

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN IT AND THE WEST VIRGINIA RESEARCH CORPORATION ON BEHALF OF WEST VIRGINIA UNIVERSITY AS THE SAME APPLIES TO THE FUNDING OF THE CITY'S WEST RUN PASSIVE TREATMENT INSTALLATION PROJECT AT THE MORGANTOWN MUNICIPAL AIRPORT.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute in duplicate the Agreement hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

**Subcontract Between  
West Virginia University Research Corporation  
on behalf of  
West Virginia University  
and  
City of Morgantown**

This Subcontract, entered into as of \_\_\_\_\_, 2014, by and between the West Virginia University Research Corporation on behalf of West Virginia University (hereinafter referred to as "WVURC") and the City of Morgantown. (hereinafter referred to as Subcontractor").

**Project Specifications**

**Subcontract No. 14-682-COM**

**Project Sponsor: WV Department of Environmental Protection (Grant No. NPS 1379)**

**Project Title: West Run Passive Treatment Installation – Airport Portals Phase II**

**Period of Performance: May 15, 2014 through September 30, 2015**

**Subcontract Type and Amount: Cost Reimbursable - \$ 216,553.00**

**WVURC Representatives:**

**Technical: Jennifer Hause**

**Administrative: Margaux Johnson**

**Subcontractor Representatives:**

**Technical: Stephen Fanok**

**Administrative:**

This Agreement is subject to all terms and conditions appended hereto, including General Terms and Conditions, and Special Terms and Conditions, if any.

**West Virginia University Research  
Corporation on behalf of  
West Virginia University**

**City of Morgantown**

\_\_\_\_\_  
Signature

Mary Jane Buckland \_\_\_\_\_  
Name

Assistant Secretary \_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **Terms and Conditions**

### **Article 1 - Statement of Work**

The work to be performed by the Subcontractor is set forth in Attachment 1 attached hereto and incorporated herein. The Subcontractor will meet the schedules and activities outlined in the Statement of Work.

### **Article 2 - Period of Performance**

The project period of performance under this Subcontract shall commence on May 15, 2014, and continue through September 30, 2015. This includes the submission of any and all draft and final reports.

### **Article 3 - Program Officials**

Jennifer Hause has been designated as the WVURC Technical Representative. As the Technical Representative, Ms. Hause will be the point of contact between WVURC and the WV DEP for technical matters.

### **Article 4 - WVURC's Contracting Officer**

WVURC has designated Ms. Mary Jane Buckland to be the Contracting Officer with sole responsibility for all administrative and budgetary matters and the single point of contact with the WV DEP for such matters.

### **Article 5 - Financial Support**

The total cost for work performed under this Subcontract payable to Subcontractor \$ 216,553.00. The Subcontractor agrees to provide matching funds in the amount of \$ 176,456.00 for the total project cost of \$ 393,009.00. A detailed budget for these costs is attached hereto and incorporated herein as Attachment 1. Subcontractor is expected to bring the activities outlined in Attachment 1 to a conclusion within the funds provided. Costs in excess of \$ 216,553.00 require prior written approval in the form of an amendment to this agreement.

### **Article 6 - Payment**

WVURC shall reimburse the Subcontractor, not more often than monthly for allowable costs actually incurred and chargeable to WVURC in accordance with the budget categories outlined in Attachment 2. The Subcontractor shall submit invoices to:

Jennifer Hause  
WV Water Research Institute  
West Virginia University  
PO Box 6064  
Morgantown, WV 26506-6064  
[jhause@wvu.edu](mailto:jhause@wvu.edu)

All invoices shall include the following:

- Name and address of subcontractor

- Invoice date
- Project No. 13-724, West Virginia University Research Corporation
- Period of Performance
- Current and cumulative costs
- Description of service and price
- Name and address of official to whom payment is to be sent
- Name (where practicable), title, phone number and mailing address of person to be notified in the event of a defective invoice
- Statement as to truth and accuracy of invoice
- Any other information or documentation as may be required
- will provide a written progress update report detailing activities completed

Subcontractor will submit the DEP Request for Reimbursement from along with supporting documentation to WVURC to obtain reimbursement for allowable expenses. Supporting documentation includes a spreadsheet or other budget breakdown of expenses incurred during the specified period and based on budget categories as outlined in the original project proposal.

A detail of the cost-sharing provided shall also be submitted with each invoice. Invoices will not be paid without proper cost sharing documentation.

An invoice marked "final" must be submitted within thirty (30) days of the expiration of this Subcontract. Failure to submit said invoice may result in nonpayment.

**Article 7 -- Financial Considerations**

The cost of this Subcontract, including both the direct and indirect costs, will not exceed the amount set forth in this Subcontract. The total cost is to be based upon on the following:

1. Direct cost for salaries and wages and associated fringe benefits for all personnel to be assigned to work on the Subcontract;
2.
  - a. F&A costs at the rate of 10% of MTDC –consisting of all salaries and wages fringe benefits, materials, supplies, services, travel and subcontracts up to the first \$ 25,000 of each subcontract(regardless of the period covered by the subcontract). MTDC shall exclude equipment, capital expenditures, charges for patient care, tuition remission, rental costs of off-sit facilities, scholarships and fellowships as well as the portion each subcontract in excess of \$ 25,000; or
  - b. For Subcontracts directly funded through federal subgrants, the F&A costs at the percent established by the U.S. DHHS Audit Agency for the Subcontractor during the official period of the Subcontract beginning and ending dates, but provisionally as stated in the Subcontract for each Subcontract and subject to final audit adjustments;
3. Cost of special equipment essential to the Subcontract and usable only on the Subcontract;
4. Cost of materials used on the project;
5. Travel expenses;
6. Telephone and information technology charges, tuition;
7. Subcontracts, books, computer software, facility rentals, and manuals;
8. Reimbursement for costs of travel an subsistence will be made in accordance with WV State Travel Regulations and will be limited to travel within the State of West Virginia

(except for out-of-state travel which is considered essential to the effective execution of the project and which is either specifically itemized in the approved Research proposal or is approved in advance in writing by the WV DEP through WVURC one month prior to the travel).

9. The Subcontractor is expected to limit purchase of non-expendable equipment to purchases authorized by the subcontract as approved by WVURC. Titles of non-expendable equipment will be vested in the Subcontractor unless otherwise provided for in the Subcontract.
10. The Subcontractor will include with each requisition and invoice submitted to the WVURC a certification that the items included therein as direct costs have been excluded from all indirect costs.
11. The Subcontractor will pay all costs incurred in conducting the work on this Subcontract and will be reimbursed upon approval by WVURC.
12. WVURC will retain 10 % of the total invoiced amount until the acceptance of the draft final report and the final report by WVURC. Upon acceptance of the draft final report, the Department will process payment for the final 10 % of the total invoice amount.
13. The Subcontractor will immediately reimburse WVURC for any and all overpayments made by WVURC to the Subcontractor pursuant to the Subcontract and agrees that the statute of limitations will not commence to run against WVURC for such overpayments until the same is discovered and made know to WVURC.

#### **Article 8 – Prior Approval**

The Subcontractor is required to obtain prior approval by WV DEP through WVURC prior to assigning, subletting, or transferring any of the work provided for under this Subcontract.

