



Project Funding Agreement ____

Titled

“ _____ ”

This Project Funding Agreement (“PFA”) is entered into on _____, (the “Effective Date”) by and among **The Water Research Foundation** (“WRF”), a Colorado non-profit corporation, whose place of business is located at 6666 W. Quincy Ave., Denver, Colorado 80235, and ____ (“Sub-recipient”), whose principal place of business is located at _____. WRF and Sub-recipient are each a “Party” and together the “Parties.”

WRF has selected Sub-recipient to receive a research and development contract as more specifically detailed in this PFA, which includes the following Exhibits attached hereto:

Exhibit A – Project Plan

Exhibit B – Task, Timelines & Contacts

Exhibit C – Budget Summary

Exhibit D – Invoice Form

Exhibit E – Copyright Assignment Form

Exhibit F – Federally Funded Project – NOT APPLICABLE

Exhibit G – Webtool Deliverables – As Applicable

The Parties mutually agree as follows:

I. DEFINITIONS. The following defined terms shall apply in this PFA:

- A. “Code” means the U.S. Code of Federal Regulations Title 2 (Grants and Agreements) Part 200: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (a/k/a/ Uniform Grants Guidance or UGG).
- B. “Cost Share” means the portion of allowable costs that Sub-recipient or Subcontractor funds in kind toward completing the Project. All Cost Share accounting must comply with the Code.
- C. “Deliverables” are the items required to be delivered to WRF as listed in Exhibit B, including all Reports and all Work Product.
- D. “Expenses” means any WRF approved expenses incurred by Sub-recipient in performing under this PFA.

- E. “Intellectual Property” or “IP” is all rights to copyrights, trademarks, service marks, patents, inventions, trade secrets, know how, and confidential information, including the right to enforce, divest, license, seek registration, prosecute infringers, and commercially or otherwise exploit such rights.
- F. “Participating Utility” is a utility that is or may provide data or information for the Project, and the input and approval of which Sub-recipient must obtain to complete the Project, as described in this PFA.
- G. “Principal Investigator” or “PI” is Sub-recipient employee identified in Exhibit B, who is primarily responsible for ensuring that all terms and conditions of this PFA are met and to whom WRF shall give all notices intended for Sub-recipient. If more than one PI is designated in Exhibit B, the additional PIs shall be referred to as a Co-PI(s), though the PI shall remain the primary point of contact under this PFA.
- H. “Project” is the work to be completed by Sub-recipient, as described more specifically in the Project Plan attached hereto as Exhibit A.
- I. “Project Coordinator” is the WRF staff member who supports the Research Program Manager.
- J. “Project Funds” are the aggregate maximum amount of cash award which WRF agrees to provide to Sub-recipient to fund its performance of the Project pursuant to this PFA.
- K. “Project Plan” is the description in Exhibit A of the tasks and Deliverables to be completed by Sub-recipient for the Project, for which WRF will disburse the Project Funds and monitor progress pursuant to this PFA.
- L. “Proposal Guidelines” are the WRF’s written guidelines, currently maintained at www.waterrf.org/proposal-guidelines in which the procedures, criteria and requirements for eligibility, proposal, performance, administration, reporting, and other matters governing the proposal of and performance of the Project are set forth. The Proposal Guidelines were provided to Sub-recipient prior to its submission of a Project Proposal, and its terms and requirements are incorporated in this PFA by this reference. The terms “Deliverable”, “Periodic Report”, “Draft Report”, and “Final Report” appearing in this PFA shall have the definitions, and be governed by the requirements applicable thereto, as set forth in the Proposal Guidelines.
- M. “Reports” are the Periodic Reports, Draft Report, and/or Final Report, individually or collectively.
- N. “Research Program Manager” is the WRF staff member identified in Exhibit B who will be the primary point of contact for WRF and will oversee the Principal Investigator’s performance of the Project.
- O. “Subcontractor” is any third party identified by Sub-recipient in the Project Plan as assisting in the performance of the Project under this PFA.
- P. “Sub-recipient Funds” is any portion of the Project Funds, if so identified in Exhibit C, as being provided by Sub-recipient to fund the Project under this PFA.

- Q. "Subject Data" shall mean all non-patented original and raw research data, originated or assembled by Sub-recipient in performance of this PFA, but specifically excluding WRF Intellectual Property or Sub-recipient Intellectual Property as defined within this PFA. Subject Data also excludes financial reports, receipts, costs, analysis, and similar information incidental to contract administration.
- R. "Work Product" is copyrightable works of authorship created by Sub-recipient or its Subcontractors in the course of performing under this PFA or the Project, including, without limitation, the Project Plan, all Reports and other Deliverables, all interim drafts of the foregoing, and any computer software and related documentation developed under the Project.

II. GENERAL OBLIGATIONS OF THE PARTIES

A. Sub-recipient.

1. Sub-recipient agrees to complete the research, prepare and deliver written Reports, deliver all Deliverables to WRF, and perform such other functions, all in accordance with the schedules and other requirements set forth in the Exhibits and this PFA. Sub-recipient shall itself, and shall require all its Subcontractors to, perform the Project and all related activities in full compliance with all laws, regulations, ordinances, and other requirements governing them. All Reports and invoices shall be sent to the Research Program Manager with a copy to the Project Coordinator.
2. Sub-recipient may not use any portion of the Project Funds for any purpose other than as expressly detailed in the Project Plan as necessary to perform the Project.
3. Sub-recipient shall be solely responsible for payment of any Subcontractors, and for procurement of all equipment, materials, and other resources necessary for performance of the Project, out of the Project Funds it receives from WRF.
4. Sub-recipient has paid to WRF all Sub-recipient Funds, if any as of the Effective Date.

