



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

Public Works

Board Action

File #: 18-371

Commissioner Chad Brown - Public Works - To Accept and Appropriate Grant Funding through the 2017-2018 Clean Fuel Advanced Technology Project for the Purpose of Converting Ten (10) Additional County Vehicles to Burn LPG Utilizing a Bi-fuel System (\$50,400; Required Local Match of \$19,600)

STAFF CONTACT

Ray Maxwell, PE - Director - Public Works - 704-862-7551

BUDGET IMPACT

Appropriate Grant Revenues. Local Government Match Required.

BUDGET ORDINANCE IMPACT

Increase Revenues by \$50,400 and appropriate \$50,400 into Project Account.

BACKGROUND

Gaston County has previously partnered with the NC Clean Energy Technology Center to complete Liquid Propane Gas (LPG) conversions on forty (40) County-owned vehicles resulting in emissions reduction and significant fuel cost savings estimated over \$400,000 since starting the project in 2012. Thirty-seven (37) of the converted vehicles were still in service in January 2018. In February 2018, Gaston County Public Works submitted a grant application to the NC Clean Energy Technology Center in an effort to secure funding through the 2017-2018 Clean Fuel Advanced Technology Project to convert ten (10) additional County-owned vehicles to burn LPG in a bi-fuel system setup. The budget for this project is \$70,000.00 and vehicles selected for conversion include one (1) Ford F-150 for Building Inspections, one (1) Ford F-150 for Public Works, five (5) Ford E-450 units for ACCESS (public transportation) and three (3) Ford Explorers operated by the Gaston County Sheriff's Office. Based on historical fuel usage, it is anticipated that these ten (10) County-owned vehicles will drive approximately 180,000 miles per year consuming approximately 21,000 gallons of LPG.

(Continued on Page 2)

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	JBrown	AFrale	BHovis	TKelgher	TPhilbeck	RWorley	Vote
2018-251	10/23/2018	TK	CB	A	A	AB	A	A	A	A	U

DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

Commissioner Chad Brown - Public Works - To Accept and Appropriate Grant Funding through the 2017-2018 Clean Fuel Advanced Technology Project for the Purpose of Converting Ten (10) Additional County Vehicles to Burn LPG Utilizing a Bi-fuel System (\$50,400; Required Local Match of \$19,600)

Page 2

Gaston County has been awarded a grant from the Clean Fuel Advanced Technology Project to convert ten (10) County-owned vehicles to bi-fuel (LPG/gasoline) use in an effort to reduce harmful emissions in North Carolina's non-attainment and maintenance counties for National Ambient Air Quality Standards. Per the grant proposal, Gaston County intends to convert ten (10) County-owned vehicles to the LPG bi-fuel system with a total project cost of \$70,000.00. The grant is administered by North Carolina State University and provides reimbursement equal to 72% of the total project costs not to exceed \$50,400.00. Gaston County will be required to provide a local organizational match equal to 28% of the total project cost or \$19,600.00.

Approval of this Board Action accepts the Clean Fuel Advanced Technology Project grant funding, appropriates grant funding to the project account and authorizes the County Manager, or his designee, to sign the grant agreement. This Board Action also authorizes moving \$19,600.00 in currently budgeted funding to the project account to satisfy the local match.

POLICY IMPACT

N/A

ATTACHMENTS

Budget Change Request and Agreement

GASTON COUNTY BUDGET CHANGE REQUEST	
TO:	<u>Earl Mathers</u> COUNTY MANAGER
FROM:	<u>4265 Public Works</u>
	<u>Dept. # Department Name</u>
	<u>Department Director's Name Date</u>

<input type="checkbox"/>	Line Item Transfer Within Department & Fund	<input type="checkbox"/>	Line Item Transfer Between Funds *
<input checked="" type="checkbox"/>	Project Transfer Within Department & Fund	<input checked="" type="checkbox"/>	Additional Appropriation of Funds *
<input type="checkbox"/>	Line Item Transfer Between Departments *	<u>* Requires resolution by the Board of Commissioners</u>	

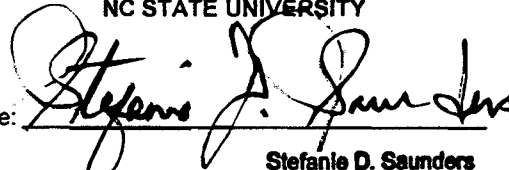
ACCOUNT DESCRIPTION (As it appears in the budget)	ACCOUNT NUMBER Fund - Function - Dept - Division - Object - Project xxx - xx - xxxx - xxxx - xxxxx - xxxxxx	AMOUNT Whole Dollars Only (See Note Below)
2018 CFAT Grant - Revenue	010-01-4265-4265-420000-19551	(50,400)
Professional Services	010-01-4265-4265-530010	(19,600)
2018 CFAT Grant - Expense	010-01-4265-4265-560000-19551	70,000

