



SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement ("Agreement") is between THE BOARD OF TRUSTEES OF ILLINOIS STATE UNIVERSITY, a body corporate and politic organized and existing under the laws of the State of Illinois, doing business through its Research and Sponsored Programs, Campus Box 3040, Normal, Illinois 60790-3040("UNIVERSITY"), and The City of Rochelle, with its principal offices at 333 Lincoln Highway, Rochelle, Illinois 61068 ("SPONSOR"). The parties may be referred to individually as "Party" and collectively as the "Parties."

Whereas the Parties contemplate that the research to be performed under this Agreement will be of mutual interest and benefit;

Whereas the UNIVERSITY has determined that the research will further the instructional, research, public service or economic development objectives of UNIVERSITY consistent with its status as a public institution of higher education;

Whereas, it is recognized that the UNIVERSITY conducts fundamental and open research and intends to publish and share the results of such research; and

Whereas SPONSOR, in recognition of the UNIVERSITY'S mission, will limit the amount of any export controlled Proprietary Information that is disclosed under this Agreement;

NOW, THEREFORE, the Parties agree:

1.0. THE RESEARCH

1.1. STATEMENT OF WORK. UNIVERSITY will use reasonable efforts to perform the research project titled Evaluation of Radium Contamination in Groundwater in Ogle County, Illinois and more fully described in the statement of work attached to this Agreement as Exhibit A ("Research").

1.2. REPORTS. UNIVERSITY will furnish to SPONSOR written progress reports of the Research in such detail that SPONSOR reasonably requests according to the following schedule: _____

1.3. PRINCIPAL INVESTIGATOR. The Principal Investigator who will direct the Research for UNIVERSITY is Dr. Catherine O'Reilly. If the Principal Investigator becomes unable to perform this Agreement for any reason, UNIVERSITY may appoint a successor Principal Investigator with SPONSOR's written approval. Either Party may terminate this Agreement in accordance with Section 3.5 if the Parties cannot agree on an acceptable successor within a reasonable time.

RSP # _____

Grant # _____

1.4. PERFORMANCE PERIOD. UNIVERSITY will perform the Research during the period January 1, 2018 through December 31, 2019 ("Performance Period"). The Parties may extend the Performance Period by written amendment.

1.5. EQUIPMENT/SUPPLIES. Title to all equipment and property purchased by UNIVERSITY under this Agreement will be in and remain with UNIVERSITY even after completion or termination of the Agreement.

2.0. RESEARCH COSTS

2.1. BUDGET. SPONSOR will pay to UNIVERSITY the direct and the facilities and administration ("F&A") costs (collectively "Research Costs") described in Exhibit B ("Budget") that UNIVERSITY incurs in performing the Research. The F&A cost rate set forth in the Budget will remain in effect during the Performance Period. SPONSOR is not liable for costs other than the Research Costs described in the Budget, and UNIVERSITY is obligated to perform only the Research funded by SPONSOR.

2.2. PAYMENT SCHEDULE. SPONSOR will pay to UNIVERSITY the Research Costs in U.S. dollars as follows:

This is a cost-reimbursement agreement. No more frequently than monthly, UNIVERSITY will submit invoices to SPONSOR evidencing the actual Research Costs incurred by UNIVERSITY in performing the Research. SPONSOR will pay the full amount due within 30 days from its receipt of an invoice.

This is a fixed-price agreement. Within 30 days of the Effective Date, SPONSOR will pay UNIVERSITY \$10,000 and thereafter as follows: \$10,000 for total compensation of \$20,000.

2.3. REMITTANCE. SPONSOR will pay UNIVERSITY by check made payable to "Illinois State University" and mailed to:

Illinois State University
Research & Sponsored Programs
Campus Box 3040
Normal, Illinois 61790-3040
U.S.A.