B. WRF. WRF will disburse the Project Funds to Sub-recipient as detailed in this PFA and Exhibit C.

III. DISBURSEMENT OF PROJECT FUNDS

- A. Project Funds. WRF will disburse the Project Funds in installments directly to Sub-recipient. The amount of the Project Funds was set based on Sub-recipient's budget attached in Exhibit C and is a "not to exceed" amount. WRF will not make any payments in excess of such amount. Disbursement of all Project Funds is subject to Sub-recipient's compliance with this Section III and Exhibit C. Any increase in a budget line item by more than 10% of such line item's stated budget may require an amendment, even if other budget decreases offset such increase and there is no overall increase to the required Project Funds
- B. Advance Payment. Following the Effective Date, WRF will advance to Sub-recipient 10% of the Project Funds. All invoices submitted by Sub-recipient must reflect a credit equal to the advance payment and will invoice WRF to the extent such Expenses correspond with the associated Deliverable.
- C. Invoicing and Payments.

1. Beginning three (3) months after the Project Start Date identified in Exhibit B, and every three (3) months thereafter during the term of this PFA, Sub-recipient shall submit to WRF a detailed invoice itemizing the Expenses incurred by Sub-recipient in the three (3) months prior to the invoice date in the performance of the Project and identifying all Cost Share and third-party in-kind contributions as well as the contributing parties. The invoice shall be sent to the Project Coordinator with a copy to the Research Program Manager.
2. Each invoice shall reference the line items in Exhibit B, and be in the form required in the link provided on Exhibit D. Only Expenses actually incurred by Sub-recipient, in accordance with the Code, may be invoiced under this PFA.
3. WRF will disburse Project Funds based upon Sub-recipient timely submitting Deliverables meeting the requirements of this PFA. No portion of the Project Funds will be disbursed unless and until WRF receives, approves, and accepts each corresponding invoice and Deliverable. If WRF approves and accepts the invoices and Deliverables, Sub-recipient will be paid as follows:
 - (a) The ten percent (10%) advance payment must be shown on all invoices, including the final invoice, as an advance payment received by Sub-recipient. Subject to the hold back provision below, invoices will be paid to the extent Expenses incurred exceed the advance payment.
 - (b) Regardless of the actual amounts invoiced, WRF will at all times during this PFA hold back twenty percent (20%) of the Project Funds and will only disburse same as follows: Ten percent (10%) of the Project Funds will be disbursed to Sub-recipient when WRF receives and accepts the Draft Report. The remaining held back ten percent (10%) of the Project Funds will be disbursed to Sub-recipient after Sub-recipient has completely and adequately responded to all of WRF's queries on the Final Report, has made all revisions reasonably requested by WRF to finalize the Final Report, submitted a final invoice, and Assignment of Copyright, a form of which is attached in Exhibit E, executed by all those who prepared or contributed to Work Product under this PFA.
 - (c) No conditions, notations, acknowledgements, comments, or terms other than the items required to be included and itemized on Sub-recipient's invoice shall be binding on WRF.
 - (d) WRF may deduct amounts or withhold payments if Sub-recipient fails to comply with any requirement in this PFA.

IV. COMPLIANCE MONITORING

- A. Financial Management System.** Sub-recipient shall maintain an accounting system and accurate and complete accounting records that, at a minimum but without limitation, allow for the identification, tracking, and verification of Expenses, Cost Share, invoiced items, and funding received, all in a manner that is segregated and allocable solely to performance of the Project. All Expenses incurred must be supported by receipts and be made available to WRF upon request.
- B. U.S. Federal Administrative, Cost and Audit Requirements.** Regardless of the nature or funding source for the Project, WRF is categorized as a Pass Thru Entity (PTE) because of the federal funding it receives. To stay in procurement compliance, WRF must comply with applicable federal regulations and requirements governing federal funding and must pass through compliance to its funding recipients. Accordingly, Sub-recipient represents and certifies that the budget disclosures in

the Project Plan were prepared by Sub-recipient in full compliance with The Water Research Foundation Guidelines and all relevant U.S. laws, regulations and agreement terms and conditions related to U.S. Federal Financial Assistance including, but not limited to, the Code. Cost Principles specifically applicable for awards to for-profit organizations are set forth in the Federal Acquisition Regulations System (FARS, at 48 CFR 31.2) to determine allowable costs under WRF project funding agreements. Sub-recipient shall throughout the Project, and in the preparation of every invoice, report, and maintenance of its accounting system, remain in compliance with the above regulations. It shall be Sub-recipient's obligation to determine and comply with its governing cost principles, including, without limitation, those governing survey costs, and to ensure all of its Subcontractors' invoices are equally in compliance with these requirements.

- C. Indirect Costs and Allocation of Costs. If Sub-recipient proposes to invoice for indirect costs, substantiation of those charges must be in compliance with WRF's "Guidelines for Research Priority Program Proposals," which include compliance with the applicable cost principles referenced in Section IV.B above.
- D. Record Retention. Sub-recipient shall retain all original books and records pertinent to this PFA and the Project for at least three (3) years from the termination of this PFA.
- E. Audit and Monitoring.
 1. Sub-recipient's use of the Project Funds under this PFA shall be in compliance with the Code, including its Subpart F, Audit Requirements, and may be audited by WRF and its designee. Furthermore, WRF shall have the right, itself or through a designee, to visit Sub-recipient premises or anywhere else performance of the Project takes place, to observe, review, and monitor performance of the Project, as well as application and use of the Project Funds. Accordingly, following a two (2) business day prior notice from WRF, Sub-recipient shall provide WRF and its designee access to its premises, technical staff, supervisors, knowledgeable personnel, computer systems and databases, assistance, original documents, including those required to be maintained under this PFA, and any information related to Sub-recipient's use of the Project Funds and performance under this PFA, to enable the WRF's audit and monitoring. The WRF's audit rights shall survive termination of this PFA by three (3) years.
 2. WRF will keep any proprietary financial, technical and/or scientific information obtained in the course of performing an audit under this Section in confidence, provided that such material (a) is appropriately marked as "Confidential," (b) is not already generally known to the public, (c) is not required to be disclosed as a result of a legal proceeding, or applicable legal requirement, (d) is not already known to WRF or others without a confidentiality obligation, and (e) is not a Deliverable or Work Product under this PFA.
 3. Any deficiencies or non-compliance in Sub-recipient's systems, procedures, record keeping, finances, and performance of other obligations under this PFA discovered in the audit, review or monitoring process, or discovered otherwise, shall be a material breach of this PFA subject to the procedures and remedies in Section VII below.

V. PROCUREMENT STANDARDS

- A. Procurement Standards. Sub-recipient shall at all times remain in compliance with Subpart D, Procurement Standards, of the Code. Sub-recipient represents and warrants that it is familiar with and able to comply with these standards, which include but are not limited to:
1. Sub-recipient's procurement policies must adhere to the Uniform Grants Guidance.
 2. Sub-recipient shall maintain and enforce with its officers, employees, and agents (including Subcontractors) a code of conduct designed to enhance goodwill, ethics, and compliance with laws while performing under this PFA.
 3. Sub-recipient shall conduct all procurement transactions in a manner that maximizes open and free competition and in compliance with the restrictions and limitations in this PFA.
 4. Sub-recipient shall ensure that its Subcontractors comply with the requirements and restrictions in this Section and in this PFA generally.
 5. Sub-recipient shall notify WRF, within two (2) months of the Project Start Date, of all Subcontractor agreements executed between Sub-recipient and the Subcontractors identified in the Project Plan.

VI. IP RIGHTS AND PUBLICATION

- A. Work Product.
1. Copyrights. WRF shall own all worldwide copyrights in all the Work Products, including the Project Plan, all Deliverables, and all interim drafts of the foregoing. Sub-recipient shall and hereby does assign exclusively to WRF all right, title, and interest in and to the Work Product and the copyrights embodied therein, and subject to provisions of the Code and 37 CFR 401 which are made part of this PFA by reference except where superseded by this Section VI or the U.S. Federal Grant Agreement.
 2. Distribution Permission. WRF will provide Sub-recipient with a PDF copy of the Final Report. The Work Product may not be copied, published, adapted, modified, transferred, posted on an intranet or website, or disclosed in any manner except with WRF's prior written approval. WRF granting approval will not be unreasonably withheld, though it may be conditioned. WRF has provided approval in certain circumstances prior to publishing the Final Report. To request approval, refer to our copyright page at: www.waterrf.org/Copyright.
 3. License Granted to Sub-recipient. WRF hereby grants Sub-recipient a non-exclusive, irrevocable, perpetual, royalty free license to create derivative works, including the use of the Subject Data which is produced as a result of this PFA.
 4. WRF Intellectual Property Guidelines for PIs are available at: www.waterrf.org/project-report-guidelines
 5. PI guidelines for Periodic Report Format and Content and Preparation of Research Reports are available at: www.waterrf.org/project-report-guidelines

B. Inventions and Patents.

1. All proprietary or patentable ideas, devices, methods, formulations, designs, and other inventions developed or conceived by or on behalf of Sub-recipient during performing under the Project, including, but not limited to, the right to apply for patent protection thereon and all patents issuing on such applications (collectively, "Inventions"), shall remain the property of Sub-recipient.
2. Sub-recipient shall not withhold any information on or descriptions of Inventions, whether or not patentable, from Work Products or any Deliverable. Sub-recipient's rights in Inventions shall not limit, delay, restrict, or in any other manner interfere with WRF's right to own, publish, and exercise all other copyrights in the Work Product.
3. All IP rights that were owned and developed by Sub-recipient or third parties prior to the Project Start Date and outside the scope of the Project (collectively, "Preexisting IP"), and which Sub-recipient will use in the performance of the Project or incorporate in whole or in part into any Deliverables, has been fully disclosed and identified by Sub-recipient in the Project Plan. Sub-recipient represents that all Preexisting IP is used with full authorization and permission from its respective owner, and copies of such permissions and licenses shall be provided to WRF by the Project Start Date. Sub-recipient shall obtain all appropriate permissions on WRF's behalf to the extent necessary to enable WRF to exercise its ownership and publication rights in the Work Product, including the Final Report, such right shall be transferable, sublicense able, and shall not be subject to any payment, restriction, or other obligation on the part of WRF. Such agreements to procure rights for WRF shall be subject to the WRF's prior review and approval, in its sole discretion.
4. Sub-recipient hereby grants WRF a fully paid-up, royalty free, perpetual, irrevocable, world-wide, nonexclusive license, with the right to grant sublicenses, to utilize the Inventions and Preexisting IP for educational or other non-profit purposes.