Gaston County has been awarded a grant from the Clean Fuel Advanced Technology Project to convert ten (10) County-owned vehicles to bi-fuel (LPG/gasoline) use in an effort to reduce harmful emissions in North Carolina's non-attainment and maintenance counties for National Ambient Air Quality Standards. Per the grant proposal, Gaston County intends to convert ten (10) County-owned vehicles to the LPG bi-fuel system with a total project cost of \$70,000.00. The grant is administered by North Carolina State University and provides reimbursement equal to 72% of the total project costs not to exceed \$50,400.00. Gaston County will be required to provide a local organizational match equal to 28% of the total project cost or \$19,600.00. Approval of this Budget Change Request is necessary to accept the CFAT Grant and appropriate the grant funds.

Note: Decreases in expenditures & increases in revenue accounts require brackets. Increases in expenditures & decreases in revenue do not require brackets. Please note that transfers between funds require interfund transfer accounts.

**NC State University Cost Reimbursement
Subaward Notice (SN) Number: 2017-1789-14**

☒ New
☐ Modification No.

NC State University	Subrecipient														
1. NC STATE UNIVERSITY Sponsored Programs 2701 Sullivan Drive, Admin. Services III Bldg., Suite 240 Campus Box 7514 Raleigh, NC 27695-7514 (See Page 2 for Contact Information.)	2. Gaston County Public Works Department PO Box 1578 Gastonia, NC 28053 (See Page 2 for Contact Information)														
3. Proposal/Project Title: Clean Fuel Advanced Technology (CFAT) Outreach, Awareness, and Subawards Program (See Block 16, Appendix A)	4. Source of Funding: Direct Sponsor: NC DOT Federal Flow through Agency: FHWA Prime Agreement Number: C-5702B CMAQ-000S(895) CFDA Number: 20.205 CFDA Title: Highway Planning and Construction (See Block 16, Appendix C)														
5. Description/Purpose of This Action: To issue a new subaward.															
6. Special Terms and Conditions: <ul style="list-style-type: none"> Technical Reporting: Refer to Appendix A, Statement of Work, for details Final Report Due: Refer to Appendix A, Statement of Work, for details Invoicing: Refer to Appendix A, Statement of Work, for details Final Invoice Due: Refer to Appendix A, Statement of Work, for details 	7. Funding Information / Period of Performance: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>a. Amount Funded This Action:</td> <td align="right">\$50,400</td> </tr> <tr> <td>b. Amount Prior Funding:</td> <td align="right">\$0</td> </tr> <tr> <td>c. Total Sponsored Funds To Date:</td> <td align="right">\$50,400</td> </tr> <tr> <td>d. Cost-sharing Added with This Action:</td> <td align="right">\$19,600</td> </tr> <tr> <td>e. Total Cost Sharing Required To Date:</td> <td align="right">\$19,600</td> </tr> <tr> <td>f. Start Date:</td> <td align="right">9/15/2018</td> </tr> <tr> <td>g. End Date:</td> <td align="right">9/15/2020</td> </tr> </table>	a. Amount Funded This Action:	\$50,400	b. Amount Prior Funding:	\$0	c. Total Sponsored Funds To Date:	\$50,400	d. Cost-sharing Added with This Action:	\$19,600	e. Total Cost Sharing Required To Date:	\$19,600	f. Start Date:	9/15/2018	g. End Date:	9/15/2020
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e. Total Cost Sharing Required To Date:	\$19,600														
f. Start Date:	9/15/2018														
g. End Date:	9/15/2020														
<input checked="" type="checkbox"/> Special T&C Continued in <u>Block 17, page 3</u>															
Each signatory below certifies that they are authorized to execute legally binding commitments on behalf of their named party.															
For: NC STATE UNIVERSITY Signature:  Name & Title: Stefanie D. Saunders Associate Director, Operations NCSU Sponsored Programs Date: <u>8/20/18</u> TIN/EIN: DUNS:	For: SUBRECIPIENT Signature: _____ Name & Title: Date: _____ TIN/EIN: DUNS:														

ADDITIONAL GASTON COUNTY CONTRACT TERMS/CONDITIONS AND SIGNATURE PAGE

NON APPROPRIATION

In the event funds are not appropriated during the term of this Agreement for the subject matter herein described, and there are no other available funds by or with which payment can be made to the Vendor, this agreement is terminated. This Agreement will be deemed terminated on the last day of the fiscal period for which appropriations were received without penalty or expense, except to the portion of payment for which funds have been appropriated and budgeted.

IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. Chapter 147, Article 6E

As of the date listed below, the vendor or bidder listed below is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. the applicable provisions within Chapter 147, Article 6E of the N.C.G.S. The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed below to make the foregoing statement.

NOTE: N.C.G.S Chapter 147, Article 6E requires this certification for bids or contracts with the various governmental entities of North Carolina, including Counties. The certification is required when a bid is submitted, when a contract is entered into, and when a contract is renewed or assigned. No vendor may utilize any subcontractor found on the State Treasurer's Final Divestment List. The List is updated every 180 days, and can be found at www.nctreasurer.com/iran

NORTH CAROLINA E-VERIFY CERTIFICATION

APPLICABILITY: Pursuant to North Carolina Sessions Law 2015-294, the certification is applicable for all contracts entered into by Gaston County, except contracts solely for the purchase of goods, apparatus, supplies, materials, equipment, or contracts with specific other entities as described in N.C.G.S. §143-133.3, piggy-back contracts, and travel purchases.

CERTIFICATION: By signing and entering into this contract with Gaston County, I hereby certify that I comply with E-Verify, the aforementioned Federal program used to verify the work authorization of newly hired employees working in North Carolina. I certify compliance with the E-Verification program pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes. If applicable, I am also certifying that any subcontractor hired or used by me will comply with E-Verify, as described herein.

ADA AND CIVIL RIGHTS CERTIFICATION OF COMPLIANCE

I hereby certify that I comply with all applicable federal civil rights laws, including the applicable provisions of the Americans with Disabilities Act

NOTE ON UNIFORM GUIDANCE ("UG") REQUIRED CONTRACT PROVISIONS. Uniform Guidance ("UG") is a set of uniform standards for contracts involving the award/expenditure of certain federal monies. If the UG requirements are not applicable, the UG provisions do not apply, unless specifically stated so in the contract.

NOTE: BY SIGNING THE GASTON COUNTY SIGNATURE PAGE, YOU AGREE TO FOLLOW THE ATTACHED TERMS AND CONDITIONS, TO THE EXTENT THAT SUCH PROVISIONS ARE APPLICABLE.

VENDOR

Vendor Name: _____

By: _____ Title: _____

Date: _____

GASTON COUNTY

By: _____
County Manager/Assistant County Manager

Date: _____

ATTEST:

Clerk to the Board/Deputy Clerk to the Board

APPROVED AS TO FORM:

County Attorney/Assistant County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget Act.

Finance Director/Financial Quality Assurance Manager

Uniform Guidance ("UG") Required Contract Provisions

APPLICABILITY: *UG is a set of uniform standards for award and expenditure of federal financial assistance, and applies to the purchase of apparatus, supplies, equipment, materials, services, construction and repair, and engineering/architectural services. See 2 CFR Part 200. Provided that these standards are applicable to you, by signing this signature page, you are certifying that your organization meets these requirements and that this certification, with the statutory references incorporated into each certification, on its face constitutes the "provision for compliance" for any paragraphs requiring such provision or other similar required statement, terms, or requirements. Gaston County is also required to be bound by such provisions. As the UG requires that any more stringent state law or local ordinance/policy supersedes these certifications, such state or local contractual references supersedes the requirements below, to the extent that the state or local provisions are more stringent than the federal requirements. If the service provided under the contract is not covered by the UG, signing the contract signature page will not bind the parties to these requirements, unless if specified in the contract. See generally https://www.ecfr.gov/cgi-bin/text-idx?SID=04e61f4e0a8317140a9ec150bb2ac195&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.ii*

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Ex. Order 11375, "Amending Ex. Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of

\$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Ex. Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Ex. Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Ex. Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

§200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

**NC State University Cost Reimbursement
Subaward Notice (SN) Number: 2017-1789-14**

☒ New
☐ Modification No.

(Subaward Notice Continued) Contact Information

The parties agree that pen and ink entries to correct or update the information in Blocks 10-15 are not "changes" requiring initials.

NC STATE UNIVERSITY	SUBRECIPIENT
8. Principal Investigator: Name: Heather Brutz Phone: 919-515-0277 Fax: Email: hmbutz@ncsu.edu	9. Principal Investigator: Name: Matt Blackwell Phone: 704-862-7503 Fax: Email: matt.blackwell@gastongov.com
10. Negotiator / Administrator: Name: Anne Lesky Phone: 919-515-2444 Fax: 919-515-7721 Email: anne_lesky@ncsu.edu (alt. sps@ncsu.edu) Address: Refer to address in block #1	11. Negotiator / Administrator: Name: Ray Maxwell Phone: 704-862-7551 Fax: Email: ray.maxwell@gastongov.com Address: Refer to address in block #2
12. NCSU Financial POC: Name: Patrick Hayes Phone: 919-515-7009 Fax: Email: phayes@ncsu.edu Address: NC State University College of Engineering 21 Current Drive, 115-D Page Hall, CB 7901 Raleigh, NC 27695-7901	13. Reserved.
14. Reserved.	15. Send Invoices To: Name: Heather Brutz Address: NC State University NC Clean Energy Technology Center Campus Box 7409 Raleigh, NC 27695 Email: hmbutz@ncsu.edu
16. Incorporation: The documents checked are incorporated into this subaward as noted: <input checked="" type="checkbox"/> Appendix A: SUBRECIPIENT's Proposal and or Statement of Work, including the approved budget, attached. <input checked="" type="checkbox"/> Appendix B: NCSU Cost Reimbursement Subaward Terms and Conditions, 10-2017, attached <input checked="" type="checkbox"/> Appendix C: Funding Source Prime Agreement, attached. <input checked="" type="checkbox"/> Appendix D: Useful Life Table, 41 CFR Section 102-34.270, attached. <input checked="" type="checkbox"/> Appendix E: 2 CFR 200.310 through 200.316, Property Standards, attached. <input checked="" type="checkbox"/> Appendix F: 2 CFR 200.317 through 200.326, Procurement Standards, attached.	

**NC State University Cost Reimbursement
Subaward Notice (SN) Number: 2017-1789-14**

☒ **New**
☐ **Modification No.**

17. Special Terms & Conditions from # 6, may be continued here:

*The Subrecipient shall comply with all applicable Federal and State policies and procedures, found in the Subaward Agreement and the Prime Funding Source Agreement and in the NC DOT's guidelines and procedures, including the Local Programs Management Handbook.

*Subrecipient shall comply with Contract Provisions 2 CFR 200, Appendix II.

*Subrecipient shall comply with the requirements of 23 USC 313 Buy America unless a waiver is obtained from the FHWA.

*Subrecipient shall comply with the Contract Provisions related to Title, Use, Management, and Disposal of Vehicles and/or Equipment in Article 5 of the Funding Source Prime Agreement, Appendix C.

*Subrecipient shall comply with all other Contract Provisions noted in Article 9 of the Funding Source Prime Agreement.

*Subrecipient will use project property, vehicles and equipment, continuously and appropriately throughout the useful life of the property. Useful Life guidelines are found in Appendix D. Upon the end of the period of useful life, the Subrecipient may dispose of project property following federal regulations.

*The Subrecipient agrees to use Project Property for appropriate purposes and in accordance with the Property Standards denoted in 2 CFR 200.310 through 200.316, Appendix E. The Subrecipient shall maintain all project equipment at a high level of cleanliness, safety, and mechanical soundness in accordance with the minimum maintenance requirements recommended by the manufacturer.

*The Certificate of Title to all vehicles purchased shall be in the name of the Subrecipient.

*When useful life of a vehicle or equipment are met, or when the equipment or vehicles are no longer needed for the program and there is no other appropriate federal program to use the property, then the entity may dispose of the property. For property with a fair market value of more than \$5,000, the NC DOT shall be entitled to eighty (80%) of the proceeds from a sale, less a handling fee of \$500 or 10% of the proceeds, whichever is less.

*All projects implemented by the Subrecipient must comply with requirements of the National Environmental Policy Act (NEPA) and other appropriate environmental laws and regulations. All documentation must be submitted to NC DOT for review and approval. Most projects under this agreement will qualify as a Type I Non-Ground Disturbing Categorical Exclusion and NEPA requirements may be met by the completion of a checklist.

*Failure on the part of the Subrecipient to comply with the provisions of this agreement will be grounds for the Recipient to terminate this agreement immediately upon written notice, instead of providing the 30 days advance notice per Article 12 of the NC State University Cost Reimbursement Subaward Terms and Conditions, Appendix B. Subrecipient agrees to return any reimbursement of funds already received.

*Subrecipient shall give written notice to NCSU of its insolvency or intent to file a voluntary petition in bankruptcy, or enter receivership proceedings, or make an assignment for the benefit of creditors at least thirty (30) days prior to the filing of the petition. Following written notice from NCSU, this Subaward will terminate upon the occurrence of the following events:

- (1) Insolvency of Subrecipient;
- (2) Subrecipient's filing of a voluntary petition in bankruptcy without notice to NCSU; or
- (3) Initiation of involuntary bankruptcy proceedings against Subrecipient.

