

**THE REGENTS OF THE UNIVERSITY OF MICHIGAN
&
THE CITY OF ANN ARBOR
RESEARCH AGREEMENT**

This Agreement (“Agreement”) made this _____ day of _____, 2017, by and between The Regents of the University of Michigan (“University”), a Michigan constitutional corporation with offices located at c/o Office of Research and Sponsored Projects, 3003 South State Street, 1st Floor, Ann Arbor, MI 48109-1274, and the City of Ann Arbor (“City”), a Michigan municipal corporation with offices located at 301 E. Huron Street, Ann Arbor, MI 48104.

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to University and to the City, will further the instructional and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for both the City and University through inventions, improvements, or discoveries; and

WHEREAS, the City understands and accepts that research by its nature is to explore, examine, and test ideas, hypothesis and/or theories and the outcome of a research effort is inherently uncertain.

NOW, THEREFORE, in consideration of the above assumptions and the promises and mutual covenants below, the parties agree to the following:

I. Definitions

- a. “Project” means the research project being undertaken the University and the City in accordance with a Multi Funded Research Agreement, sponsored by the Water Research Foundation (“WRF”) and in accordance with any other grants or funding sources.
- b. “Research Team” refers collectively and individually to the University student or students who will conduct the research project funded in part by the WRF, in accordance with the Multi Funded Research Agreement dated _____, 2017.

II. Research Work

University and the City will use reasonable efforts to perform the research project substantially in accordance with the terms of this Agreement, as well as in accordance with the applicable terms of the Multi Funded Research Agreement.

III. Term

- a. The term of this Agreement begins and ends on the dates the Multi Funded Research Agreement begins and ends, unless written notice of termination is given by either party. Termination of the Agreement shall not affect the obligations of either party incurred during the Term of the Agreement.
- b. Either party may terminate this Agreement by giving two (2) weeks written notice to the other party of its intent to terminate.

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- c. In the event of early termination of the research project by the City, the City will pay all costs accrued by University as of the date of termination, including non-cancelable obligations, such as non-cancelable contracts and fellowships or postdoctoral associate appointments pursuant to the research project. Any obligation of the City for fellowships or postdoctoral associates ends at the end of the University's academic year during which the termination occurs, or two months, whichever period is shorter.
- d. If either party breaches or defaults on any of the terms or conditions of this Agreement, and fails to remedy the default or breach within ninety days after receipt of written notice of it from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party. The termination shall be effective as of the date of the receipt of the notice or 3 days after sending, whichever occurs first.
- e. No termination of this Agreement, however effectuated, shall release the parties from their rights and obligations accrued prior to the effective date of termination.

IV. Services

- a. The University will provide the services of a research team ("Research Team") that may include a post doc student or any other University student assigned to this project, to the City to conduct research in accordance with the Multi Funded Research Agreement. The Research Team will work at the City Water Treatment Plant for an average of 20 hours per week during the term of this Agreement, unless prior approval for a lesser number of hours is provided by Water Treatment Plant Manager, Brian Steglitz ("Steglitz"). Research Team will serve in and under the direction of the Steglitz during those periods in which he/she/they is/are working at the Water Treatment Plant. University will cooperate with the City and the Water Treatment Plant on all matters related to the Research Team's services at the Water Treatment Plant.
- b. The City will have the opportunity to meet, interview and provide input on the University's choice of Research Team based upon mutual interest and the ability to perform services specified under this Agreement.
- c. The University will provide Research Team with the use of lab space or other facilities to perform his/her/their services in conjunction with this Agreement. Similarly, the City will provide Research Team with an appropriate space at the Water Treatment Plant or other City locations necessary to carry out Employee's services.
- d. The University and the City will comply with all applicable requirements of the Multi-Funded Research Agreement, and any other applicable grants or agreements.

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- e. The City will be responsible for the daily supervision and direction of Research Team while at the Water Treatment Plant.
- f. Research Team shall comply with all policies, procedures, and rules and regulations of the Water Treatment Plant while at the Plant.
- g. The City will provide to University written statements of its policies that will be applicable to the Research Team while providing services to the City under this Agreement. Such policies will comply with all federal, state and local governmental laws and regulations.
- h. If Research Team is required, in their course of his/her/their duties, to deal with confidential information, or high value items of the City, the City will institute procedures to safeguard such items. It shall be the sole responsibility of the City and not the University to protect such valuables.
- i. Research Team will at all times remain an employee(s) of the University and will have no employment relationship with the City.