C. Publication. As the owner of Work Product, all rights to publish, distribute, publicly perform, publicly display, and publicly present the Work Product belong solely to WRF. Notwithstanding the foregoing, Sub-recipient may publish or present based on the Work Product, in whole or in part, and subject to this Section VI, with the prior written permission of WRF prior to the Final Report being published. Any such request for permission from WRF must be made to WRF at least three (3) weeks prior to the requesting party's proposed date of publication or presentation based on any portion of the Work Product, and the request must be accompanied by copies of the proposed publication or presentation material. All copies of or presentations based on the Work Product authorized to be made by WRF shall furthermore conspicuously display the following notice:

*Source: Author, Title of The Water Research Foundation Work
Copyright [year of publication],
The Water Research Foundation. Reproduced with permission.*

D. Student Thesis. In the event a college or graduate student is a part of Sub-recipient work on the Project contemplated by this PFA, and that student completes a thesis, dissertation, or report relating to this Project, solely as part of such student's college or graduate course work submitted to

the instructor or educational institution, and in no event for online publication, the student may utilize Subject Data, and/or WRF Intellectual Property.

- E. Acknowledgement. Any public presentation or publication by Sub-recipient, including a student writing a thesis, dissertation, or report, based on the Inventions or any portion of the Work Product, if permitted by WRF, shall include a statement substantially as follows:

“[Sub-recipient] gratefully acknowledges that The Water Research Foundation are funders of certain technical information upon which this publication [manuscript] [presentation] is based. [Sub-recipient] thanks The Water Research Foundation, for their financial, technical, and administrative assistance in funding the project through which this information was discovered. This material does not necessarily reflect the views and policies of the funders, and any mention of trade names or commercial products does not constitute the funders’ endorsement or recommendations thereof.”

- F. Originality. Sub-recipient represents, that it, and its Subcontractors, are the sole creator(s) and originator(s) of all Work Product, Inventions, and Preexisting IP; none of those rights have been bargained, sold, encumbered, licensed, or otherwise transferred to any other party in a manner that would limit or interfere with the requirements and covenants of Sub-recipient under this PFA. Further, Sub-recipient shall ensure that no portion of this Project, including any portion completed by Subcontractors, infringes upon the IP rights of any other person or entity or violates the common law or statutory right, title, or interest of any person or entity. Sub-recipient, shall execute and deliver to WRF, and shall cause its Subcontractors and agents to execute and deliver to WRF, all documents and instruments reasonably requested by WRF, including, without limitation, the Assignment of Copyright attached in Exhibit E, to further evidence or memorialize the assignment of rights to WRF set forth in this PFA.

VII. TERM AND TERMINATION

- A. Term. This PFA is effective as of the Effective Date, and shall continue for the duration of the Project, ending on WRF’s delivery to Sub-recipient of the final disbursement of the Project Funds in accordance with Section III.B above. The term of this PFA governing only Sub-recipient’s obligations and WRF’s rights may be extended beyond final disbursement of the Project Funds, if expressly so stated in an Exhibit to this PFA. This PFA may be terminated earlier for the following reasons:
1. WRF may terminate this PFA by written notice to Sub-recipient at any time in the event of Sub-Recipient’s or a Subcontractor’s material breach of this PFA or any requirements or timelines in the Project, which breach is not cured within thirty (30) days of WRF’s written notice of such breach.
 2. WRF may terminate this PFA effective immediately by written notice to Sub-recipient if WRF reasonably determines that the Project is no longer feasible or its performance desired, or that if Sub-recipient is not likely to complete the Project on time.
 3. If Sub-recipient, after reasonable consultation with WRF and sufficient exploration of other options and possible mutual agreements to amend this PFA, determines that circumstances beyond its control prevent it from continuing the Project, Sub-recipient may terminate this PFA at any time by written notice to WRF.

4. Any change in legal requirements or entitlements which materially alter Sub-recipient's performance under this PFA, or any change in the availability of funds to WRF, shall warrant good faith renegotiation of the provisions of this PFA impacted by such change. If the Parties cannot agree to an amendment to this PFA, at WRF's option Sub-recipient's performance of the Project may be suspended, or this PFA may be terminated effective immediately by WRF's written notice.
5. If termination occurs under this Section, Sub-recipient shall cease all work as of the notice of termination and shall prepare and submit to WRF a final invoice and accounting of expended and non-cancellable funds as of the date of receipt of the notice of termination. Any portion of the Project Funds that was prepaid to Sub-recipient, but which remains unspent, or which corresponds to Deliverables rendered unusable by Sub-recipient's material breach or termination of this PFA, shall be returned to WRF with the final invoice. WRF shall pay any amount owed under the final invoice, if reasonably accepted by WRF. Sub-recipient shall be entitled to compensation for all satisfactory and authorized work completed as of the termination date, provided that all Work Product corresponding to the invoiced amounts have been delivered to WRF, and further provided that funds are available (i.e., subject to any reduction in granted funds as stated above).
6. Return of IP. Sub-recipient shall provide to WRF legible copies of all Work Product (including unencrypted source code and object code of any computer software program and programmer's notes and documentation) in a format reasonably designated by WRF within thirty (30) days of any Party's delivery of a notice of termination hereunder, whether or not a cure period is provided. Further, at the same time, Sub-recipient shall provide copies and originals in whatever medium and format is reasonably designated by WRF. No further payments will be made unless Sub-recipient fully complies with the foregoing requirements.

VIII. DISPUTE RESOLUTION

All disputes between WRF and Sub-recipient arising under this PFA shall be resolved by binding arbitration in Denver, Colorado U.S.A., conducted in accordance with the then effective rules of expedited commercial arbitration of the American Arbitration Association ("AAA"), before one Arbitrator selected in accordance with such rules. The Arbitrator shall have subpoena powers. The decision of the Arbitrator shall be final and binding and may be enforced in any court having proper jurisdiction. Notwithstanding the foregoing, WRF shall be entitled to seek injunctive relief in court without the need to arbitrate in order to enforce its IP rights.

IX. STANDARD TERMS AND CONDITIONS

- A. Survival. All terms which by their nature and intent are required to be performed after termination of this PFA shall survive to the extent necessary to enable their fulfillment.
- B. Quality Assurance. Sub-recipient shall use its best efforts to ensure that all data and test results, regardless of the source of such data and test results, developed or collected during this PFA and included, or relied upon, in the Final Report, are verified and accurate to the best of its knowledge, information, and belief.

- C. Standard of Performance. At all times, all obligations performed by Sub-recipient or by any Subcontractors pursuant to this PFA shall be performed in a manner consistent with the professional and industry standards, and in compliance with all laws, regulations, and other requirements governing such activities.
- D. Indemnification. Sub-recipient shall be responsible for, and shall hold harmless and indemnify WRF, all other co-funders of the Project, and their officers, directors, affiliated organizations, employees, agents, volunteers, and publisher, if any, from any and all liability, obligation, damage, loss, cost, claim, lawsuit, cause of action, or demand whatsoever of any kind or nature, including, but not limited to, attorneys' fees and costs ("Claims"), arising from (i) any negligent actions, or omissions, or willful misconduct of Sub-recipient, its officers, directors, Subcontractors, employees independent contractors, agents, or other related entities or individuals, (ii) any use or misuse of IP claimed to be owned by another, or (iii) any breach of this PFA by Sub-recipient. If Sub-recipient or any Subcontractor is a governmental or quasi-governmental entity that is by law prohibited from indemnifying others, this Section IX.D is modified to the extent that will impose the maximum available liability and responsibility on Sub-recipient. Sub-recipient shall require all parties involved in the performance of this PFA that are not prohibited from indemnifying others to so indemnify WRF through a written agreement acceptable to WRF.
- E. Insurance. Sub-recipient shall maintain a financially sound program of self-insurance or commercially purchased liability insurance covering Sub-recipient if it is negligent and failed to adhere to generally accepted industry standards and negligent actions or omissions of any and all of Sub-recipient's officers, directors, employees, agents, and independent contractors and/or Subcontractors in the amount of one million dollars (\$1,000,000.00). Proof of such insurance shall be presented to WRF pursuant to the schedule detailed by Exhibit B. The proof of insurance document shall clearly specify the Project by number and title on the insurance certificate.
- F. Worker's Compensation. 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 WRF pursuant to the schedule detailed by Exhibit B.
- G. Authority. The individuals executing this PFA on behalf of their respective Parties hereby represent and certify 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. No provision, requirement, or term of this PFA may be modified, supplemented or amended, nor may it be waived or discharged, except in writing, signed by all Parties. A written waiver of a breach of one provision in this PFA shall not operate as a waiver of a subsequent breach of the same provision.
- I. No Assignment. Sub-recipient shall not assign this PFA in whole or in part, including by operation of law, merger, reorganization, or change in ownership or control. Any unauthorized assignments shall be void.
- J. Sub-Contracting: Sub-recipient may only utilize Subcontractors under this PFA that have been disclosed in the Project Plan and are pre-approved by WRF.

1. Sub-recipient shall require any and all Subcontractors to comply with all applicable qualifications and terms of this PFA prior to working on the Project in any manner. All obligations of Sub-recipient apply equally to the Subcontractor(s). Sub-recipient shall at all times remain primarily responsible and liable to WRF for the acts and omissions and performance of this PFA by its Subcontractors, and their agents, employees, officers, directors, affiliates, and other representatives.
- K. Integration. This PFA, including all attachments hereto and the documents and requirements referenced herein, contains the entire understanding between the parties relating to this PFA. This PFA supersedes all prior and contemporaneous understandings, representations, negotiations, and agreements between the parties whether written or oral. In the event of a conflict between the terms of an Exhibit or other document referenced herein and this PFA, the terms of this PFA shall control.
- L. Severability. The provisions of this PFA shall be severable, and the invalidity, illegality or unenforceability of any provision of this PFA shall not affect the validity or enforceability of any other provisions. If any provision of this PFA is found to be invalid, illegal, or unenforceable, such provision shall be modified to the extent necessary to render it enforceable, and as modified, this PFA shall remain in full force and effect.
- M. Notices. Any notice, request, demand, or communication required or allowed under this PFA shall be sent in writing to the addresses and contact information for the Parties set forth in Exhibit B, 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, or upon receipt if sent via facsimile or email, if delivery can be confirmed by the sender.
- N. Force Majeure. No Party will be liable for any delay or default in performance caused by conditions beyond its control, including, but not limited to, acts of God, Government restrictions, continuing domestic or international problems such as wars, threats of terrorism, or insurrections, strikes, fires, floods, work stoppages and embargoes; provided, however, that any Party will have the right to terminate this PFA upon thirty (30) days prior written notice if another Party's delay or default due to any of the above-mentioned causes continues for a period of two (2) months.
- O. Limitation of Liability. IN NO EVENT SHALL WRF OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS OR REPRESENTATIVES BE LIABLE TO ANY OTHER PARTY, OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL OR EXPECTED PROFITS OR REVENUES, IN ANY WAY RELATING TO THIS PFA, INCLUDING, WITHOUT LIMITATION, THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF IT HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, PRODUCTS LIABILITY OR OTHERWISE. IN NO EVENT SHALL WRF'S LIABILITY HEREUNDER EXCEED THE FUNDING ALREADY MADE UNDER THIS PFA.
- P. Applicable Law/Venue. This PFA is written and shall be construed in accordance with and governed by the laws of Colorado unless U.S. Federal law applies. However, if Sub-recipient is exclusively governed by U.S. Federal or state laws overriding Colorado laws (e.g., if Sub-recipient is

a quasi-public or public entity), this PFA shall be construed and interpreted in accordance with such laws to the extent of such exclusivity. Any arbitration action under this PFA must be brought in Denver, Colorado and enforcement of arbitration decisions and injunctive relief must be brought in a State Court or U.S. Federal District Court located in Denver, Colorado.

