

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is entered into on _____ (“Effective Date”) by and between The Trustees of Indiana University on behalf of the School of Public Health, Department of Environmental & Occupational Health, located at 2719 E. 10th Street, Bloomington, IN 47408 (“IU”) and Monroe County, Indiana (“Client”).

WHEREAS, Client desires that IU test wastewater samples utilizing a wastewater monitoring approach called Wastewater-Based Epidemiology (“WBE”), which helps to predict the prevalence of fecal associated viral and bacterial agents and other microbes in a given municipality;

WHEREAS, IU desires to provide such services to Client in exchange for the consideration set forth below;

NOW, THEREFORE, the parties, intending to be legally bound, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, do agree as follows:

1. TERM AND TERMINATION

IU will perform the Services for an initial 26 weeks from the Effective Date with the exception of holidays. After the initial 26 weeks, either party may terminate the Agreement, with or without cause, with 30 days’ notice to the other party. If the Agreement is terminated, Client agrees to pay IU for all the Services that have been performed up to the date of termination. Client understands that IU’s ability to perform the Services is contingent on CBU providing the samples. Client agrees that IU will not be in breach of this Agreement or otherwise liable if IU is unable to provide the Services in any week because it has not been provided the samples.

2. SERVICES

IU will provide the following services (“Services”) to Client:

This project will involve testing wastewater samples using an approach called Wastewater-Based Epidemiology (WBE), which helps to predict the prevalence of infectious diseases and harmful agents in a given municipality. We will be using this method to test for specific controlled substances such as methamphetamine, amphetamine, and fentanyl. Monitoring will take place throughout Monroe County for a duration of 6 months (26 weeks) from 3 different locations. Additionally, a spatial analysis of illicit drug use will be done by sampling from several different manholes across Monroe County to determine which areas of Monroe County have the highest amounts of drug levels. Data from this project will guide the health department on which controlled substances to focus on and areas to make improvements in preventions.

3. PAYMENT

Client shall pay IU for performance of the Services as follows:

(a) Client shall pay IU \$20,000 within 30 days of the Effective Date as a payment for services to be performed within the 26 weeks of the project.

4. INDEMNIFICATION

Client will indemnify, defend, and hold harmless IU, its Trustees, officers, employees, and agents from any suit, action, claim, demand, judgment, or related expense (including reasonable attorneys' fees) arising out of Client's negligence or willful misconduct in the performance of this Agreement or any breach of this Agreement. Provided, however, that Client's obligations hereunder shall be limited in substance by statutes and constitutional provisions designed to protect the exposure and liability of Client as an instrumentality of Monroe County, Indiana (e.g., actions and conditions as to which Client is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the continued ability to defeat a claim by reason of contributory negligence or fault of claimant), so that its liability to indemnify, defend and hold harmless shall not exceed what might have been its liability to a claimant if sued directly by the claimant in Indiana and all appropriate defenses had been raised by Client.

IU will indemnify, defend, and hold harmless Client, its officials, members, employees, and agents from any suit, action, claim, demand, judgment, or related expense (including reasonable attorneys' fees) arising out of IU's negligence or willful misconduct in the performance of this Agreement or any breach of this Agreement. Provided, however, that IU's obligations hereunder shall be limited in substance by statutes and constitutional provisions designed to protect the exposure and liability of IU as an instrumentality of the State of Indiana (e.g., actions and conditions as to which IU is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the continued ability to defeat a claim by reason of contributory negligence or fault of claimant), so that its liability to indemnify, defend and hold harmless shall not exceed what might have been its liability to a claimant if sued directly by the claimant in Indiana and all appropriate defenses had been raised by IU.

5. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

IU IS PROVIDING THE SERVICES "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, IU MAKES NO, AND SPECIFICALLY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES WILL BE ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE, NON-INFRINGEMENT, OR QUIET ENJOYMENT.

In no event will Client or IU's liability to one another arising out of or in connection with this Agreement or the Services exceed, in the aggregate, the total fees paid by Client to IU.

6. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be construed in accordance with and pursuant to the laws of the State of Indiana. Further, the Parties:

- a. Agree that litigation initiated by either party concerning the interpretation or implementation of this Agreement shall exclusively be brought and litigated in a state court of competent jurisdiction in Monroe County, Indiana;
- b. Consent to the personal jurisdiction of such courts; and
- c. Waive any defense of *forum non conveniens*.

7. IU PROPERTY and DATA OWNERSHIP

As part of performing the Services, IU personnel may utilize copyrighted or copyrightable material, proprietary software, methodologies, tools, specifications, ideas, knowledge, or data that has been developed by IU and/or its personnel (collectively, "IU Property"). Client acknowledges that IU Property is and shall remain the exclusive property of IU and its personnel. Client shall not do any act, or assist any other party to do any act, which would infringe IU's or its personnel's rights in any of the IU Property and shall not contest the rights of IU or its personnel in any of the IU Property. Client shall notify IU immediately if Client becomes aware of any suspected infringement of IU Property rights and take such action as IU shall direct in relation to the infringement.

IU acknowledges and agrees that the testing data generated by IU under this Agreement is the property of Client. Client grants to IU a non-exclusive, royalty-free, perpetual, worldwide right to utilize the testing data for whatever purposes IU deems useful including, but not limited to, research.

8. MISCELLANEOUS

- a. Neither party may assign this Agreement or any portion thereof without the express written consent of the other.
- b. If the performance of any part of this Agreement is prevented or delayed by reasons of an act of God, act of war, act of terrorism, fire, governmental action, or any other cause beyond the performing party's reasonable control, then that party will be excused from performance for the length of the prevention or delay.
- c. The parties enter this Agreement as independent contractors, and nothing herein shall be interpreted to create any agency, partnership, or joint venture between them.
- d. If any term or condition of this Agreement is adjudged to be illegal, invalid, or inoperable, that illegality, invalidity, or inoperability shall not affect the remainder of this Agreement, its validity or enforceability.
- e. The failure of either party to enforce a breach of this Agreement will not constitute a waiver of any future breach, whether similar or dissimilar in nature.
- f. The parties agree that the terms and conditions of this Agreement are controlling and constitute the entire understanding and agreement between the parties regarding the subject matter hereof. The parties agree that any terms presented by Client in a separate document, such as a purchase order, are not binding and are expressly excluded from this

Agreement. This Agreement may not be modified or amended except by a written instrument executed by both parties.

8. NON-DISCRIMINATION

IU and Client shall comply with City of Bloomington Ordinance 2.21.020, Monroe County Ordinance, and all other federal, state and local laws and regulations governing non-discrimination, including but not limited to employment. IU understands that Client prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for Client. If IU believes that a Client employee engaged in such conduct towards IU and/or any of its employees, IU or its employees may file a complaint with the Client's department head in charge of the IU work under this Agreement, and/or with the human resources department or the Bloomington Human Rights Commission. Client takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any Client employee engaged in such prohibited conduct. Any breach of this section is a material breach and will be cause for termination of this Agreement by the nonbreaching party.

9. INDEPENDENT CONTRACTOR STATUS

During the entire term of this Agreement, IU shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of Client. IU shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from IU employee wages, or payable on behalf of employees of IU.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**The Trustees of Indiana University on behalf
of the Department of Environmental &
Occupational Health**

Monroe County, Indiana

By: _____

Donald S. Lukes
University Treasurer

By: _____

Julie Thomas
President