#### **Article 9 – Equipment**

All apparatus and equipment approved for purchase in the Subcontractor will be used exclusively on the project and will be at the disposal of the Subcontractor for the duration of the specific project. Title to non-expendable equipment purchased by projects funds will be vested in the Subcontractor upon completion of the project, unless the parties agree otherwise prior to acquisition of the equipment. Purchase of minor items of apparatus and equipment listed as a lump sum in the Subcontract will not exceed the amount itemized in the budget unless approved in writing in advance by the WV DEP through WVURC.

#### **Article 10 – Records**

WVURC and WV DEP will exercise general supervision over the work completed under this Subcontract. The Subcontractor will maintain accounting records and other evidence pertaining to the costs incurred on the Subcontract. These data will be made available for inspection by WVURC/WV DEP at all reasonable times at the office of the Subcontractor during the period of the Subcontract and for three years after the date of the final payment by WVURC with respect to the Subcontract. Copies thereof will be furnished if requested.

WVURC and WV DEP will at all times be accorded proper facilities for review and inspection of work hereunder, and will at all reasonable times have access to the premises and to all data, notes, records, correspondence, instructions and memoranda of every description pertaining to the work hereunder.

Costs allowable and administrative rules under this Subcontract shall be determined in

accordance with OMB Circular A-87 and A-102.

**Article 11 -- Audit Requirements**

Requirement for the conduct, oversight, scope, and frequency of financial and compliance audits shall be established in accordance with 10 CFR 600.120.

The Subcontractor also agrees to abide by OMB Circular A-133, which implements the Single Audit Act, the Subcontractor agrees to obtain a single audit from an independent auditor if it expends \$ 500,000.00 or more in total in Federal funds in any fiscal year.

**Article 12 -- Propriety Rights/Ownership of Data**

The parties under this Subcontract agree that if patentable discoveries or inventions should result from the work of the Subcontractor hereunder, all rights accruing from such discoveries or inventions will be the sole property of the Subcontractor. For Subcontracts funded solely with State funds, only WVURC/ WV DEP will be an irrevocable, nonexclusive, nontransferable and royalty-free license to practice such invention in the manufacture, use and disposition, according to law and any article or mutual and the in the use of any that may be developed as part of the under this Subcontract.

The ownership of data collected under this Subcontract together with summaries and charts derived there from, will be vested in WVURC with the proviso that the Subcontractor has a royalty free license to use the data for research, teaching, and other academic purposes.

**Article 13 -- Governing Laws**

The conduct of work under this Subcontract is subject to pertinent State and Federal laws, regulations and policy procedure directives. This Subcontract is further subject to any constitutional prohibition, either Federal or State.

Further, it is understood that the Subcontractor is qualified and able to conduct the research, but is unable to do as contemplated under the provisions of WV Code 17-2A-9 without charge or compensation because of budget limitations, and in order to obtain research, WVURC and WV DEP agrees to compensate the Subcontractor as herein provided by this Subcontract.

All disputes between the parties of this Subcontract will be settled in accordance with the Constitution and laws of the State of West Virginia.

**Article 14 -- Reporting and Deliverables**

The Subcontractor will submit deliverables according to the approved Statement of Work, under otherwise provided by WVURC. Deliverables are to be submitted in two hardcopies and one electronic version, in MS-WORD compatible format. Deliverables shall be submitted on or before the last day of the Subcontract and shall be accompanied with an invoice. If the time frames and work schedules outlined in the Statement of Work are deviated from, a summary stating the reasons why the project is not on schedule and the impact on the estimated completion date shall be included with the deliverable. Additionally, a new time schedule shall be submitted for review and approval by WVURC. Failure to submit deliverables will result in withholding of all future payments for the project until the deliverables are submitted and approved, and may subsequently result in termination of the project. All deliverables will be reviewed by WVURC

within ninety days of submission.

The Subcontractor agrees to submit progress reports when any request for payments is made to WVURC. The Subcontractor also agrees to submit semi-annual and annual reports of progress for all projects identified in this agreement. The reports must contain the elements described on the program's website (<http://www.dep.wv.gov/nonpoint>).

Reporting periods are as follows:

- October 1 – March 30 with the report due May 1
- April 1 – September 30 with the report due on November 1
- A final report is due following the completion of the grant.

A final report, satisfactory to the WVURC Technical Representative, must be submitted for review by WVURC. When approved, two bound paper copies; an electronic copy in Portable Document Format; and one copy of the final report in MS-WORD compatible format, as well as all additional data/files will be submitted to WVURC unless stated otherwise by the Subcontract. Acceptance of the final report by WVURC is a requirement for fulfillment of the Subcontract; however, no report will be arbitrarily rejected. The text of the above-designated report and software must be written in a manner that will be intelligible to their intended audiences.

Final reports will be reviewed and comments provided or the report accepted within thirty days of receipt by WVURC.

#### **Article 15 – Publication**

Papers, interim or final reports, forms or other materials that are a part of any Subcontract will not be formally registers as copyrights with the Library of Congress except with the written approval of WV DEP through WVURC. The Subcontractor is free to publish or use the data and results without restriction after acceptance and publication of the final report.

Neither party will release, either orally or in writing, information, forms or other material developed on this Subcontract prior to publication of all final reports except with the prior written approval of all parties involved. However, there is no intent to limit discussion of the project with small technical groups or lectures to employees or students. Lectures to other groups which describe the research plans but disclose neither data nor results are permissible without advance approval by WVURC. It is understood that WVURC, WV DEP and Subcontractor will comply with the requirements of the WV FOIA.

The Subcontractor will advise WV DEP through WVURC in writing of any proprietary or patentable information contained therein and may, as necessary, formally request that WVURC or WV DEP delay the information's publication or dissemination. WVURC will refrain from publishing any such information categorized by the Subcontractor as proprietary or patentable for a period not to exceed 180 days from the date of such written request, to enable Subcontractor to appropriately coordinate with WVURC and WV DEP to file for protection of any proprietary or patentable Intellectual Property interests.

All published reports of projects will, unless stated otherwise in the Subcontract, contain the following statements within the document: "Prepared for the WVURC and the West Virginia Department of Environmental Protection," and

"The contents of this report reflect the views of the author who is responsible for the facts

and the accuracy of the data presented herein. The contents do not necessary reflect the official views or policies of the State or WVURC. This report does not constitute a standard, specification, or regulation. Trade or manufacturers' names which may appear herein are cited only because they are considered essential to the objectives of this report. Neither the State of West Virginia or WVURC, endorses products or manufacturers."

**Article 16 -- Supplies and Services**

The Subcontractor shall furnish all personnel, facilities, equipment, material, supplies, and services and otherwise do all things necessary for, or incident to, the performance of the work outlined in Attachment 1 hereto.

**Article 17-- Acceptance**

Acceptance of all technical work and effort under this Subcontract shall be accomplished by the Program Manager.