- Q. Counterparts. This PFA may be executed and delivered in counterparts, and by facsimile and email, and each shall be valid as if all Parties had executed the same document.
- R. Relationship. The Parties are independent contractors, and no agency, employer-employee, partnership, or joint venture relationship is intended or created by this PFA. No Party shall have any right or authority to assume or create any obligation, commitment or responsibility for or on behalf of the others except as the other may expressly authorize in writing. No Party shall be eligible to participate in another's benefit program. Sub-recipient shall be solely responsible for the performance and compensation of its employees, for withholding taxes and providing unemployment and other benefits.

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DRAFT



Project ____

Title:

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

The Water Research Foundation

[Sub-recipient Organization]

By: Peter C. Grevatt, PhD
Title: Chief Executive Officer

By: [Authorized Representative]
Title: _____

Date: _____

Date: _____

The Water Research Foundation

[Sub-recipient Organization]

By:
Title: Research Program Manager

By:
Title: Principal Investigator

Date: _____

Date: _____

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

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

DRAFT AGREEMENT DO NOT SIGN

EXHIBIT A
PROJECT PLAN

Project ____

NOTE: EXHIBIT A WILL CONSIST OF THE PROJECT PLAN IN THE FINAL DOCUMENT, IT IS NOT INCLUDED IN THE DRAFT DOCUMENT.

Title:

Project Plan, & all subsequent correspondence including but not limited to compiled PAC comments, Sub-recipient's responses, and in-kind contribution letters.

DRAFT

EXHIBIT B
TASKS AND SCHEDULE

Project ____

NOTE: EXHIBIT B SHOWN IS THE STANDARD DRAFT SCHEDULE; ACTUAL SCHEDULE WILL BE MUTUALLY DECIDED UPON BETWEEN THE RPM AND PI AT THE FINAL AGREEMENT STAGE.

Title:

<u>TASK</u>	<u>DUE DATE (1st or 15th of Month)</u>
Project Start Date	[insert Start date]
Project Information Summary	30 days after start date
Proof of Insurance	30 days after start date
Periodic Report 1 – electronic copy & Invoice	3 months after start date
Periodic Report 2 (Technical Summary & Web Update) & Invoice	6 months after start date
Periodic Report 3 & Invoice	9 months after start date
Periodic Report 4 (Technical Summary & Web Update) & Invoice	12 months after start date
Periodic Report 5 & Invoice	15 months after start date
Periodic Report 6 (Technical Summary & Web Update) & Invoice	18 months after start date
Periodic Report 7 & Invoice	21 months after start date
Periodic Report 8 (Technical Summary & Web Update) & Invoice	24 months after start date
Draft Report & Invoice	27 months after start date
Final Report	5 months after draft report
Assignment of Copyright - Exhibit E	5 months after draft report
Letter of Confirmation from each participating utility review & IK	5 months after draft report
Final Invoice	5 months after draft report
(End of Deliverables)	
Publication Date & Project End Date	12 months after draft report

Note: Please submit one electronic copy of each Periodic Report and Draft Report. Submit the Final Report in electronic copy in *MSWord format*. For each report an invoice shall be submitted for payment using the link posted in Exhibit D – such invoice to be printed on your company letterhead. All Reports and Invoices should be sent to the Research Program Manager with a copy to the Project Coordinator identified in Exhibit B WRF Key Contacts.

CONTACTS

WRF Key Contacts:

The Water Research Foundation
 6666 West Quincy Avenue
 Denver, CO 80235

Name:	Function:	Phone:	Email:
	Research Program Manager		
	Project Coordinator		
Christine Conville	Contracts Manager	303.734.3424	cconville@WaterRF.org
Connie Schonlau	Contracts Assistant	303.347.6211	cschonlau@WaterRF.org

Sub-recipient Key Contacts:

Name/Title:	Project Role:	Organization/Address:	Phone:	Email:
	PI			
	Authorized Rep			
	Accounting			
	Contracts			

Co-Principal Investigator(s):

Name/Title:	Organization/Address:	Phone:	Email:

Each Party shall provide written notice of changes in contact persons, addresses, telephone, and email addresses. The Principal Investigator, Co-Principal Investigator, or any Subcontractor may only be changed with the prior written approval of WRF.

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EXHIBIT C
BUDGET SUMMARY

Project ____

Sub-recipient:	
-----------------------	--

Title:

WRF shall not have any obligation for payment of invoices for costs incurred by Sub-recipient after the foregoing end date. All report and invoice submittals shall be sent to the Research Program Manager with a copy to the Project Coordinator identified as WRF Key Contacts in Exhibit B.

Payments to Sub-recipient will be issued to Sub-recipient organization and mailed to the address shown in the first paragraph of this funding agreement. If payment of an invoice requires a purchase order number Sub-recipient agrees to provide such number.