3.0. EFFECTIVE DATE AND TERMINATION

3.1. EFFECTIVE DATE. This Agreement is effective on the date signed by the last of the Parties to sign this Agreement unless otherwise provided in this section as follows: _____ ("Effective Date").

3.2. EXPIRATION. This Agreement will expire on the end date of the Performance Period, unless sooner terminated in accordance with this Section 3.

3.3. TERMINATION FOR CONVENIENCE. Either Party may terminate this Agreement for convenience by providing 60 days' advance written notice to the other Party.

3.4. TERMINATION FOR BREACH. Upon material breach, the aggrieved Party may terminate this Agreement provided that the breaching Party fails to cure the breach within 30 days after receipt of written notice. This remedy is in addition to any other remedies available at law.

3.5. IMMEDIATE TERMINATION. Either Party may terminate this Agreement effective immediately upon notice to the other if: (a) the Parties cannot agree on an acceptable successor Principal Investigator; (b) SPONSOR has been declared insolvent, ceases (or threatens to cease) to carry on its business; or an administrator or receiver has been appointed over all or part of its assets; (c) SPONSOR's failure to pay promptly; or (d) either Party is debarred or excluded from participating in any government program.

3.6. EFFECT OF TERMINATION. If SPONSOR terminates this Agreement for convenience, SPONSOR will pay for all Research Costs incurred through the date of termination, including all non-cancelable obligations, even though the obligations may extend beyond the termination date. For any other termination, SPONSOR will pay UNIVERSITY for all Research Costs incurred through the termination date. Termination will not affect the Parties' rights and obligations accrued prior to termination.

4.0. CONFIDENTIAL INFORMATION

4.1. CONFIDENTIALITY OBLIGATION. Each Party will advise its employees to use reasonable efforts to hold in confidence all proprietary information received from the other Party in connection with the Research ("Confidential Information"); provided, however, that:

- i) Each Party may share Confidential Information with third parties to the extent necessary to perform the Research under terms consistent with this Agreement.
- ii) All Parties shall use Confidential Information only for the purpose for which the Confidential Information was disclosed.
- iii) The UNIVERSITY intends to conduct the project as fundamental research under the export regulations such that the technical information generated by the UNIVERSITY qualifies as public domain under ITAR 120.105(5) and 120.11 or publicly available under the Export Administration Regulations, 15 C.F.R. 734(b)(3) and 734.7 – 734.11. The UNIVERSITY reserves the right to elect to not receive export controlled information, technical data or equipment. Prior to the transfer of any export controlled Confidential Information to the UNIVERSITY, the SPONSOR will notify the UNIVERSITY of the specific export control classification number of such export controlled Confidential Information. In the event Sponsor's Confidential Information is determined by Sponsor to be export controlled, and the UNIVERSITY agrees to accept such Confidential Information, the Parties will develop and agree to a plan for receipt, use, and dissemination prior to disclosure or transfer.
- iv) It is the responsibility of party sharing information to identify and define precisely the confidential, proprietary or restricted information being shared.
 - a. For written disclosures, the Party disclosing Confidential Information will mark the information "Confidential" at the time of disclosure.
 - b. For oral or visual disclosures, the Party disclosing Confidential Information will designate the information "Confidential" at the time of disclosure and confirm such designation in writing to the other Party no later than 30 days after disclosure.
- v) Except as provided in Section 6.2, each Party's obligation of confidentiality shall extend for three years from disclosure and shall not apply to information that: (a) was in

recipient's possession on a non-confidential basis prior to receipt from disclosing Party; (b) is in the public domain or is general or public knowledge prior to disclosure, or after disclosure, enters the public domain or becomes general or public knowledge through no fault of recipient; (c) is properly obtained by recipient from a third party not under a confidentiality obligation to disclosing Party; (d) is explicitly approved for release by written authorization of disclosing Party; (e) is or has been developed by recipient independent of recipient's access to disclosing Party's Confidential Information; or (f) is required by law or court order to be disclosed.

4.2. RESPONSE TO INFORMATION REQUESTS. If UNIVERSITY receives a request under the Illinois Freedom of Information Act or a request by legal process to disclose Confidential Information, UNIVERSITY will use reasonable efforts to provide prompt notice to SPONSOR and will reasonably cooperate with SPONSOR to protect any SPONSOR Confidential Information.

5.0. PUBLICATION/PUBLIC PRESENTATIONS

5.1. Review Period. UNIVERSITY researchers may publish or publicly disclose research results without SPONSOR interference after providing SPONSOR a 30-day period for review and comment. Upon written notice by SPONSOR that the proposed publication contains SPONSOR Confidential Information or enabling disclosures of Inventions (as defined below), the SPONSOR shall have the right to require removal of any Confidential Information from the proposed publication, other than Study results and background information required for publication. In addition, the University may also delay publication for a limited period in its discretion to allow for preparation and filing of U.S. patent applications. The Parties will cooperate so that student theses or dissertations are not adversely affected by any delay.

5.2. COPIES OF PUBLICATIONS. UNIVERSITY will furnish SPONSOR with a copy of any publications resulting from the Research.

5.3. ACKNOWLEDGMENT. Each Party will acknowledge the contributions of the other Party in publications or public presentations as scientifically appropriate.

6.0. INTELLECTUAL PROPERTY

6.1. INVENTIONS. "Inventions" means those potentially patentable discoveries, including pending patent applications and issued patents, first conceived and actually reduced to practice in performance of the Research. UNIVERSITY shall own all Inventions first conceived and actually reduced to practice solely by UNIVERSITY employees or solely by SPONSOR employees through significant use of UNIVERSITY resources ("UNIVERSITY Inventions"). SPONSOR shall own all Inventions otherwise first conceived and actually reduced to practice solely by SPONSOR employees ("SPONSOR Inventions"). The Parties shall jointly own all Inventions first conceived and actually reduced to practice by both UNIVERSITY and SPONSOR employees ("Joint Inventions").

6.2. CONFIDENTIALITY OF INVENTION DISCLOSURES. UNIVERSITY will promptly notify SPONSOR of any Invention disclosure received by its Research and Sponsored Programs (RSP) office. SPONSOR shall treat all UNIVERSITY Invention disclosures as Confidential Information. Notwithstanding Section 4.1, SPONSOR's obligation of confidentiality for Invention disclosures shall continue until the Confidential Information becomes publicly available through no fault of SPONSOR. Each Party will promptly notify the other of any Joint Inventions.

6.3. PATENTS

6.3.1. PATENT FILING. UNIVERSITY may, at its discretion and at its expense, file patent applications in the United States and in foreign countries for any UNIVERSITY or Joint Invention. UNIVERSITY also will, at SPONSOR's request and expense, file patent applications in the United States for UNIVERSITY or Joint Inventions. SPONSOR will make any such request to UNIVERSITY in writing and within 60 days of UNIVERSITY's notice of Invention disclosure. UNIVERSITY will keep SPONSOR promptly informed regarding the status of any patent application filed at SPONSOR's expense and will give SPONSOR reasonable opportunity to comment.

6.3.2. FOREIGN FILING ELECTION. SPONSOR will notify UNIVERSITY of any foreign countries in which SPONSOR desires a license at least 60 days prior to the respective foreign filing due date.

6.3.3. COSTS. If SPONSOR requests UNIVERSITY to file a patent application or if SPONSOR elects to license UNIVERSITY Inventions, SPONSOR will pay UNIVERSITY, within 30 days of invoice date, all documented costs to secure and maintain the patents.

6.4 LICENSING. For any patent application on a UNIVERSITY Invention or Joint Invention, UNIVERSITY grants to SPONSOR (a) a non-exclusive, non-transferable, royalty-free license to practice the Invention for non-commercial purposes; and (b) the option to negotiate a royalty-bearing commercial license in a designated field of use and territory, which SPONSOR may elect by written notice to UNIVERSITY no later than six months after UNIVERSITY's notice of Invention disclosure. The negotiation period for the license shall be three months from the date of notice of election. If the parties have not entered into a license before the end of the negotiation period, then UNIVERSITY may license the Invention and its interest in the Joint Invention to third parties without further obligation to SPONSOR.

6.5. BACKGROUND INTELLECTUAL PROPERTY. Nothing in this Agreement grants to either Party any rights or interest in the other Party's Background Intellectual Property. "Background Intellectual Property" means (a) all works of authorship created outside the scope of this Agreement and (b) potentially patentable discoveries, including pending patent applications and issued patents, conceived or first reduced to practice outside the scope of this Agreement.

6.6. CREATE ACT. The Parties agree by marking this box that this Agreement constitutes a "joint research agreement" as that term is defined by the Cooperative Research and Technology Enhancement Act of 2004, 35 U.S.C. § 103(c)(3). In the event of any Inventions, the Parties will reasonably cooperate in invoking the CREATE Act and its companion regulations to overcome an obviousness rejection of a patent application.

6.7 Government Sponsored Research. The Parties agree by marking this box that pursuant to 37 CFR §401 the United States government may have some rights in the inventions and discoveries under the Agreement, which rights, if applicable, would include a non-exclusive, nontransferable paid up license to practice or have practiced for or on behalf of the United States the subject invention(s) throughout the world.

6.8 COPYRIGHTS

6.8.1. OWNERSHIP. Title to all original works of authorship created in performance of the Research and in which copyright may be claimed ("Copyrightable Works") shall vest initially in the author, subject to the policies of the Party that employs the author. Any joint work, as that term is defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, as amended, shall be jointly owned, but co-owners shall have no duty of accounting for any profits.

6.8.2. INTERNAL USE LICENSE. UNIVERSITY grants to SPONSOR a non-exclusive, royalty-free license to use, reproduce, prepare derivative works, display, distribute and perform all UNIVERSITY-owned Copyrightable Works other than computer software and its documentation and informational databases for SPONSOR's internal research purposes, provided that SPONSOR shall not have the right to distribute copies or derivative works to third parties. For UNIVERSITY-owned Copyrightable Works that are identified as a deliverable under the Statement of Work and in the nature of computer software (and its documentation) or informational databases, UNIVERSITY grants to SPONSOR for SPONSOR's internal research purposes a royalty-free, non-transferable, non-exclusive license to use, reproduce, prepare derivative works, display and perform such Copyrightable Works.

7.0. TANGIBLE RESEARCH PROPERTY. "Tangible Research Property" ("TRP") means those tangible (corporeal) items, as distinguished from intangible (intellectual) property, produced in performance of the Research. For purposes of illustration, TRP may include items such as: biological materials, computer media, drawings and diagrams, integrated circuit chips, prototype devices, and equipment. UNIVERSITY shall hold title to all TRP produced by UNIVERSITY with UNIVERSITY resources; provided, however, that title to TRP identified as a deliverable under the statement of work will vest in SPONSOR upon delivery by UNIVERSITY.

8.0. DISCLAIMER OF WARRANTIES. UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. UNIVERSITY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, USE OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO DATA, INVENTIONS, COPYRIGHTABLE WORKS, TRP, OR OTHER RESEARCH RESULTS PROVIDED BY UNIVERSITY.

9.0. LIMITATION OF/RELEASE FROM LIABILITY

9.1. LIMITATION OF LIABILITY. UNIVERSITY SHALL NOT BE LIABLE TO SPONSOR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER DAMAGES (INCLUDING LOST REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC LOSS OR DAMAGE) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER FOR BREACH OR IN TORT, INCLUDING NEGLIGENCE) ARISING FROM, RELATED TO, OR CONNECTED WITH SPONSOR'S USE OF DATA, INVENTIONS, COPYRIGHTABLE WORKS, TRP, OR ANY OTHER RESEARCH RESULTS PROVIDED BY UNIVERSITY, EVEN IF UNIVERSITY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9.2. RELEASE FROM LIABILITY. SPONSOR releases UNIVERSITY and its Trustees, officers, employees, and agents from all liability, and shall be responsible, for any and all costs, damages, and expenses, including attorney fees, arising from any claims, damages, and liabilities asserted by third parties in connection with or arising from SPONSOR's use of data, Inventions, Copyrightable Works, TRP, or any other Research results provided by UNIVERSITY.

10.0. GENERAL PROVISIONS

10.1. FISCAL MANAGEMENT. UNIVERSITY will maintain complete and accurate accounting records in accordance with accepted accounting practices for institutions of higher education. UNIVERSITY will make the accounting records available for inspection and audit by SPONSOR or its authorized agent, at reasonable times upon reasonable notice at SPONSOR's expense for three years following the end of UNIVERSITY's fiscal year (July 1 - June 30) in which Research Costs are incurred.

10.2. COMPLIANCE. The parties agree to comply with all applicable with all applicable Federal, State and local laws, rules, and regulations.

10.3. USE OF NAMES. Neither Party will use the name of the other in any form of advertising or publicity without the express written permission of the other Party. SPONSOR shall seek permission from UNIVERSITY by submitting the proposed use, well in advance of any deadline, to the University Marketing and Communications, 109 Alumni Center, Campus Box 3420 Normal, IL 61790-3420, VOC (309) 438-8404, Fax: (309) 438-8411

10.4. RELATIONSHIP OF THE PARTIES. The Parties do not intend that any agency or partnership relationship be created between them by this Agreement. Neither Party is agent, employee, legal representative, partner or joint venturer of the other. Neither Party has the power or right to bind or commit the other.

10.5. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, U.S.A., without reference to its conflict of law provisions.

10.6. THIRD PARTY BENEFICIARIES. This Agreement does not create any rights, or rights of enforcement, in third parties.

10.7. SEVERABILITY. If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement and the Parties will continue to perform. If the Agreement cannot be performed in the absence of the provision, this Agreement will terminate upon 30 days' written notice by one Party to the other Party.

10.8. MERGER. This Agreement and all attachments embody the entire understanding of the Parties and will supersede all previous or contemporaneous communications, either verbal or written, between the Parties relating to this Agreement. All terms and conditions of any instruments, including purchase orders, issued by SPONSOR to facilitate payment under this Agreement are void, even though they may be issued after the signing of this Agreement.

10.9. AMENDMENTS. No modification to this Agreement will be effective unless confirmed in a written amendment signed by each Party's authorized representative.

10.10. COUNTERPARTS. The Parties may sign this Agreement in one or more counterparts, each of which constitutes an original and all of which together constitute the Agreement. Facsimile signatures shall constitute original signatures for all purposes.

10.11. ASSIGNMENTS. This Agreement shall bind, and inure to the benefit of, the Parties and any successors to substantially the entire assets of the respective Party. Neither Party may assign this Agreement without first obtaining the prior written consent of the other Party, and any attempted assignment is void.

10.12. FORCE MAJEURE. Each Party will be excused from performance of the Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the affected Party. The Party claiming excuse for delayed performance will promptly notify the other Party and will resume its performance as soon as performance is possible.

10.13. EXPORT CONTROL. Each Party acknowledges that performance of all obligations under this Agreement is contingent on compliance with applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. 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 SPONSOR that SPONSOR will not re-export data or commodities to certain foreign countries or nationals thereof without prior approval of the cognizant government agency.

10.14. RESOLUTION OF DISPUTES. The Parties will enter into good faith negotiations to resolve any disputes arising from this Agreement. Resolution will be confirmed by written amendment to this Agreement. If the Parties cannot resolve any dispute amicably through negotiation, either Party may terminate this Agreement in accordance with Article 3.0.

10.15. SURVIVAL. All terms of this Agreement that are intended to survive termination or expiration in order to be effective shall survive such termination or expiration.

10.16. WAIVER. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

10.17. NOTICES. Any notice given under this Agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other address designated by a Party by written notice to the other Party in accordance with this section:

UNIVERSITY: *For matters related to the Sponsored Research Agreement:*

Illinois State University
Director, Research and Sponsored Programs
Campus Box 3040
Normal, IL 61790-3040
Telephone: (309) 438-2528
Fax: (309) 438-7912

SPONSOR: The City of Rochelle
333 Lincoln Highway, Rochelle, IL 61068
Telephone: 815-562-2761
Fax: _____

10.18. AUTHORIZED SIGNATORIES. Each Party represents that the individuals signing this Agreement on its behalf are authorized, and intend, to bind the organization in contract.

**THE BOARD OF TRUSTEES OF
ILLINOIS STATE UNIVERSITY**

The City of Rochelle

John E. Baur,
Associate Vice President for Research
and Graduate Studies

Date _____

Signature

Name and Title of Authorized Signatory

Date _____

UNDERSTOOD AND AGREED:

Principal Investigator

Approved for form by University Counsel: 10-24-11 by AMM

Exhibit A (Statement of Work)

This project will be the basis of graduate research for Illinois State University Hydrogeology MS candidates. Supervision will be by Dr. David Malone and Dr. Catherine O'Reilly. Two scientific questions will be addressed: (1) What are the temporal and spatial trends of groundwater radium concentration in Ogle County, and (2) What are the geologic constraints of radium occurrence in Ogle County, IL. For the latter, three hypotheses are advanced. First, radium is associated with the ubiquitous glauconite that occurs in these Cambrian strata. Second, the radium may be derived from basement rocks, and radium was transferred through groundwater flow along the Sandwich Fault. Third, the radium is derived from the Glasford Formation, a Quaternary till unit that directly overlies Cambrian strata in the footwall of the Sandwich Fault.

To explore these hypotheses further, we will conduct field studies and interpret existing well log data. We will use these data to produce and construct isopach maps, structure contour maps, cross sections, and correlated stratigraphic units. We will also use tools such as structural and stratigraphic modeling using *Petrel* as well as groundwater models. These various analytical approaches will allow us to determine the most likely locations, sources and flow paths of radium.

Exhibit B (Budget)

Rochelle - Malone and O'Reilly		
1/1/2018-12/31/2019		
ISU Internal Budget		
<u>Personnel</u>	<u>Year 1</u>	<u>Year 2</u>
Graduate Student		
Research Assistanceship (\$1087/month for 9 months)	\$ 9,783	\$ 9,783
Fringe Benefits		
N/A		
Travel		
398 miles at \$0.545/mile	\$ 217	\$ 217
Total Direct Costs	\$ 10,000	\$ 10,000
Indirect Costs	\$ -	\$ -
Total Costs	\$ 10,000	\$ 10,000
TOTAL		\$20,000

(Budget Justification)

**David Malone PI
Catherine O'Reilly Co-PI
1/1/2018-12/31/2019**

Personnel (\$19,566)

- One graduate assistantship for each year of the project. Student will be responsible for evaluating Radium contamination in groundwater in Ogle County, Illinois, and for formal presentations of results to interested water managers in northern Illinois. Student will be under the supervision of Drs. Malone and O'Reilly. Budgeted at \$1087/month for 9 months in each year (\$9783/year).

Travel (\$434)

- Travel funds are budgeted to be reimbursed at the rate of 0.545/mile for field work, etc. as required (\$217/year).

Total cost: \$20,000

We note that in some cases we may need to move funds among budget lines in order to support activities related to this project through the intended period of support.