**Article 18 -- Equal Employment Opportunity and Nondiscrimination**

During the performance of this Subcontract, the Subcontractor and any of its subcontractors agree that there shall be no discrimination against any individual employed in work covered by this Subcontract, or who is employed in other work or against any application for such employment, because of race, color, religion, sex, age, national origin or handicap. This provision shall include, but not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Further, the Subcontractor agrees that they, along with any lower tier subcontractors, will comply with the EO of the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965, and the Civil Rights Act of 1964. During the performance of this Subcontract, the Subcontractor, for itself, its assignees and successors in are as follows.

WVURC will cooperate with the Subcontractor in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to insure that minority business enterprise shall have the maximum practicable opportunity to compete for any subcontract under this Subcontract.

Additionally, the Subcontractor will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, relation to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912, as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of Civil Rights Act of 1968, as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) Intergovernmental Personnel Act of 1970 ( 42 U.S.C. ?? 4728-4763) relating to prescribed

standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration; (j) any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statutes which may apply to this application.

The Subcontractor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

The Subcontractor will not discriminate on the grounds of race, color or nation origin in the selection and retention of subcontractors, including procurement of materials and lease of equipment. The Subcontractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Federal Regulations, including employment practices when this Subcontract covers a program set forth in Appendix B of the Regulations.

The Subcontractor certifies that it will or continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about –
  1. The dangers of drug abuse in the workplace;
  2. The Subcontractor's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the Subcontract be given a copy of the statement required by paragraph (a);
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
  1. Abide by the terms of the statement, and
  2. Notify the employer in writing of their conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- e. Notifying WVURC in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2), from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the State agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers of each affected subcontract;
- f. Taking one of the following actions, within thirty (30) calendar days of receiving under subparagraph (d)(2), with respect to any employee who is so convicted –
  1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through

implementation of paragraphs (a), (b), (c), (d), (e), and (f).

All solicitations made by the Subcontractor for work to be performed under a subcontract (including procurement of materials and equipment), each potential subcontractor or supplier shall be notified by the Subcontractor of the Subcontractor's obligations under this Subcontract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin, or handicap.

The Subcontractor will provide all the information and reports required by the Regulations, orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information and its facilities as may be determined by the WVURC and WV DEP if pertinent to the ascertaining compliance with such regulations, orders and instructions. Where any information required of the Subcontractor is in the exclusive possession of another who fails or refuses to furnish this information, the Subcontractor shall also certify to WV DEP through WVURC, and shall set forth what efforts it has made to obtain the information.

In the event of the Subcontractor's noncompliance with the nondiscrimination provisions of the Subcontractor, these sanctions may include, but not limited to:

1. Withholding of payments to the contractor under this Subcontract until the Subcontractor complies; and/or
2. Cancellation, termination or suspension of the Subcontract, in whole or in part.

The Subcontractor will include all of the above provisions in this article in every subcontract, including procurement of materials and lease of equipment, unless exempt by the regulations, orders or instructions issues pursuant thereto. This Subcontractor will take such action with respect to any subcontractor or procurement as WV DEP through WVURC may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that in the event the Subcontractor becomes involved in or is threatened in or is threatened with litigation by a subcontractor or vendor, the Subcontractor may request the WV DEP through WVURC to enter into such litigation to protect the interests of the United States.

**These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of this Subcontract.**

#### **Article 19 – Lead-Based Paint Poisoning**

The Subcontractor agrees to comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ?? 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

#### **Article 20 – Compliance**

The Subcontractor will comply, as applicable, with the following Acts:

- Hatch Act provisions (5 U.S.C. ?? 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with State or Federal funds.
- Davis-Bacon Act ( 40 U.S.C. ?? 276a to 276a-7)
- Copeland Act (40 U.S.C. ?? 276c and 18 U.S.C. ? 874)
- The Contract Work Hours and Safety Standards Act (40 U.S.C.?? 327-333) regarding

- labor standards for federally assisted construction sub agreements.
- Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$ 10,000.00 or more.
- Environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and EO 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with 11988; (e) assurance of project consistency with the approved State management programs developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ?? 1451 et seq.); (f) conformity of Federal actions of State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ? 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- The Wild and Scenic Rivers Act of 1968 (16 U.S.C. ?? 1271 et seq.) relating to protecting components or potential components of the national wild and scenic rivers system.
- Provide assurance in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

**Article 21 -- Termination**

This Subcontract may be terminated by either party with sufficient cause, by providing thirty (30) days written notice to the other party.

If at any time West Virginia Department of Environmental Protection Grant No. NPS 1464 is terminated by the West Virginia Department of Environmental Protection Agreement shall also be terminated upon receipt by the Subcontractor of written notice to that effect from the WVURC. The Subcontractor shall be reimbursed for uncancellable obligations properly incurred prior to the date of notice of termination. If through any cause the Subcontractor shall fail to fulfill in a timely and proper manner its obligations under this Subcontract, or in the event of violation of any of the covenants contained herein, the WVURC shall thereupon have the right to terminate this Subcontract by giving written notice to the Subcontractor specifying the effective date of termination.

The Subcontractor will insure that its contractor procure, from a reputable surety, a performance bond and payment bond for the total amount of the contract. If the Subcontractor defaults and the surety waives its right to perform the contract or otherwise arrange for completion of the contract, the Subcontractor will reimburse WVURC on a pro rate share, from the funds distributed by the Subcontractor by the surety.

**Article 22 – Direct and Indirect Costs**

The Subcontractor may charge overhead at the percent established by their federal cognizant audit agency for the Subcontractor during the official period of the Subcontract beginning and end dates, but provisionally and subject to final audit.

In accordance with section 319 (h) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10 % of the amount of the Subcontract.

Further, the Subcontractor agrees that management fees or similar charges in excess of direct and indirect costs are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Subcontract.

#### **Article 23 -- Export Control**

WVURC and Subcontractor are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Subcontractor that the Subcontractor will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While WVURC agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, WVURC cannot guarantee that such licenses will be granted.

#### **Article 24-- Indemnification**

To the extent permitted by law, Subcontractor shall at all times defend, indemnify and save harmless WVURC, WVU and the Project Sponsor and their respective employees, agents, successors and assigns ("Indemnified Entities"), from and against any and all claims, liability, loss, cost or expense of whatsoever kind or nature, including without limitation attorneys' fees, court costs and interest, which may be sustained or incurred by the Indemnified Entities arising out of or attributable to the performance of the Subcontract, whether or not caused in part by the negligence of the Indemnified Entities, or a third party, except where such liability is caused by the sole negligence of the Indemnified Entities. Subcontractor's indemnity obligations under this Subcontract shall not be limited by the provisions of any workers' compensation or similar act.

#### **Article 25-- Insurance**

Subcontractor shall maintain at its sole cost and expense all insurance of any kind or nature which may be required by the laws, regulations and/or ordinances applicable thereto. Subcontractor shall, at a minimum, maintain statutory workers' compensation insurance and comprehensive general liability insurance, including contractual liability coverage, with limits of a minimum amount of one million dollars (\$1,000,000) covering all of its operations in connection with the performance of this Subcontract. Subcontractor shall also maintain motor vehicle liability insurance with limits of liability in the minimum amount of one million dollars (\$1,000,000), covering any and all automobiles, trucks or other motor vehicles used by the Subcontractor for or in connection with the performance of this Subcontract. WVURC, WVU and the Project Sponsor shall be named as additional insured's on the comprehensive general liability and motor vehicle liability insurance policies of the Subcontractor. The Subcontractor's failure to maintain said insurance shall constitute a default by the Subcontractor under this Subcontract.