DRAFT

EXHIBIT D
INVOICING REQUIREMENTS

Project ____

Title:

Invoices must be submitted in the form posted on the following page under the Exhibits section:

www.waterrf.org/contract-materials#Exhibits

DRAFT

EXHIBIT G
WEBTOOL DELIVERABLES

Project ____

Title:

The following terms govern any Deliverables or Work Product under the Project that consist of software, databases collected and maintained for use with software, interactive web-based tools, resources, reporting, and other information and functionality, all computer programming code, in source code and object code format, and all user and programmer's documentation, manuals, flowcharts, data, databases, and technical documents (collectively, "Webtools").

1. Webtools Launch. As a condition to WRF's disbursement of the final installment of the Project Funds, Sub-recipient shall demonstrate to WRF's reasonable satisfaction that the Webtools are complete and operational, and the website at [insert url] (the "Hosted Site") where the Webtools are hosted is accessible and is operating substantially without error (the "Webtools Launch").
2. Webtools Assurances. Webtools are for all purposes Deliverables and Work Product under the PFA. The terms of this Exhibit G governing Deliverables that are also Webtools are terms in addition to all other terms and conditions in the PFA generally governing Deliverables and Work Product. Accordingly, Sub-recipient additionally represents and warrants that Webtools:
 - a. do not contain any virus, encryption, or any malicious code that corrupts, damages, or interferes with the use or operation of the Webtools, or of any software, database, platform, network, or system used to interface with or access and use the Webtools;
 - b. do not infringe or misappropriate the IP or personal or privacy rights of any other party; and
 - c. substantially conform with the technical specifications and other requirements for the Webtools as described in the Project Plan.
3. Hosting and Maintenance. Sub-recipient will for a period of five (5) years from the Webtools Launch (such five-year term and any extension or renewal thereof the "Webtools Term") provide the following services:
 - a. Sub-recipient shall host the Webtools at [insert url.] (the "Hosted Site"), to accept user traffic directed there from WRF's main member and subscriber login site (the "WRF Users"). All WRF Users shall have unlimited and free right to access and use the Webtools at the Hosted Site throughout the Webtools Term. Users who are not WRF Users and access the Hosted Site and Webtools through other than a WRF subscriber login may be granted access to Webtools in accordance with terms and instructions determined by WRF. All users shall be required to agree, electronically by indicating their agreement online or through other verified and authenticated methods, to the terms of the end user license agreement ("EULA") in the form attached hereto as Schedule 1, before gaining access to Webtools.
 - b. The Hosted Site shall maintain an uptime of no less than 99.9% of the time, not including downtime for scheduled maintenance. Sub-recipient shall reasonably monitor, maintain, and remedy errors in availability and operation of the Webtools, and any Hosted Site downtime. Maintenance and support services for the Webtools and Hosted Site shall be available to WRF

Users via email, chat and/or telephone support on weekdays (not including Federal Holidays), between the hours of [8AM and 6PM CST].

- c. The Hosted Site shall utilize only encrypted connections. Sub-recipient shall at all times use and maintain an SSL certificate issued by [insert] for the Hosted Site.

4. Rights to Webtools and Hosted Site.

- a. Any database provided and maintained, updated, corrected, supplemented, or in any manner modified through use and as part of the Webtools during the Webtools Term shall also be Work Product under the PFA.
- b. All reports generated for WRF Users in their use of the Webtools shall be the property of [the inquiring WRF User].
- c. The brand name for the Webtools service shall be [insert] (“Webtools Brand”). The Webtools Brand and the domain name [insert address of Hosted Site] shall be owned by WRF. WRF shall have the exclusive right to seek trademark registration on the Webtools Brand, and to register the domain name. The look and feel and all other text, graphics, photos, presentations, design, layout of the Hosted Site shall be Deliverables and Work Product, and the exclusive copyright of WRF.
- d. [optional]The Hosted Site shall be branded with the Webtools Brand and with the names, marks, and logos of WRF (collectively with the Webtools Brand, the “WRF Marks”). The Hosted Site shall prominently feature a link to waterrf.org, and any other website directed by WRF. WRF grants to Sub-recipient a limited, restricted, revocable license to display the WRF Marks solely on the Hosted Site, and in all events consistent with WRF’s use requirements and standards associated with the WRF Marks. The Webtools, the Hosted Site, and Sub-recipient’s hosting, support and maintenance services for the foregoing shall meet or exceed the quality, integrity and professionalism standards associated with the WRF Marks. WRF retains the right to monitor use of the WRF Marks and the Hosted Site generally, and to require Sub-recipient to correct any failures to meet WRF’s quality standards associated with the WRF Marks, or to terminate Sub-recipient’s license to display the WRF Marks.

5. Term.

- a. The term of this Exhibit G commences on the Effective Date of the PFA and continues until expiration of the Webtools Term, unless earlier terminated under Section VII of the PFA. Sub-recipient’s obligations and WRF’s rights under the PFA are hereby expressly extended through to the expiration or termination of the Webtools Term, as such PFA terms pertain to Webtools and the subject matter of this Exhibit G.
- b. The Webtools Term may be renewed by WRF’s written notice of renewal to Sub-recipient no later than ninety (90) days prior to any expiration of the then current Webtools Term.
- c. In preparation for any expiration or non-renewal of the Webtools Term and of this Exhibit G, Sub-recipient shall reasonably assist WRF in transitioning the provision of the Webtools and all aspects of the Hosted Site to WRF and/or its designee, shall ensure that all current copies of Webtools and related Work Product are delivered to WRF and no such copies remain with Sub-recipient, and in all other respects shall comply with the requirements of the PFA as they pertain to Deliverables and Work Product.

SCHEDULE 1 TO EXHIBIT G
END USER LICENSE AGREEMENT

PLEASE READ THIS END-USER LICENSE AGREEMENT (“EULA”) CAREFULLY. This EULA is a legal agreement between you (either an individual or a single entity) and The Water Research Foundation (“WRF”) governing your use of WRF’s software, web-based tools, mobile apps, databases, reports, associated media, electronic documentation, as well as printouts of any of the foregoing (collectively “Software”). BY DOWNLOADING, ACCESING, VIEWING, PRINTING, OR OTHERWISE USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT ACCESS OR USE THE SOFTWARE.

1. GRANT OF LICENSE. Subject to your ongoing compliance with this EULA, WRF grants to you an individual, single personal, nonexclusive, revocable, non-transferable license to access and use the Software for your personal research, educational and non-commercial purposes. If any end user documentation is included as part of the Software, you may make only one copy of such documentation, solely for your own use, and subject to all other obligations and restrictions governing Software under this EULA.
2. RIGHTS AND RESTRICTIONS.
 - 2.1. You may not resell, distribute, rent, lease, lend, publish or otherwise transfer or make available the Software to others. Neither the any portion of the Software nor this EULA may be transferred to any third party. Only you, and no other party, may access and use the Software through your login.
 - 2.2. You may not copy, reverse engineer, decompile, or disassemble the Software.
 - 2.3. This EULA does not grant you any rights in connection with any trademarks, copyrights, trade secrets, or other intellectual property of WRF, except as expressly provided in Section 1.
 - 2.4. You agree that WRF may collect and use technical information gathered as part of any support services provided to you. WRF may use this information for any purpose, including but not limited to improve our Software or to provide customized services or technologies to you. WRF will not disclose this information in a form that personally identifies you. For more information, please see the WRF Privacy Notice available on the WRF Website at www.waterrf.org.
3. NO WARRANTY. THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES. WRF HEREBY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND WHETHER RELATING TO THE SOFTWARE OR ANY ASPECT OF COMPONENT OF IT, OR THE WEBSITE THROUGH WHICH IT IS MADE AVAILABLE. WRF EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY, AVAILABILITY, UPTIME, ACCURACY OR COMPLETENESS, WORKMANLIKE EFFORT, LACK OF VIRUSES, AND LACK OF NEGLIGENCE, ALL WITH REGARD TO THE SOFTWARE, AND THE PROVISION OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT

THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE. Some states/jurisdictions do not allow the disclaimer of particular warranties, so the above disclaimer may not apply to you. You may have others which vary from state/jurisdiction to state/jurisdiction.

4. EXCLUSIVE REMEDY. IN NO EVENT SHALL WRF BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION OR DATA, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF WRF OR ANY SUPPLIER, AND EVEN IF WRF OR ANY DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WRF's entire liability and obligation, if any, and your exclusive remedy, if any, for any matter related to the Software shall be for you to discontinue use of the Software.
5. LINKS TO THIRD PARTY SITES. The Software and the website where it is accessed may contain links to third party sites. Such links do not imply an endorsement or affiliation with the materials, information, companies, organizations, products, or services displayed or associated with such third-party sites. Links to other websites are provided for convenience only. You should carefully review the terms of use and privacy policies of all other sites that you visit.
6. ARBITRATION. Any dispute or claim arising or related to this EULA its performance, breach, or interpretation (including issues about its validity or enforceability), shall be resolved by final binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), decided by one arbitrator selected under such rules. The arbitrator shall be neutral and have a substantial background in copyright and intellectual property law. The arbitrator shall use all reasonable efforts to minimize discovery and to complete the arbitration proceedings as expeditiously as possible. WRF shall nevertheless be entitled to seek equitable relief in court without the need to arbitrate, to protect its intellectual property rights.

The arbitration shall be held in Denver, CO; Awards shall be final, binding and non-appealable (except on the minimal grounds required the Federal Arbitration Act or under other applicable law). All awards may be filed with one or more courts, state, federal or foreign having jurisdiction over the party against whom such award is rendered or its property, as a basis of judgment and of the issuance of execution for its collection.

7. GOVERNING LAW. This EULA will be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to its conflicts of laws rules. You hereby consent to the exclusive personal and subject matter jurisdiction and venue of the judicial districts for Denver,

Colorado for WRF's equitable relief actions and to enforce arbitration orders. If any provision of this EULA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions of this EULA, which shall remain in full force and effect.

8. ENTIRE AGREEMENT. This EULA is the entire agreement between you and WRF relating to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA.
9. COPYRIGHTS. The Software is protected by copyright and other intellectual property laws and treaties. WRF and/or its licensors own all right and title in and to the copyrights and other intellectual property rights in the Software. The Software is licensed, not sold. WRF reserves all rights not expressly granted in this EULA.
10. TERMINATION. This EULA is effective until terminated. WRF may terminate this EULA at any time, with or without cause, with or without notice, by discontinuing availability of the Software or terminating or suspending your access to the Software. Your rights under this EULA will terminate automatically without notice from WRF if you fail to comply with any term(s) of this EULA. Upon the termination of this EULA, you shall cease all use of the WRF Software and destroy all copies, full or partial, of any printouts associated with or derived from the Software.

The Water Research Foundation,
6666 West Quincy Avenue, Denver, CO 80235
1199 N Fairfax St, Suite 900, Alexandria, VA 22314

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