V. Costs, Billings, and Other Support

- a. University will compensate the Research Team, maintain all required human resources and compensation records, compute the Research Team's compensation and withhold and pay all required employment taxes, pay all required worker's compensation, unemployment compensation, overtime and fringe benefits required by law or pursuant to University policy. University will also perform such other duties and obligations as required to comply with any and all applicable federal, state and local statutes, ordinances, rules and regulations, including, without limitation, the maintenance of appropriate worker's compensation insurance.
- b. The University will invoice the City on a monthly basis for all charges related to the Multi Funded Research Agreement. Payment will be made by the City within 30 days of receipt of an invoice. Notice of any dispute regarding the charges in an invoice must be provided in accordance with Article XIII and include a description of the item(s) in dispute and a reasonably detailed explanation of the reason for the dispute.
- c. University will retain title to any equipment that it purchases in relation to this project. The City will retain title to any equipment that it purchases in relation to this project.

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VI. Publicity

The City will not use the name of University, nor of any member of University's Project staff, in any advertising, news release or other promotional activity without the prior written approval of an authorized representative of University. University will not use the name of the City, nor any employee of the City, in any advertising or other promotional activity without the prior written approval of the City. Both parties retain the right to disclose the existence of this Agreement, the identity of the parties, or the nature and scope of the Project.

VII. Publications

- a. Subject to the following terms, the University has the right to publish, publicly present, or otherwise make available to the public the results, analysis, and methods relating to the Research Project (a "Disclosure of Results"). The University will notify the City at least twenty (20) days in advance of the earlier of either (a) the submission to a third party, such as a journal, of a proposed publication or public presentation that would include a Disclosure of Results or (b) other public Disclosure of the Results, and furnish a description of the content therein.
- b. Subject to the following terms, the City has the right to publish, publicly present, or otherwise make available to the public the results, analysis, and methods relating to the Research Project (a "Disclosure of Results"). The City will notify the University at least twenty (20) days in advance of the earlier of either (a) the submission to a third party, such as a journal, of a proposed publication or public presentation that would include a Disclosure of Results or (b) other public Disclosure of the Results, and furnish a description of the content therein.
- c. If the content would contain either (a) patentable subject matter that is Intellectual Property of any party or (b) Confidential Information disclosed pursuant to Article IX, then the City or the University has the right to object in writing to the Disclosure of the Results within twenty (20) days after the publishing party furnishes such description. If the non-publishing party makes a timely objection, then the publishing party will refrain from the Disclosure of the Results until the non-publishing party files patent or sixty days from the date of the objection, whichever is earlier. If the non-publishing party makes a timely objection then the publishing party will comply with the reasonable request to delete or modify information that is Confidential Information, giving due recognition to publishing party's missions and interests in publishing the result of such projects.

VIII. Reports and Conferences

- a. The City and the University will jointly comply with all reporting requirements specified in the Multi Funded Research Agreement.
- b. During the Contract Period, representatives of the University and the City will meet at the Water Treatment Plant at least monthly, at a time to be mutually agreed upon,

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to discuss the progress and results as well as ongoing plans, or changes in the Project.

IX. Confidentiality

- a. University and the City jointly agree to use confidential or proprietary information and data acquired from the other and identified as confidential or proprietary at the time of disclosure ("Confidential Information") only in performing the services of this Agreement and not to disclose to any third party any Confidential Information during and for a period of five (5) years from the date of disclosure, provided that if Confidential Information is disclosed orally or in other non-tangible form, the disclosing party will supply the other party in writing a general description of the Confidential Information and confirmation of its confidential or proprietary status within twenty (20) working days of disclosure.
- b. The obligation to protect Confidential Information shall not apply to any information that: (1) is already in the possession of, or is independently developed by, University or the City; (2) becomes publicly available other than through breach of this provision; (3) is received by University or the City from a third party with authorization to make the disclosure; (4) is released with the other party's written consent; or (5) is required to be released by legal process or other legal authority.
- c. Any disclosures made to the City by the Research Team, arising out of or in connection with the research project, whether verbally or in written or tangible form, shall be considered as having been disclosed to and received by the City on a non-confidential basis and shall not be construed to create or imply any obligation on the part of the City except as otherwise agreed in this Research Agreement between the parties.
- d. Any disclosures made to the University by employees or representatives of the City, arising out of or in connection with the research project, whether verbally or in written or tangible form, shall be considered as having been disclosed to and received by the University on a non-confidential basis and shall not be construed to create or imply any obligation on the part of the University except as otherwise agreed in this Research Agreement between the parties.