**Article 26 -- Liability**

Each party shall be responsible for its own negligent or intentional acts or omissions in the performance of this Subcontract.

Neither party to this Subcontract shall be held liable by the other party for personal injury or property damage in connection with the performance of this Subcontract. The Subcontractor shall maintain adequate liability insurance during the life of this Subcontract.

**Article 27 -- Independent Contractor**

Subcontractor, acting as an independent contractor and not as an agent of WVURC, is willing to perform said work upon the terms hereinafter provided.

**Article 28 -- Force Majeure**

Neither WVURC nor Subcontractor shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting directly or indirectly, from acts of God, civil or military authority, acts of public enemy war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of WVURC or Subcontractor.

**Article 29 -- Conflict of Interest**

By signing this Agreement the Subcontractor certifies that the institution has an active and enforced Conflict of Interest policy which complies with the awarding agency's guidelines. It also certifies that the relevant investigator(s) are in compliance with the Subcontractor's Conflict of Interest policy. In the event the Subcontractor does not have such a policy, it shall request a copy of WVURC's Conflict of Interest policy and shall comply with the WVURC's policy.

Subcontractor shall provide FCOI reports to the WVURC Administrative Representative regarding all financial conflicts of interest of all subrecipients' investigators prior to the expenditure of funds and within 30 days of any subsequently identified FCOI.

**Article 30 -- Modifications**

This Subcontract may be amended from time-to-time by written mutual agreement of the parties. Said modifications shall take the form of numbered amendments to this Subcontract.

**Article 31 -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

1. Subcontractor, by signing this agreement, certifies to the best of its knowledge and belief, that it and its principles:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State department or agency.
  - b. Have not within a three-year period preceding this proposal been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction, violation of Federal

or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local).
2. The Subcontractor agrees by submitting the proposal of work that it will include the clauses under Part B: Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **Article 32 – Lobbying**

The Subcontractor certifies, to the best of their knowledge and belief, that:

1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of the State Legislature, a Member of Congress and other officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
2. The Subcontractor shall require that the language of this agreement be included in the agreements of all sub agreements at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify accordingly.

Subcontractors understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to this recipient.

### **Article 33 – Clean Water Act Section 319 Nonpoint Source Program**

The Subcontractor agrees to ensure that all conference, meeting, convention or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act (PL 101 – 391 as amended). The Subcontractor also agrees to comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certifications or lobbying forms shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$ 100,000 for each such expenditure. The Subcontractor agrees that no grant funds have been or will be used to engage in lobbying the Federal Government, other political activities, or in litigation against the United States. See OMB Circulars A-21, A-87, or A-122. In accordance with EPA Order 1000.25 and Executive Order (EO) 13423, the Subcontractor agrees to use recycled paper and double-side printing for all reports that are prepared as a part of this grant award and delivered to EPA.

The Subcontractor understands that they, as a Subcontractor, their employees, sub-recipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the Subcontract is in effect; procure a commercial sex act during the period of time that the Subcontract is in effect; or use force labor in the performance of the award or subcontracts under this Subcontract.

Subcontractors are encouraged to consider, and report to WVURC, the use of companies under Disadvantage Business Enterprise (DBE) program for purchases of products or services. The purpose of the DBE program is to encourage, cultivate and support equal opportunities for firms owned and controlled by socially and economically disadvantaged individuals. The DBE contractor and consultant lists can be found at; [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)  
[www.bpi.gov/CCRSearch/Search.aspx](http://www.bpi.gov/CCRSearch/Search.aspx)  
[http://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app\\_search](http://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app_search)  
<http://www.transportation.wvu.gov/ceo/DBE/Pages/default.aspx>

The Subcontractor agrees to work with WVURC and WV DEP to enter or provide water quality monitoring data, for data collected in a waterbody pursuant to the implementation of Section 319 project, into EPA's "storage and retrieval" (STORET) data system using either the Water Quality Exchange (WQX) or WQX web. All funds awarded by this agreement and identified as watershed project (WP) funds shall be used to implement best management practices and/or programs that will result in direct measurable environmental results such as load reductions and/or water quality improvements and which implement a specific goal, action or project clearly identified in the Watershed Based Plans (WBPs).

Subcontractor understands that in regards to payment of consultants, that the EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by Subcontractor or by Subcontractor's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. The limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$ 596.00 per day and \$ 74.50 per hour.

Funding and/or technical assistance provided from this agreement to any agriculture operation shall be used in accordance with either:

- a. USDA NRCS Nutrient Management Standard Code (NM) 590 as adopted at the state level and as such time that NRCS adopts guidelines at the state level for "Comprehensive Nutrient Management Plans (CNMPs)," all funding for such purpose will have to adhere to NM Std. 590 and CNMP guidelines or ;
- b. State program requirements and technical standards that are functionally equivalent to those identified in the final USDA NRCS "Comprehensive Nutrient Management Guidance."

Engineering costs for design work shall be capped at the following:

- a. Projects less than \$ 100,000 for construction, 13-15 % cap on design costs
- b. Projects between \$ 100,001 and \$ 500,000 for construction, 8-12% cap on design costs
- c. Projects over \$ 500,000 for construction, 6-8 % cap on design costs.

The Subcontractor agrees to ensure the continued proper operation and maintenance (O&M) of all management practices that have been implemented for projects funded under this grant. Such practices shall be operated and maintained in accordance with commonly accepted standards.

#### **Article 34 – Titles II and III**

The Subcontractor will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of the State and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of State participation in purchases.

#### **Article 35 – Food and Refreshments**

The Subcontractor agrees, that unless the event(s) and all of its components are specified in the approved work plan, the Subcontractor will obtain prior approval from WVURC for the use of grant funds for light refreshments and/or meals served at meetings, conference, training workshops, and outreach activities (events). The Subcontractor must send requests for approval to WVURC and include: an estimated budget and description of the light refreshments, meals, and/or beverages to be served at the event(s); a description of the purpose, agenda, location, length and timing of the event; an estimated number of participants in the event and a description of their roles. Note: U.S. General Services Administration regulations define light refreshments for morning afternoon or evening breaks to include, but not limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins (41 CFR 301 -- 74.11).

#### **Article 36 – Quality Assurances**

In accordance with 40 CFR 30.45 and 31.45, the Subcontractor must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to WVURC at least 90 days prior to the initiation of data collection or data compilation. Prior to the data collection or compilation, the QAPP must be approved by WVURC.

#### **Article 37 – Permits**

The Subcontractor agrees to ensure that all permits are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state, or local laws. The project implantation plan must identify permits that may be needed to complete work plan activities. The Subcontractor must keep documentation regarding necessary permits in the project file.

#### **Article 38 -- Entire Agreement**

Upon acceptance of this Subcontract, Subcontractor agrees that the provisions under this Subcontract, including all documents incorporated by reference , shall constitute the entire Agreement between the parties hereto and supersede all prior agreements relating to the subject matter hereof. This Subcontract may not be modified or terminated orally, and no modification nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced.

The following are hereby incorporated and made a part of this Subcontract:

Attachment 1 -- Statement of Work

Attachment 2 -- Budget

Attachment 3 -- Prime Award

**End of Section**

# **Attachment 1**

## **Statement of Work**

The City of Morgantown will be responsible for project administration and oversight of construction to meet project goals and mitigation requirements of the City. Additional duties will include performing routine site visits and providing project status reports to WVVRI when submitting invoices on a monthly or quarterly basis, whichever is convenient for the City of Morgantown. Reports will be reviewed by WVVRI staff and shared with the funding agency, West Virginia Department of Environmental Protection (WVDEP), by incorporating information into the semi-annual reports required as part of the WV Nonpoint Source Pollution program. Additionally, cost share obligations will need to be included as part of the City of Morgantown's regular reporting to WVVRI. WVVRI will monitor and report cost share to WVU and WVDEP on a semi-annual basis.

## **Attachment 2**

### Budget

Item	Cost
Mobilization/Demobilization	\$ 5,000.00
Open Limestone Channels	\$ 33,281.00
Limestone Leach Beds (4)	\$ 250,000.00
Steel Slag Leach Bed	\$ 49,000.00
Settling Basin	\$ 20,000.00
Incidentals (10 %)	\$ 35,728.00
Total Construction	\$ 393,009.00
Engineering	0
Total Construction & Engineering	\$ 393,009.00

WVURC will contribute \$ 216,553.00 to the overall budget.  
City of Morgantown will provide \$ 176,456.00 in cost sharing to the overall budget.

## **Attachment 3**

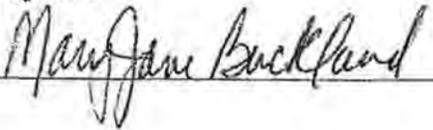


West Virginia  
Department of  
Environmental Protection

<b>Recipient Type:</b>	<b>WV CODE</b>	<b>NPS Number</b>	<b>Grant Year:</b>	<b>Date of Award:</b>
Higher Education	§22.1.14 (SRF)	NPS1379	2012	4/1/14
<b>Sub Recipient: (Include FEIN)</b>		<b>Sub Recipient Contact:</b>		
WVU Research Corp. FEIN #550665758 886 Chestnut Ridge Road/P.O. Box 6845 Morgantown, WV 26506-6845		Mary Jane Buckland, Assistant Secretary Jennifer Hause, Project Manager Mary Jane Buckland, Grant Administrator		
<b>Project Title and Description:</b>				
West Run AMD Remediation, Morgantown Airport				
<b>Performance Period:</b>		<b>Total Sub Grant Award:</b>		
4/1/14-6/30/15		\$264,685		
<b>NOTICE OF AWARD</b>				
<p>The West Virginia Department of Environmental Protection (WVDEP), Division of Water and Waste Management (DWWM), Nonpoint Source Program has determined, based on the project proposal identified above and made a part hereof by reference, to award a sub-grant to the Sub Recipient identified above in the amount of \$264,685.00. This award is being granted from state <u>Stream Restoration Fund</u> monies. The monies are to be used for the restoration and enhancement of the streams and water resources of West Virginia that have been affected by coal mining or acid mine drainage.</p> <p>This sub-grant may be terminated by WVDEP without further cause if the sub-recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section, as well as signing all included certifications and assurances, and returning all pages of this agreement to the WVDEP Sub Grant Unit listed below within 21 days after receipt. This agreement is subject to all applicable state statutory provisions, the referenced project proposal, and all terms and grant conditions of this agreement and any attachments.</p>				
<b>AWARD APPROVAL OFFICE</b>				
<b>ORGANIZATION / ADDRESS</b>				
Scott G. Mandirola, Director West Virginia Department of Environmental Protection Division of Water and Waste Management 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304				
<b>WVDEP Sub Grant Unit:</b>		<b>WVDEP (Project Manager):</b>		
Teresa M. Koon, Assistant Director WVDEP Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1020		Tim Craddock, NPS Coordinator WVDEP Division of Water and Waste Management Nonpoint Source Program 601 57 <sup>th</sup> Street, S.E. Charleston, WV 25304 Phone: 304-926-0499 ext 1040		
<b>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION</b>				
<b>Signature of Award Official</b>		<b>Typed Name and Title</b>	<b>Date</b>	
		Scott G. Mandirola, Director Division of Water and Waste Management	4/1/14	
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
<b>Signature</b>		<b>Typed Name and Title</b>	<b>Date</b>	
		Mary Jane Buckland, Assistant Secretary, WVU Research Corp.	4/1/14	



West Virginia  
Department of  
Environmental Protection

Recipient Type:	WV CODE	NPS Number	Grant Year:	Date of Award:
Higher Education	522.1.14 (SRF)	NPS1379	2012	4/1/14
Sub Recipient: (Include FEIN)		Sub Recipient Contact:		
WVU Research Corp. FEIN #550665758 886 Chestnut Ridge Road/P.O. Box 6845 Morgantown, WV 26506-6845		Mary Jane Buckland, Assistant Secretary Jennifer Hause, Project Manager Mary Jane Buckland, Grant Administrator		
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<b>WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION</b>				
Signature of Award Official		Typed Name and Title		Date
		Scott G. Mandirola, Director Division of Water and Waste Management		
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
Signature		Typed Name and Title		Date
		Mary Jane Buckland, Assistant Secretary, WVU Research Corp.		4/5/14

## ASSURANCES – CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the West Virginia Department of Environmental Protection. Further, certain state or federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for State or Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-State share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the West Virginia Department of Environmental Protection (DEP), or the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the State interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with State assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ?? 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5, C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ?? 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all State and Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ?? 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ? 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. U.S.C. ?? 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ?? 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of Civil Rights Act of 1968 (42 U.S.C. ? 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for State or Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of the State and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of State participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. ?? 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with State or Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ?? 276a to 276a-7), the Copeland Act (40 U.S.C. ? 276c and 18 U.S.C. ? 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. ?? 327-333) regarding labor standards for federally assisted construction sub agreements.
14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;(b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ?? 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ? 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ?? 1271 et seq.) related to protecting components or potential components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
18. Will cause to be performed annually the required financial and compliance audits in accordance with the Single Audit Act of 1984. Copies of audit reports are to be provided to WVDEP annually.
19. Will comply with all applicable requirements of all other State and Federal laws, Executive Orders, regulations and policies governing this program.
20. Will be required to follow guidelines as stated in the OMB Circulars: A-102, Uniform Administrative Requirements; A-87, Cost Principles for State, Local, and Indian Tribal Governments; A-133, Audits of States, Local Governments, and Non-Profit Organizations. Will submit Performance Reports as prescribed in OMB Circular A-102 and in an approved electronic Microsoft Word format..
21. Will insure that its contractor procures, from a reputable surety, a performance bond and payment bond for the total amount of the contract. If the contractor defaults and the surety waives its right to perform the contract or otherwise arrange for completion of the contract, the Grantee will reimburse Grantor on a pro rate share, from the funds distributed to the Grantee by the surety.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL <i>Mary Jane Buckland</i>		TITLE Mary Jane Buckland, Assistant Secretary
APPLICANT ORGANIZATION West Virginia University Research Corporation		DATE SUBMITTED <i>4/4/14</i>

EPA Project Control Number

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Mary Jane Buckland, Assistant Secretary, WVU Research Corp

Typed Name & Title of Authorized Representative

Mary Jane Buckland 4/4/14  
Signature and Date of Authorized Representative

### Grant Conditions for Clean Water Act Section 319 Nonpoint Source Program Grants

1. The recipient agrees to ensure that all conference, meeting, convention or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act (PL 101 – 391 as amended).
2. The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 regarding Suspension and Debarment. Recipients may access suspension and debarment information <http://www.sam.gov>.
3. Recipients who receive awards exceeding \$100,000 agree to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
4. Recipient agrees that no grant funds under this award will be used to engage in lobbying the Federal Government, other political activities, or in litigation against the United States, unless authorized under existing laws. See OMB Circulars A-21, A-87, or A-122.
5. In accordance with EPA Order 1000.25 and Executive Order 13423, recipient agrees to use recycled paper and double-side printing for all reports that are prepared as a part of this grant award and delivered to EPA.
6. In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total in Federal funds in any fiscal year. For more information visit the Federal Audit Clearinghouse Web site at <http://harvester.census.gov/fac/>.
7. The recipient agrees that management fees or similar charges in excess of direct and indirect costs are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this award.
8. Trafficking Victim Protection Act. Provisions applicable to a recipient that is a private entity. You, as the recipient, your employees, sub-recipients under this award, and sub-recipients’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.
9. Recipients are encouraged to consider, and report to DEP, the use of companies under the Disadvantaged Business Enterprise (DBE) program for purchases of products or services. The purpose of the DBE program is to encourage, cultivate and support equal opportunities for firms owned and controlled by socially and economically disadvantaged individuals. The

DBE contractor and consultant lists can be found at  
[http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)  
[www.bpn.gov/CCRSearch/Search.aspx](http://www.bpn.gov/CCRSearch/Search.aspx)  
<http://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app.search>  
<http://www.transportation.wv.gov/eec/DBE/Pages/default.aspx>

10. Recipient understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to the recipient.
11. Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$596 per day and \$74.50 per hour.
12. Recipient will submit the DEP Request for Reimbursement form along with supporting documentation to obtain reimbursement for allowable expenses. Supporting documentation includes a spreadsheet or other budget breakdown of expenses incurred during the specified period and based on budget categories as outlined in the original project proposal.
13. The recipient agrees to submit progress reports when any request for payment is made. The recipient also agrees to submit semi-annual and annual reports of progress for all projects identified in this grant award document. . The reports must contain the elements described on the program's website (<http://www.dep.wv.gov/nonpoint>).

Reporting periods are as follows:

- October 1 – March 30 report is due May 1
  - April 1 – September 30 report is due November 1
  - A final report is due following the completion of the grant
14. The recipient agrees to perform the activities identified and specified in the project proposal that is made a part of the agreement.
  15. The recipient agrees to work with WV DEP to enter or provide water quality monitoring data, for data collected in a waterbody pursuant to the implementation of a Section 319 project, into EPA's "storage and retrieval" (STORET) data system using either the Water Quality Exchange (WQX) or WQXweb.
  16. Funds awarded by this grant and identified as watershed project (WP) funds shall be used to implement best management practices and/or programs that will result in direct measurable environmental results such as load reductions and/or water quality improvements and which implement a specific goal, action or project clearly identified in the Watershed Based Plans (WBPs).

16. Engineering costs for design work shall be capped at the following:
  - a. Projects less than \$100,000 for construction, 15-20% cap on design costs
  - b. Projects between \$100,001 and \$500,000 for construction, 10-15% cap on design costs
  - c. Projects over \$500,000 for construction, 6-10% cap on design costs.
17. Recipient shall ensure the continued proper operation and maintenance (O&M) of all management practices that have been implemented for projects funded under this grant. Such practices shall be operated and maintained for the expected lifespan of the specific project in accordance with commonly accepted standards. The recipient shall include a provision in every applicable sub-grant or contract awarded under this grant requiring that the management practices of the project be properly operated and maintained.
18. In accordance with section 319(h) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10% of the amount of the grant.
19. Food and Refreshments. Unless the event(s) and all of its components are specified in the approved workplan, the recipient agrees to obtain prior approval from DEP for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the DEP Nonpoint Source Coordinator and include: an estimated budget and description of the light refreshments, meals, and/or beverages to be served at the event(s); a description of the purpose, agenda, location, length and timing of the event; an estimated number of participants in the event and a description of their roles. Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins (41 CFR 301-74.11).
20. In accordance with 40 CFR 30.54 and 31.45, the recipient must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to the DEP Nonpoint Source Coordinator at least 60 days prior to the initiation of data collection or data compilation. Prior to the data collection or compilation, the QAPP must be approved by DEP.
21. The recipient agrees to ensure that all permits are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state or local laws. The project implementation plan must identify permits that may be needed to complete work plan activities. The recipient must keep documentation regarding necessary permits in the project file.
21. If you are not a state agency and would like to receive reimbursement through electronic deposit into your bank account, complete the paperwork for an eVendor agreement – Vendors at <http://www.wvsao.gov/electronicpayments/DirectDepositForms.aspx>.

West Virginia Department of Environmental Protection

Certifications Regarding Debarment, Suspension and  
Other Responsibility Matters, Drug-Free Workplace  
Requirements and Lobbying

**PART A: Certification Regarding Debarment, Suspension and Other Responsibility Matters -  
Primary Covered Transactions**

X CHECK IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State department or agency.
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local)
2. The prospective primary participant agrees by submitting this proposal that it will include the clauses under Part B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -  
Lower Tier Covered Transactions**

\_\_\_\_ CHECK IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**PART C: Certification Regarding Drug Free Workplace Requirements**

X CHECK IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL.

1. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
  - (1) Abide by the terms of the statement and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the State agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

2. The grantee shall provide below the site(s) of the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)  
West Run, Morgantown, WV 26505

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Check if there are workplaces on file that are not identified here.

<b>PART D: Certification Regarding Lobbying</b>
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The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of the State Legislature, a Member of Congress and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering

into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

2. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. Any person who fails to file the required certification shall be disqualified from program participation.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

*Mary Jane Buckland*

*4/4/14*

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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

Mary Jane Buckland, Assistant Secretary, West Virginia University Research Corporation

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TYPED NAME AND TITLE

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DATE

**MASTER RESEARCH AGREEMENT**  
**BETWEEN**  
**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL**  
**PROTECTION**  
**AND**  
**WEST VIRGINIA UNIVERSITY**

THIS MASTER AGREEMENT, made this 29<sup>th</sup> day of February, 2012, by and between the WEST VIRGINIA DEPARTMENT OF Environmental Protection, hereinafter called the "Department," and West Virginia University, hereinafter called the "Contractor."

**WITNESSETH:**

WHEREAS, the Department has a continuing interest to cooperate with the Contractor in its conduct and pursuit of certain research and special studies, hereinafter individually called "Project," where in the determination of Department such research and special studies are calculated to meet the present or future needs of the Department; and

WHEREAS, the Contractor is qualified and able to conduct said research and special studies and agrees to do so, and the Department agrees to compensate the Contractor as hereinafter provided; and,

WHEREAS, the Department and the Contractor both believe it to be mutually beneficial to operate under a Master Agreement establishing certain responsibilities/conditions,

NOW, THEREFORE, for the considerations stated hereinafter, Department and Contractor agree as follows:

- I. Project Agreement: Each project shall be authorized by execution of a Project Agreement specifying the cost, the time frame, the Project Manager, deliverables, and other provisions as may be necessary for the Project and shall be deemed to include the agreed upon Research Project Proposal and the terms of this Master Agreement.
- II. Coordination of Documents: These provisions and those of a Project Agreement and Research Project Proposal are intended to be mutually complementary. In case of any discrepancy, the provisions of the Master Agreement and the Project Agreement will

prevail over the Research Project Proposal and Sections XV, XVI, XVII, XVIII, XIX, XX and XXI of the Master Agreement will prevail over all other terms and conditions of the Project Agreement and the Research Project Proposal.

- III. Purpose, Scope and Methods: The purpose, scope of work and method of each project or study undertaken will be described in the Project Agreement and Research Project Proposal. This Master Agreement will include all research and special studies conducted at West Virginia University pursuant to this agreement.
- IV. Project Deliverables:
  - A. The Contractor shall meet the schedules and activities outlined in the Project Proposal.
  - B. The Contractor will submit deliverables according to the approved Project Proposal, unless otherwise provided by the Department. Deliverables are to be submitted in two (2) hardcopies and one (1) electronic version, in MS-WORD compatible format. Deliverables shall be submitted on or before the last day of the month in which they are scheduled for completion and shall be accompanied by an invoice. If the time frames and work schedules outlined in the Project Proposal are deviated from, a summary stating the reasons why the project is not on schedule and the impact on the estimated completion date shall be included with the deliverable. Additionally, a new time schedule shall be submitted for review and approval from the Department. Failure to submit deliverables will result in withholding of all future payments for the project until the deliverables are submitted and approved, and may subsequently result in termination of the project. All deliverables will be reviewed by the Department within sixty (60) days of submission.
  - C. A final report, satisfactory to the Department's Project Manager, must be submitted for review by the Department. When approved, two (2) bound paper copies; an electronic copy in Portable Document Format; and one (1) copy of the final report in MS-WORD compatible format, as well as all additional data/files will be submitted to the Department unless stated otherwise in the Project Agreement. Acceptance of the final report by the Department is a requirement for fulfillment of the Project Agreement; however, no report will be arbitrarily rejected. The text of the above-designated report and software must be written in a manner that will be intelligible to their intended audiences. Final reports will be reviewed and comments provided or the report accepted within sixty (60) days of receipt by the Department.
- V. Time: This Master Agreement will be in effect from the date it is executed by the parties

hereto and will continue in force until terminated. The time period of a Project Agreement will be stated therein. Insofar as it has the right to do so under the laws and the Constitution of the State of West Virginia, the Department may, at its option, extend a Project Agreement for such reasonable time as it deems necessary. Failure of the Contractor to proceed with the work of the Project contracted for in a Project Agreement within thirty (30) days after the written notice to proceed by the Department may result in a termination notice from the Department as set forth in Section XV. The Department will complete its review of preliminary or final reports submitted by the Contractor within sixty (60) calendar days of receipt.

**VI. Financial Considerations:**

- A. The project cost, including both the direct and indirect costs, will not exceed the amount set forth in the Project Agreement. The total cost is to be based upon the following:
1. Direct cost for salaries and wages and associated fringe benefits for all personnel to be assigned to work on the Project;
  - 2a. Facilities and Administrative costs at the rate of 10% of Modified Total Direct Cost (MTDC) -consisting of all salaries and wages fringe benefits, materials, supplies services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Modified total direct costs shall exclude equipment, capital expenditures, charges for patient care, tuition remission, rental costs of off-site facilities, scholarships and fellowship as well as the portion each subgrant and subcontract in excess of \$25, 000; or
  - 2b. For projects directly funded through federal subgrants, the Facilities and Administrative costs at the percent established by the US Department of Health and Human Services' Audit Agency for the Contractor during the official period of the Project beginning and ending dates, but provisionally as stated in the Project Agreement for each Project and subject to final audit adjustment;
  3. Cost of special equipment essential to the Project and usable only on the Project;
  4. Cost of materials used in the Project;
  5. Travel expenses;
  6. Telephone and information technology (IT) charges;
  7. Subcontracts;

8. Books and manuals

9. Computer software;

10. Facility Rentals; and

11. Tuition

- B. Reimbursement for costs of travel and subsistence will be made in accordance with West Virginia State Travel Regulations and will be limited to travel within the State of West Virginia (except for out-of-state travel which is considered essential to the effective execution of the Project and which is either specifically itemized in the approved Research Proposal or is approved in advance in writing by the Department one month prior to the travel).
- C. The Contractor is expected to limit purchase of non-expendable equipment to purchases authorized by the Project Agreement as approved by the Department. Titles of non-expendable equipment will be vested in the Contractor unless otherwise provided for in the Project Agreement and Research Project Proposal.
- D. The Contractor will include with each requisition and invoice submitted to the Department a certification that the items included therein as direct costs have been excluded from all indirect costs.
- E. The Contractor will pay all costs incurred in conducting the work of each Project and will be reimbursed upon approval by the Department of the Contractor's billing. Invoices detailing the charges and expenses incurred may be submitted electronically or as an original and three (3) copies on a schedule determined in the notice to proceed and with deliverables. Reimbursement will be made for costs clearly supported by the Contractor's records and upon acceptance of the deliverable. Progress billings for each Project Agreement and Research Project Proposal must be identified by the designation "Progress" and the final billing by the designation "Final." The Department will pay legitimate and uncontested invoices within sixty (60) days of approval by the Project Monitor. In no event shall Department delay payment later than ninety (90) days after receipt of a legitimate, uncontested invoice and approval by the Project Monitor.
- F. The Department will retain ten percent (10%) of the total invoiced amount until the acceptance of the draft final report and the final report by the Department. Upon acceptance of the draft final report, the Department will process payment for the final ten percent of the total invoiced amount.
- G. The Contractor will immediately reimburse the Department for any and all overpayments made by said Department to the Contractor pursuant to the Project

Agreement and agrees that the statute of limitations will not commence to run against the Department for such overpayments until the same is discovered and made known to the Department.

- VII. Subcontracting and Special Services: The services of the Contractor under each Project Agreement are to be directed by a Principal Investigator or such other individuals as are mutually acceptable to the Department and the Contractor. The Contractor will not assign, subcontract, or transfer any of the work provided for under the Agreement without prior approval, as noted in the Research Project Proposal.
- VIII. Proprietary Rights: The parties of the Master Agreement agree that if patentable discoveries or inventions should result from the work of the Contractor hereunder, all rights accruing from such discoveries or inventions will be the sole property of the Contractor. For Projects funded solely with State funds, only the Department will be granted an irrevocable, nonexclusive, nontransferable and royalty-free license to practice such invention in the manufacture, use and disposition, according to law and any article or mutual and in the use of any that may be developed as a part of the work under the Master Agreement.
- IX. Inspection of Work: The Department will at all times be accorded proper facilities for review and inspection of work hereunder, and will at all reasonable times have access to the premises and to all data, notes, records, correspondence, instructions and memoranda of every description pertaining to the work hereunder.
- X. Records
- A. The Department will exercise general supervision over the work completed under each Project Agreement. The Contractor will maintain accounting records and other evidence pertaining to the costs incurred on the Project. These data will be made available for inspection by the Department at all reasonable times at the office of the Contractor during the time period of the Project Agreement and for three years after the date of the final payment by the Department with respect to the Project. Copies thereof will be furnished if requested.
- B. Charges for salaries and wages of all individuals working on the Project will be maintained in conformity with the U. S. Office of Management and Budget Circulars A-21 and A-110. These records will be verified by the Principal Investigator and submitted with appropriate invoices.

- XI. Ownership of Data: The ownership of the data collected under the Project Agreement, together with summaries and charts derived there from, will be vested in the Department with the proviso that the Contractor has a royalty free license to use the data for research, teaching, and other academic purposes.
- XII. Equipment and Instrumentation:
- A. All apparatus and equipment approved for purchase in the Project Agreement will be used exclusively on the Project and will be at the disposal of the Contractor for the duration of the specific Project. Title to non-expendable equipment purchased by Project funds will be vested in the Contractor upon completion of the project, unless the parties agree otherwise prior to acquisition of the equipment.
  - B. Purchase of minor items of apparatus and equipment listed as a lump sum in the Project Agreement will not exceed the amount itemized in the Project Agreement and Research Project Proposal unless approved in writing in advance by the Department.
- XIII. Publication
- A. Papers, interim or final reports, forms or other materials that are a part of any Project will not be formally registered as copyrights with the Library of Congress except with the written approval of the Department. Contractor is free to publish or use the data and results without restriction after acceptance and publication of the final report.
  - B. Neither party will release, either orally or in writing, information, forms or other material developed on any Project prior to publication of all final reports except with the prior written approval of the other party. However, there is no intent to limit discussions of the study with small technical groups or lectures to employees or students. Lectures to other groups which describe the research plans but disclose neither data nor results are permissible without advance approval by the other party. It is understood that the Department and Contractor will comply with the requirements of the West Virginia Freedom of Information Act.
  - C. The Contractor will advise the Department in writing of any proprietary or patentable information contained therein and may, as necessary, formally request that the Department delay the information's publication or dissemination.
  - D. The Department shall refrain from publishing any such information categorized by the Contractor as proprietary or patentable for a period not to exceed one hundred eighty (180) days from the date of such written request, to enable Contractor to

appropriately coordinate with the Department to file for the protection of any proprietary or patentable Project Intellectual Property interests.

- E. Nothing in the Master Agreement or the Project Agreement will be construed to affect the preparation and filing of a thesis by students working on any Project in accordance with the practices normally followed or required by the Contractor's regulations.
- F. All published reports of projects will, unless stated otherwise in the Project Agreement, contain the following statements on the frontispiece:

"Prepared for the West Virginia Department of Environmental Protection and,

- 2. "The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State. This report does not constitute a standard, specification, or regulation. Trade or manufacturers' names which may appear herein are cited only because they are considered essential to the objectives of this report. The State of West Virginia does not endorse products or manufacturers".

XIV. Amendment: A Project Agreement may be amended to extend the time, change the Agreement price, or change the scope of the work of the Project. Amendments will be mutually agreed upon in writing prior to undertaking any work under the change or incurring additional costs.

XV. Termination of Agreement: If it is considered to be in the best interest of the Department, the Department may terminate either the Master Agreement or a Project Agreement upon thirty (30) days notice in writing to the Contractor. The Master Agreement or a Project Agreement may also be terminated by the Contractor by thirty (30) days written notice to the Department. If the Master Agreement or the Project Agreement is so terminated prior to fulfillment of the terms stated herein, the Contractor will be reimbursed only for actual expenses and non-cancellable obligations, both direct and indirect, incurred to the date of termination.

XVI. General Provisions

- A. The conduct of the work is subject to pertinent State and Federal laws, regulations and policy procedure directives. This Master Agreement is further subject to any constitutional prohibition, either Federal or State.

- B. It is understood that the Contractor is qualified and able to conduct the research and special studies but is unable to do as contemplated under the provisions of West Virginia Code 17-2A-9 without charge or compensation because of budget limitations, and in order to obtain said research and special studies, the Department agrees to compensate the Contractor as herein provided by this Master Agreement.
  - C. All disputes between the Department and the Contractor will be settled in accordance with the Constitution and laws of the State of West Virginia.
- XVII. Equal Employment Opportunity: During performance of any Project under this Master Agreement, the contractor and any of its subcontractors agree that there shall be no discrimination against any individual employed in work covered by this Master Agreement, or who is employed in other work or against any applicant for such employment, because of race, color, religion, sex, age, national origin or handicap. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- XVIII. Disadvantaged Business Enterprise: The Department shall cooperate with the Contractor in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises, and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
- XIX. Nondiscrimination of Employees: The Contractor and its subcontractors shall comply with the Executive Orders of the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965, and the Civil Rights Act of 1964. During the performance of the Master Agreement, the Contractor, for itself, its assignees and successors in interest are as follows:
- XX. Compliance with Regulations:
- A. The Contractor will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 5794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of

1975, as amended (42 U.S.C. §§101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- B. Nondiscrimination: the Contractor, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurement of materials and lease of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Federal Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations made by the Contractor (either by competitive bids or negotiation) for work to be performed under a subcontract (including procurement of materials and equipment), each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin or handicap.
- D. Information and Reports: The Contractor will provide all the information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information and its facilities as may be determined by the West Virginia Department of Environmental Protection if pertinent to ascertaining compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor

shall so certify to the Department, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of the Master Agreement, the Master Agreement sanctions may include, but not be limited to:

1. Withholding of payments to the contractor under the Project Agreement until the Contractor complies; and/or
2. Cancellation, termination or suspension of the Project Agreement, in whole or in part.

F. Incorporation of Provisions: The contractor will include the provisions of Paragraphs A through F in every subcontract, including procurement of materials and lease of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontractor or procurement as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation by a subcontractor or vendor, the Contractor may request the Department to enter into such litigation to protect the interest of the Department; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of the Master Agreement.

XXI. Agreement Exceptions and/or Variances: The Department reserves the right to provide exceptions and/or variances to any item contained in this Master Agreement. Said exceptions and/or variances shall be specifically identified in the Project Agreement.

IN WITNESS WHEREOF, the parties have caused their respective names to be signed by their  
duly authorized officers.

ATTEST:

Mary Burdette

WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: [Signature]  
Its: Cabinet Secretary

ATTEST:

[Signature]

WEST VIRGINIA UNIVERSITY

By: [Signature]  
Its: Assistant Vice President