In the event of such termination, Subrecipient shall be entitled to reimbursement for allowable costs incurred prior to receipt of notice of termination, and shall return any unused funds. If property has been purchased, Subrecipient shall transfer title of the property to NC DOT.

*The total amount spent cannot exceed the total amount funded.

*Proper supporting documentation shall accompany each invoice. Submission of each invoice by the Subrecipient is a certification that Subrecipient has adhered to all applicable state and federal laws and regulations in this agreement.



APPENDIX

A

Gaston County

Public Works Department

February 16, 2018

Rick Sapienza
NC Clean Energy Technology Center
1575 Varsity Drive
Raleigh, NC 27606

Gaston County has previously partnered with the NC Clean Energy Transportation Center to complete Liquid Propane Gas (LPG) conversions on forty (40) county-owned vehicles resulting in emissions reduction and significant fuel cost savings. The County submits the attached grant application to the NC Clean Energy Transportation Center in an effort to secure \$56,000 in grant funding through the 2017-2018 Clean Fuel Advanced Technology (CFAT) Project.

Gaston County intends to apply these grant funds to implement a project to convert ten (10) county-owned vehicles to burn LPG in a bi-fuel setup using the PRINS system. If approved, these additional ten (10) vehicles will bring the total number of LPG vehicles converted by Gaston County to fifty three (50). Gaston County is committed to using the proposed emission reduction technology on the ten (10) converted vehicles for the required minimum period and accepts responsibility for meeting all relevant state and federal purchasing requirements including Buy American.

If selected for award, Gaston County will seek to secure the required twenty percent (20%) local match to any funds awarded by this grant application in the same manner as with prior grant awards. The estimated total cost of the project is \$70,000.00 and the anticipated Gaston County cost share is \$14,000.00. We look forward to again working with the NC Clean Energy Transportation Center in implementing another emission reduction project.

Sincerely,

A handwritten signature in black ink that reads "Matt Blackwell".

Matt Blackwell
Contracts Coordinator

2018 Clean Fuel Advanced Technology (CFAT) SOW

Gaston County LPG Conversions

Overview & Basic Information

Organization Name: Gaston County

Project Coordinator (first and last name): Matt Blackwell

Mailing Address: PO Box 1578

City: Gastonia

County: Gaston

Zip Code: 28053

Telephone: 704-862-7503

Cell: 704-309-5128

Email: matt.blackwell@gastongov.com

Alternative Contact: Ray Maxwell, PE

Phone: 704-862-7551

Email: ray.maxwell@gastongov.com

Project Location (if different than mailing address):

Applicant Type (public or private): Public

Amount requested (\$): \$50,400.00

Matching funds (\$) – minimum 20% of total project cost: \$19,600.00

Total Project Cost (\$) (includes both funds requested and matching funds): \$70,000.00

Percent matching funds of total project cost: 28.00%

Project Type and Specifics

1) AFV Conversions and Up-Fits:

Vehicle type (make, model, year) to be converted or up-fitted:

- 1-Ford, F-150 3.7L, 2013
- 1-Ford, F-150 5.0L, 2014
- 1-Ford, F-450, 6.8L, 2016
- 2-Ford, F-450, 6.8L, 2017
- 2-Ford, F-450 6.8L, 2018
- 3-Ford, Explorer Police Interceptor 3.7L, 2016

Number of conversions or up-fits to be installed: 10

Estimated or projected per-vehicle annual mileage: 18,060 (180,600 project annual)

Conventional fuel type (Diesel or Gasoline): Gasoline

Average conventional fuel economy (MPG): 12

Alternative fuel station(s) where vehicle(s) will refuel or recharge (street address):

816 W. Mauney Avenue, Gastonia & 425 N. Marietta Street, Gastonia

Statement of Work

Project Summary:

Gaston County will convert ten (10) existing vehicles to operate on Liquid Propane Gas (LPG) utilizing the bi-fuel PRINS System. The cost of this conversion will be \$70,000.00. The PRINS system is a U.S. EPA certified bi-fuel hybrid propane injection system for gasoline engines. The PRINS system uses the VSI-LPG II system that injects the LPG the same way as gasoline is injected. So, there is no difference in drivability. The selected ten (10) vehicles average 180,000 miles driven per year, burning approximately 19,700 gallons of gasoline. We anticipate these vehicles burning LPG fuel 95-100% of the time that they are in use. Gaston County already has two (2) LPG fueling stations. No additional infrastructure will be needed to accommodate the increase in LPG usage. Gaston County can proceed with the conversions immediately and complete the process in a minimal amount of time.

Vehicles to be converted to bi-fuel LPG are:

Year	Make	Model	Engine	Convert.		
			(Liters)	Cylinders	MPG	Fuel Type
2014	Ford	F-150	5	8	15	Unleaded
2013	Ford	F-150	3.7	6	15	Unleaded
2016	Ford	E-450	6.8	10	7	Unleaded
2017	Ford	E-450	6.8	10	8	Unleaded
2017	Ford	E-450	6.8	10	8	Unleaded
2018	Ford	E-450	6.8	10	8	Unleaded
2018	Ford	E-450	6.8	10	8	Unleaded
2016	Ford	Explorer	3.7	6	16	Unleaded
2016	Ford	Explorer	3.7	6	14	Unleaded
2016	Ford	Explorer	3.7	6	14	Unleaded

As each vehicle is converted, it will be added to our LPG vehicle registry and its mileage and LPG usage tracked daily. We fully intend to adhere to any/all reporting requirements as stipulated by the grant terms.

Plan for Deliverables

Plan for Task #1 Acquisition / Installation of Equipment with Documentation of Work:

Gaston County will contract with Blossman Services Inc./Alliance AutoGas for the purchase and installation of the PRINS system in all ten (10) vehicles at a mutually agreeable location in Gaston County. We anticipate having all conversions completed within 10-12 weeks after approval of funding. No additional LPG fueling infrastructure will be needed as our current LPG fueling stations can accommodate the increase in LPG usage.

Plan for Task #2:

Usage tracking of project technology/fuel.:

Gaston County will track miles driven per vehicle, gallons of LPG used per vehicle, and gallons of LPG purchased, as well as any other metric that the CFAT program requires. Gaston County will meet all 12

month and 36 month reporting requirements of the grant program.

Deliverable 2.1 requires that at least twelve (12) months of recorded tracking will be provided in acceptable form.

Deliverable 2.2 requires that you provide an estimate of technology/fuel usage for additional months to give a total of thirty-six (36) months of actual and estimated combined usage.

Plan for Task #3: Public Awareness and Education:

Deliverable 3.1: Documentation of all Public Awareness and Education activities will be provided via quarterly report template provided by the NC Clean Energy Technology Center.

Deliverable 3.2: Provide NCCETC with contact information of the communication and social media staff in your organization.

Deliverable 3.3: Copies of all press releases and promotional material used to showcase project to the public will accompany quarterly reports. All press releases will acknowledge support through the "NC Clean Energy Technology Center at NC State University with federal Congestion Mitigation Air Quality funding provided from the NC Department of Transportation."

Deliverable 3.4: Photo of project signage and / or photo of vehicle decals are required.

Deliverable 3.5: Documentation of participation in NC Smart Fleet initiative.

Gaston County will develop and distribute a media press release informing the public of the award of the CFAT 2018 Grant and the project details. Gaston County agrees to use vehicle decals and/or project signage as provided by NCCETC or a mutually agreed upon alternative. Additionally, Gaston County will continue to participate in the NC Smart Fleet Initiative.

Plan for Task #4 Reporting:

Deliverable 4.1: Cost share documentation on letterhead will accompany final invoice. If more than one invoice, each invoice will include cost share.

Deliverable 4.2: Completion of quarterly progress reports.

Deliverable 4.3: Copies of paid invoices for grant funded project [see Deliverable 1.1] will accompany all requests for reimbursement.

Deliverable 4.4 requires a final report summarizing project deliverables.

Gaston County will provide all reports required by the CFAT 2018 Grant, including quarterly LPG usage, quarterly miles driven, cost share documentation, copies of paid invoices/finance copies of paid invoices, and a final report summarizing the project deliverables.

Timeline

Final invoicing to NC CETC is to be on or before: September 15, 2019

Final report due: September 15, 2020

*Note that asterisk * indicates elongated or shortened quarters due to overall project period.*

Project Start: September 15, 2018

Project Completion: September 15, 2020

1st Quarter: *September 15, 2018 – December 31, 2018

- Discovery/ research
- Order PRINS system and schedule installations
- Begin install of PRINS conversions
- Test and confirm correct operation of converted vehicles
- Begin monitoring usage of converted vehicles
- Prepare Quarterly Report - Due January 15, 2019

2nd Quarter: January 1, 2019 - March 31, 2019

- Complete install of PRINS conversions
- Test and confirm correct operation of all converted vehicles
- Begin public awareness and education tasks
- Continue monitoring usage of all converted vehicles
- Prepare Quarterly Report - Due April 15, 2018

3rd Quarter: April 1, 2019 – June 30, 2019

- Continue monitoring usage and report
- Submit invoices for reimbursement
- Prepare Quarterly Report - Due July 15, 2019

4th Quarter: July 1, 2019 - September 30, 2019

- Continue monitoring usage and report
- Prepare Quarterly Report - Due October 15, 2019

5th Quarter: October 1, 2019 – December 31, 2019

- Continue monitoring usage and report
- Prepare Quarterly Report - Due January 15, 2020

6th Quarter: January 1, 2020 – March 31, 2020

- Continue monitoring usage and report
- Prepare Quarterly Report - Due April 15, 2020

7th-8th Quarter: April 1, 2020 - September 15, 2020

- Continue monitoring usage and report
- Prepare Quarterly Report – Due April 15, 2020, July 15, 2020
- Project Completion: August 15, 2020
- Final Report – Due September 15, 2020

Budget

Expense Description	Quantity	Per Item Cost	CFAT Funds	Cost Share	Total
2013 Ford F-150	1	\$ 5,600	\$ 4,032	\$ 1,568	\$ 5,600
2014 Ford F-150	1	\$ 5,600	\$ 4,032	\$ 1,568	\$ 5,600
2016 Ford E-450	1	\$ 7,200	\$ 5,184	\$ 2,016	\$ 7,200
2017 Ford E-450	2	\$ 7,200	\$ 10,368	\$ 4,032	\$ 14,400
2018 Ford E-450	2	\$ 7,200	\$ 10,368	\$ 4,032	\$ 14,400
2016 Ford Explorer Interceptor	3	\$ 7,600	\$ 16,416	\$ 6,384	\$ 22,800
					\$ -
					\$ -
					\$ -
					\$ -
Project Total			\$ 50,400	\$ 19,600	\$ 70,000
% of project total			72%	28%	

Budget Justification Gaston County CFAT 2018

Subcontractors	\$50,400
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NCCETC is issuing a subaward to Gaston County for the conversion of vehicles to propane.

<u>Total Direct Costs</u>	<u>\$50,400</u>
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Unrecovered Indirect Costs Used as Cost Share	\$5000
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Under the PRIME contract with NCDOT, NCCETC cannot charge indirect costs to this project but can use the unrecovered indirect costs as cost share. The first \$25,000 of this subaward will incur \$5000 in unrecovered indirect costs that will be used as cost share.

Third party cost share	\$19,600
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Gaston County has committed to providing 20% cost share (excluding our indirect costs) to this project, which will be a total of \$19,600.

<u>Total Cost Share</u>	<u>\$24,600</u>
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<u>Total Project Costs</u>	<u>\$75,000</u>
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1. General Provisions.

- A. These terms and conditions apply to all Cost Reimbursement Subawards issued by NCSU. They are binding when incorporated by reference into a fully executed NCSU Subaward, using a Subaward Notice (SN). All references to "Block #" are to the SN. The SN identifies the parties, the key persons, the project proposal, establishes funding and cost share obligations, the period of performance, special terms and conditions, and carries the signatures of authorized representatives of each party.
- B. The Subaward may also include other documents incorporated by the SN. Such other documents may include a proposal from the Subrecipient, or a Statement of Work with a budget as well as a Prime Award from the sponsor.
- C. The Subaward is a binding agreement whereby the Subrecipient shall provide the personnel, materials, required facilities and use its reasonable best efforts to accomplish the work described in the project proposal (incorporated into this Subaward as Appendix A) or required by the associated Statement of Work. NCSU in turn agrees to reimburse Subrecipient for the allowable costs of said project or work effort in accordance with these and other incorporated terms, up to a total funded dollar amount, (Block 7).
- D. The Subaward supersedes any prior or contemporaneous agreements or representations, between the parties regarding the proposed project, whether oral or written. Each party remains an independent entity. The Subaward does not establish any employment or agency relationship between the parties.

2. Changes and Modifications.

- A. These Terms and Conditions may be altered by the Special Terms and Conditions recorded on a given SN or in subsequent written modifications. Any changes to the Subaward after the initial SN has been executed must be recorded in written modifications, using the SN form annotated with a Modification Number. Both parties must sign modifications, except that NCSU may elect to issue the following types of modifications unilaterally:
 - 1. Changes in key personnel when subrecipient submits a written request for change
 - 2. Revisions to the project budget when subrecipient submits a written request
 - 3. Changes to administrative information
 - 4. Funding actions identified in the approved budget
 - 5. Extension of the project end date (no-cost extension)
- B. Subrecipient may reject such unilateral modifications by providing written notice of exceptions to the NCSU Negotiator /Administrator (Block #10) within 30 days after receipt of said modification. If the Subrecipient objects to a unilateral modification, the parties will negotiate an acceptable one.