X. General Responsibilities of the Parties

- a. The City agrees to comply at its expense with all safety, health and work laws, regulations, directives and rules. The City will also ensure compliance with safe work practices and use of protective equipment imposed by controlling federal, state and local government. All accidents and incidents involving the Research Team will be reported immediately to University by the City. The City and University will both cooperate with others insurance carriers who shall have the right to inspect the City's work location.

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- b. The performance by the Research Team working with the City and the Water Treatment Plant is an integral part of the City's business and that of the Water Treatment Plant. Therefore, in addition to the provisions of this Agreement, the parties to this Agreement specifically agree that where necessary to control the quality of City services, to protect its reputation, or to ensure the safety of individuals within its employ or public safety, the City and/or the Water Treatment Plant may take whatever action it deems necessary to modify or control the performance of the Research Team at the Water Treatment Plant and it may reject and/or return the Research Team or any member and remove them/him/her from the project.
- c. All documents related to Water Treatment Plant business developed as a result of this Agreement, are the property of the City of Ann Arbor. The information contained in such documents may be freely used by either party, subject to the provisions of Article VII.
- d. Neither party is authorized or empowered to act as agent for the other for any purpose and may not on behalf of the other enter into any contract, warranty or representation on any matter. Neither shall be bound by the act or conduct of the other.

XI. Insurance and Indemnification

- a. University warrants and represents that it has adequate liability insurance applicable to officers, employees, and agents while acting within the scope of their employment by University. University liability insurance policies do not extend protection to any other person.
- b. Each party assumes all risks of personal injury and property damage attributable to the negligent acts or omissions of its own officers, employees, and agents. To the extent permitted by law, the University will be responsible for any costs incurred by the City that result from the Research Team's negligence, willful misconduct, or breach of the obligations imposed by this Agreement or by applicable regulations and policies of the City.
- c. The City understands that the University is an educational institution created under Article 8, Section 5 of the State of Michigan Constitution of 1963. The University, as a state institution, has strict limitations imposed upon its use of assets and consequently the University does not and cannot pay for any claims against the City brought by third parties related to this Agreement.

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XII. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions arising from this Agreement shall be brought in the state of Michigan, County of Washtenaw.

XIII. General Provisions

- a. This Agreement is the entire Agreement regarding the research project between the City and the University and supersedes all prior representation, negotiations or agreements, whether written or oral.
- b. This Agreement may not be altered or amended except by written Agreement. The provision of this Agreement shall be binding upon the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assign.
- c. This Agreement may be executed in several counterparts, each of which shall be deemed original. Such counterparts shall together constitute but one and the same Agreement.
- d. The headings of the paragraphs of this Agreement are inserted solely for the convenience of reference. They shall in no way define, limit, extend or aid in the construction of the scope, extent or intent of this Agreement.
- e. In the event that any provision contained in this Agreement is held unenforceable by a court of competent jurisdiction, the remaining provisions shall continue. In the event that a portion of any provision is held unenforceable, the remaining portion or such provision shall nevertheless be carried into effect.
- f. The failure of a party to enforce at any time the provision of this Agreement shall not be construed as a waiver of any provision or of the right of such party thereafter to enforce each and every provision of this Agreement.
- g. Neither party shall transfer or assign the Agreement without the written consent of the other party.
- h. Any notice, request, demand, or other communication required or permitted thereunder shall be deemed properly given when placed in writing and deposited in the United States Postal Service, postage prepaid:
 - i. To the City as listed above, or such other address as provided by the City.
 - ii. To the University as listed above or such other address as provided by the University.

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- i. Provisions surviving termination or expiration of this Agreement are those that on their face affect rights and obligations after termination or expiration, including provisions concerning indemnification, confidentiality, warranty and choice of law and venue.

CITY OF ANN ARBOR, a Michigan
municipal corporation

THE REGENTS OF THE UNIVERSITY
OF MICHIGAN, a Michigan constitutional
corporation

By _____
Christopher Taylor, Mayor

By _____
Peter J. Gerard
Its: Grants and Contracts Associate Director

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus
City Administrator

Craig A. Hupy, PE, Public Services
Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney