

**AGREEMENT BETWEEN THE REGENTS OF THE UNIVERSITY OF MICHIGAN
AND THE CITY OF ANN ARBOR FOR RESEARCH REGARDING THE IMPACT OF
UV TREATMENT ON MICROBIAL COMMUNITIES IN A FULL-SCALE DRINKING
WATER DISTRIBUTION SYSTEM**

This Agreement (“Agreement”) is made this ____ day of _____, 2022, 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 (collectively “the Parties”).

WHEREAS, City applied for and was awarded project funding in the form of a grant from the Water Research Foundation to conduct a research program regarding the “Impact of UV Treatment on Microbial Communities in a Full-Scale Drinking Water Distribution System;”

WHEREAS, City wishes to use a University postdoc, student, or students to conduct this research;

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to University and 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 City and University through inventions, improvements, or discoveries; and

WHEREAS, City understands and accepts that research by its nature is to explore, examine, and test ideas, hypotheses 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 by University and City regarding the Impact of UV Treatment on Microbial Communities in a Full-Scale Drinking Water Distribution System in accordance with the Project Funding Agreement #5151 (“PFA”), 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 Project funded in part by WRF, in accordance with the PFA dated _____, 2022.

II. Research Work

University and City will use reasonable efforts to perform the Project substantially in accordance with the terms of this Agreement, and the applicable terms of the PFA

III. Term

- a. The term of this Agreement is for the term set forth in Section VII of the PFA, unless written notice of termination is given by either party. Termination of this Agreement shall not affect the obligations of either party incurred during the term of this Agreement.
- b. Either party may terminate this Agreement by giving two (2) weeks' written notice to the other party of its intent to terminate.
- c. In the event of early termination of the Project by City, 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 Project. Any obligation of City for fellowships or postdoctoral associates ends at the end of 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 (90) 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 three (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. University will provide the services of Research Team that may include a post doc student or any other University student assigned to this Project, to City to conduct research in accordance with the PFA. Research Team will work at the City Water Treatment Plant for an average of twenty five (25) 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 City and the Water Treatment Plant on all matters related to Research Team's services at the Water Treatment Plant.
- b. City will have the opportunity to meet, interview and provide input on University's choice of Research Team based upon mutual interest and the ability to perform services specified under this Agreement.
- c. 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, 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. University and City shall comply with all applicable requirements of the PFA, and any other applicable grants or agreements.
- e. 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. City will provide to University written statements of its policies that are applicable to Research Team while providing services to 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 City, City will institute procedures to safeguard such items. It shall be the sole responsibility of City and not University to protect such valuables.
- i. Research Team will at all times remain an employee(s) of University and will have no employment relationship with City.

V. Costs, Billings, and Other Support

- a. University will compensate Research Team, maintain all required human resources and compensation records, compute 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. University will invoice City on a monthly basis for all charges related to the PFA. Payment will be made by City within thirty (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. Subject to the terms of the PFA, University will retain title to any equipment that it purchases in relation to this Project. City will retain title to any equipment that it purchases in relation to this Project.

VI. Publicity

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 City, nor any employee of City, in any advertising or other promotional activity without the prior written approval of 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. City and University shall comply with the publication and intellectual property requirements specified in the PFA. To the extent that there is a conflict between the intellectual property rights and publication terms of the PFA and this Section VII, the terms of the PFA will govern.
- b. Subject to the terms of the PFA and the following terms, University has the right to publish, publicly present, or otherwise make available to the public the results, analysis, and methods relating to the Project (a "Disclosure of Results"). University will notify 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.
- c. Subject to the terms of the PFA and the following terms, City has the right to publish, publicly present, or otherwise make available to the public the results, analysis, and methods relating to the Project (a "Disclosure of Results"). City will notify 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.
- d. 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 City or 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. City and University will comply with all reporting requirements specified in the PFA.

- b. During the term of this Agreement, representatives of University and City will meet virtually or at the Water Treatment Plant at least monthly, at a time to be mutually agreed upon, to discuss the progress and results as well as ongoing plans, or changes in the Project.

IX. Confidentiality

- a. University and City 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 City; (2) becomes publicly available other than through breach of this provision; (3) is received by University or 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 City by Research Team, arising out of or in connection with the Project, whether verbally or in written or tangible form, shall be considered as having been disclosed to and received by City on a non-confidential basis and shall not be construed to create or imply any obligation on the part of City except as otherwise agreed in this Agreement between the parties.
- d. Any disclosures made to University by employees or representatives of 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 University on a non-confidential basis and shall not be construed to create or imply any obligation on the part of University except as otherwise agreed in this Agreement.

X. General Responsibilities of the Parties

- a. City agrees to comply at its expense with all safety, health and work laws, regulations, directives and rules. 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 Research Team will be reported immediately to University by City. City and University will both cooperate with the other party's insurance carriers who shall have the right to inspect City's work location.

- b. The performance by Research Team working with City and the Water Treatment Plant is an integral part of City's business and that of the Water Treatment Plant. Therefore, in addition to the provisions of this Agreement, the parties 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, City and/or the Water Treatment Plant may take whatever action it deems necessary to modify or control the performance of Research Team at the Water Treatment Plant and it may reject and/or return 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 City. 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, University shall be responsible for any costs incurred by City that result from Research Team's negligence, willful misconduct, or breach of the obligations imposed by this Agreement or by applicable regulations and policies of City. Nothing in this Section XI waives or limits, or shall be construed to waive or limit, the governmental immunity of a party.
- c. City understands that University is an educational institution created under Article 8, Section 5 of the State of Michigan Constitution of 1963. 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 City brought by third parties related to this Agreement.

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 Project between City and University and supersedes all prior representations, 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 assigns.
- 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 City as listed above, or such other address as provided by City, with a copy to:

Manager of Water Treatment Plant
919 Sunset Rd
Ann Arbor, MI 48103
 - ii. To University as listed above or such other address as provided by University.
- 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

Milton Dohoney Jr.
Interim City Administrator

Craig A. Hupy, PE, Public Services
Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney