Sub-recipient shall verify and ensure that it, its Sub-contractors, and agents (including, without limitation, the Principal Investigator and Co-Principal Investigator), are the sole creator(s) and originator(s) of all the Foundation Intellectual Property, Sub-recipient's Intellectual Property, Sub-recipient owned pre-existing Intellectual Property utilized in this Project, and Jointly Owned Intellectual Property as defined herein and provided to the Foundation in specific performance of this PFA and that 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 completed by Sub-recipient, including any portion completed by Sub-contractors, 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.
- J. Other Research/Funding.** The Foundation understands that the 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. The Sub-recipient agrees to inform the Foundation of any similar or over-lapping research funding by other individuals or entities so that any funding herein can be modified to ensure that double-funding for the same research does not occur
- K.** The terms of this Section XII. shall survive the termination of this PFA for 5 years after publication of the Final Report or payment of the final invoice or termination of this PFA,

whichever is later, except for Intellectual Property ownership and its limitations, which shall survive for as long as U.S. Federal Copyright law protects such property.

### **XIII. DISPUTE RESOLUTION**

- A.** In the event the Foundation or Sub-recipient 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 technical aspects of the Project, the Foundation shall be empowered to make the final determination after reasonably consulting with the PAC.
- B.** In the event the parties 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.
  1. Mediation shall be completed within 120 days of any Notice of dispute.
  2. Mediation shall occur in Denver, Colorado and any mediator must be located in Denver, Colorado.
  3. The parties shall jointly choose a mediator. In the event they are unable to so choose, each party shall choose a mediator, which two mediators shall then agree on a third mediator, skilled in the area of the parties' dispute, to hear the disagreement.
  4. The parties may agree on binding mediation prior to a mediator's decision.

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

- A.** Standard terms detailed below, 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. Since this is a «TotalProjectRFShareText» funded Project, a written quality assurance project plan (QAPP) will be submitted to the Foundation before data collection and analysis begins in accordance with Exhibit B. The QAPP will conform to the manual for writing quality assurance plans EPA/240/B-01/003, which was enacted March 1, 2001. For EPA QAPP updates see: <http://www.epa.gov/QUALITY/qapps.html>. The QAPP must be approved before any data collection and analysis begins on this Project. 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 Sub-contractor, the Sub-recipient will utilize reasonable and customary efforts to ensure the accuracy of the information obtained.
- C.** Participating Utility Review: The Sub-recipient shall, with each participating utility, (a) grant the participating utility the right to review the Project's use and conclusions concerning that organization's data and/or test results, and (b) provide the participating utility 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 water utility participating 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 participating utility 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 the participating utility, must be received by the 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 participating utility, the Principal Investigator may submit a signed letter stating this fact and further stating that the participating utility was provided reasonable opportunity to correct or respond to any problems or difficulties as stated above.

**D. Indemnification:** 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 the 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, 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 (including attorneys' fees and/or costs) exceed five thousand dollars U.S.
2. Foundation Standards/Program Income. The Foundation receives federal funding and is classified as a Pass Thru Entity (PTE). Because of this classification, all Projects, whether federally funded or not, must be treated the same in reference to Program Income 2 CFR 215 which is the Administrative Requirement regulation that is observed by the Foundation as a Non-Profit organization. See Uniform Administrative Requirements for Grants & Agreements 2 CFR 215.24.b (formerly known as OMB Circular A-110) which reads that recipient organizations (i.e., the Foundation) are required to account for program income related to projects financed in whole or in part with Federal funds.
3. Responsibilities of the Sub-recipient. At all times, all obligations performed by the Sub-recipient or by any Sub-contractors pursuant to this PFA shall be performed in a manner consistent with or exceeding the research professional standards customarily governing such services. Further, the Sub-recipient shall to the fullest extent permitted by law, hold harmless and indemnify the Foundation 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 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, Sub-contractors, employees, independent contractors, agents, or other related entities or individuals arising from (i) any actions or omissions of the Sub-recipient or its Sub-contractors, (ii) any use or misuse of Intellectual Property claimed to be owned by

another, or (iii) any material breach of this PFA by Sub-recipient. 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, Sub-contractors, employees, independent contractors, agents, or other related entities or individuals.

4. Responsibilities of Public Entities. In the event the Sub-recipient or any Subcontractor is a public entity or quasi-public entity which, by state statute, is not permitted to indemnify others, Sub-recipient agrees to be 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 (to the fullest extent available under law/statute), employees, independent contractors, agents or other related entities or individuals 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, cost claim, lawsuit cause or action, or demand are caused by result from the reckless or negligent acts or omissions of the Sub-recipient, its officers, directors, Subcontractors, employees, independent contractors, agrees, or other related entities or individuals. Further, Sub-recipient agrees to ensure that all individuals or entities involved in the completion of this PFA that/who may indemnify others are required to so indemnify the Foundation and its publisher through a written agreement acceptable to the Foundation.
  5. Insurance. The Sub-recipient shall maintain a financially sound program of self-insurance or purchased commercial liability insurance covering any and all of Sub-recipient's officers, directors, employees, agents, and independent contractors and/or Sub-contractors in the amount of one million dollars (\$1,000,000.00). Proof of such insurance shall be presented to the Foundation pursuant to the schedule detailed by Exhibit B. The proof of insurance document should clearly specify the Project by number and title.
  6. Worker's Compensation. The Sub-recipient and all Sub-contractors shall maintain Worker's Compensation Insurance that complies with the applicable state laws. Proof of such insurance shall be presented to the Foundation pursuant to the schedule detailed by Exhibit B.
- E. Termination:** This PFA, except for those provisions that, 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 or that funding is exhausted or has been eliminated. The natural termination date shall be the date upon which all scheduled events have occurred, funding, allowed, 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 reasonably determines in its sole discretion that the Sub-recipient, or any Sub-contractor, 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 or may terminate this Agreement in its sole discretion. If the Sub-recipient fails to eliminate problems detailed by Foundation, or fails to cure a breach of this PFA when and if the Foundation provides a cure period, within thirty (30) days of Foundation's Notice, this PFA shall terminate. The termination date shall be the date on which the thirtieth (30th) day falls.

2. The Foundation may terminate this PFA without thirty (30) days Notice if the Foundation reasonably believes the Project is no longer technically feasible or if Sub-recipient or any Subcontractor fail(s) 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. The Sub-recipient may terminate this PFA upon ninety (90) days Notice 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 and noncancellable commitments shall be submitted by the Sub-recipient contemporaneously with any Notice of Sub-recipient's termination and all remaining unspent funds or cancellable commitments, at the time of Notice, will be returned to the Foundation within thirty (30) days of the accounting.
  4. Any change in Federal statutes, rules or regulations which significantly 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 Notice or cure period.
  5. Upon receipt or delivery of a written Notice of termination, the Sub-recipient shall cease all work associated with the PFA.
  6. If termination occurs under this Section XIV., the Sub-recipient shall be entitled to compensation for all satisfactory and authorized research completed, approved costs incurred and approved, noncancellable, completed commitments as of the termination date provided funds are available.
- F. UPON TERMINATION FOR ANY REASON, THE SUB-RECIPIENT SHALL HAVE NO RIGHT TO RECOVER FROM THE FOUNDATION ANY GENERAL, SPECIAL INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF ANY DESCRIPTION OR AMOUNT. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS PFA.**
- G. 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.
- H. 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 upon by both parties.

1. Examples of items requiring the 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 the Foundation.

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

**J. Sub-Contracting:** The Sub-recipient shall enter into a subcontract for any of the work performed under this PFA provided the Subcontractor(s) have been identified in the original Proposal submitted by the Sub-recipient for the Foundation for funding. If Sub-contractors are approved by Foundation, the subcontract shall contain, at a minimum, sections of this PFA pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit Requirements, and/or any other Project Federal, state and local requirements.

1. Sub-recipient shall require any and all Sub-contractors to comply with all applicable 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 Sub-contractors shall be the Sub-recipient's sole obligation and responsibility. The Sub-recipient hereby indemnifies and holds Foundation harmless for any liability concerning such payment. In the event the Sub-recipient is a public entity, the Sub-recipient will ensure that the Subcontractor(s) understand(s) and agree(s) that the Foundation shall have no liability for such payment whatsoever.

**K. 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.

**L. 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 that gives effect to the intent of the parties in entering into this PFA.

- M. Foundation Right of Approval:** The Foundation 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 Sub-contractor of the Sub-recipient, to be located at a Foundation work location, or to provide research or services to the Foundation or its clientele or Subscribers pursuant to this PFA. Such right of refusal shall not be considered a breach of this PFA.
- N. 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.
- O. Federal Compliance:** The Sub-recipient shall comply with all applicable State and U.S. Federal statutes, laws, rules, and regulations in the performance of this PFA, whether included specifically in this PFA or not.
- P. Foundation Limitation of Liability:** The Foundation shall have no liability except as specifically provided in this PFA. In no event shall any judgment against the Foundation exceed five thousand dollars U.S. (excluding Federal funds and in-kind funding).
- Q. 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.
- R. 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.
- S. Construction:** This PFA, and any and all amendments to it, shall not be construed against the drafter.
- T. Force Majeure:** Neither 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 either party will have the right to terminate this PFA “without breach” upon thirty (30) days prior written Notice if the other party's delay or default due to any of the above-mentioned causes continues for a period of two (2) months.
- U. Security Interest:** The Sub-recipient will not grant any security interest in, or allow any lien or encumbrance of any nature upon, any of the Foundation’s Intellectual Property or Jointly Owned Intellectual Property. Breach of this Paragraph by the Sub-recipient may, at Foundation’s 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.
- V. Waiver:** Waiver of any provision of this PFA must be in writing to be effective. Waiver by the Foundation of any breach by the Sub-recipient 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.

**W. 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. If legal action is taken against Sub-recipient, however, this PFA shall be construed and interpreted in accordance with the U.S. Federal or State laws that, by statute, are required to govern the Sub-recipient (i.e., in the event Sub-recipient is a public entity). Any action against Foundation 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 PFA.

**X. 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. The 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 the Sub-recipient to the Foundation will be that of an Independent Contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this PFA. Neither the Sub-recipient nor any Sub-contractor shall be eligible to participate in any Foundation 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.

**Title:**

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

**Water Research Foundation**

**«ContractorName»**

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

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

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

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

The undersigned parties have read and understand the terms, conditions, and deliverables of this PFA.

**Water Research Foundation**

**«ContractorName»**

\_\_\_\_\_  
By: «RFProjMgr»  
Title: Project Manager

\_\_\_\_\_  
By: «ContractorName»  
Title: Principal Investigator

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](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 \_\_\_\_**

**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
QAPP	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:** Please submit one electronic copy of each Periodic Report in MSWord format. For Draft & Final Reports, please submit one electronic copy & one hard copy in MSWord format.

**Final payment will be disbursed subsequent to Principal Investigator’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. 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>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 submission & acceptance of draft report: \$\_\_**

**Amount due upon submission & 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.