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3. **Incorporation of Prime.** The Subaward is also subject to the terms and conditions of the Prime Agreement, identified in Block #4 and incorporated into the Subaward as Appendix C. Prior approval from NCSU is required to extend the period of performance of this Subaward. Any exceptions or additions to the Prime Award will be identified in the Special Terms and Conditions, under Block #6. In the event of conflicts among the various documents and agreements, the following order of precedence will govern:
1. Subaward Notice including any Special Terms and Conditions and modifications
 2. NCSU Standard Terms and Conditions Cost Reimbursement Subaward, 10-2017
 3. Proposal or Statement Of Work, and approved budget incorporated into the Subaward
 4. Terms and conditions of the Prime Award
4. **Invoice and Payment.**
- A. Subrecipient must request reimbursement for allowable costs incurred no more frequently than monthly but at least quarterly from the individual named in Block #15. Invoices must include the Subaward number; the period covered by the invoice and must show the same level of cost detail as the approved proposal budget. Invoices must show expenditures and cost share contributions for the current period and the cumulative amount to date. The invoice must include a certification by an authorized official as to truth and accuracy of the invoice.
- B. Subrecipient must submit an invoice marked "FINAL," not later than sixty (60) days after Subaward end date. Notwithstanding any terms and conditions or other provisions contained in the final invoice or any accompanying correspondence, the final invoice and/or financial statement constitutes Subrecipient's final request for reimbursement and upon its payment by NCSU, a release by which the Subrecipient does remise, release and discharge NCSU, its officers, agents and employees of and from all liabilities, obligations, claims and demands whatsoever under or arising from the Subaward. Both NCSU and Subrecipient understand that all payments are provisional and are subject to adjustment as a result of an adverse audit finding concerning the Subaward. In the event that Subrecipient fails to submit either a FINAL invoice or request for no-cost extension within the time frame established above, NCSU shall consider the last regular invoice to be the FINAL invoice. Any unexpended balance from the Total Sponsored Funds to Date (7.c.) will be automatically deobligated and NCSU will not make any further payments to that Subrecipient.
- C. If a cost-sharing amount appears in Block #7.e., Subrecipient must report such cost-share expenditures to NCSU with each invoice, either on the invoice or separately on the Subrecipient's letterhead. The report must show current period expenditures, cumulative expenditures, and a certification as to the truth and accuracy of the report. The Subrecipient may not use Federal funds to meet cost-share obligations under any other Federal awards.

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5. **Access to Records.** The Subrecipient will make all access to any and all documents, papers, or other records of the Subrecipient which are pertinent to the subaward, in order to make reviews, audits, examinations, excerpts, transcripts, and inspections available at all reasonable times by the Federal Awarding agency, the Inspectors General, the Comptroller General of the US, NCSU or by their authorized representative(s). This right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. Subrecipient must retain these records for a period of at least three (3) years from the date of submission of the final invoice or from the settlement date of any claims, audits, appeals, or litigation, whichever is later, or as the Prime Agreement prescribes.
6. **Inspection.** Designated representatives of NCSU have the right to inspect and review the progress of the work performed at the Subrecipient's place of business pursuant to this Agreement. Subrecipient must make available all reasonable facilities, including access to relevant data, test results, and computations used or generated under this Agreement if requested by NCSU. NCSU must conduct such inspections in such manner so as not to unduly delay the progress of the work. NCSU must give the Subrecipient reasonable notice prior to conducting any such inspection.
7. **Audit.** Throughout the term of the Subaward, Subrecipient agrees to forward upon request, audit information in accordance with an OMB single audit. This could include certification of audit results, web links to audit reports, the most recent report, corrective action plans or other pertinent information. In the absence of an OMB single audit, Subrecipient must submit a record of its most recent audit by an independent accountant, including a certification as to the accuracy and reliability of the Subrecipient's financial statements and internal control structure. Upon request, Subrecipient must complete a questionnaire (to be provided) regarding its accounting system and internal controls. Audits and/or related documents must be sent to the address in Block #12, Attn: Compliance Manager.
8. **Key Persons, Technical Direction and Reporting.**
 - A. The individual named in Block #9 (normally Subrecipient's Principal Investigator) is designated as a Key Person. Subrecipient agrees not to replace that individual nor reduce his/her level of commitment to the project without prior written approval of NCSU.
 - B. The NCSU Project Director named in Block #8 is responsible for monitoring Subrecipient's performance, technical reporting and approval of Subrecipient's invoices. All questions about technical and financial matters should be directed to that individual. Technical reporting requirements are stated in Block #6.
9. **Administration.** Matters concerning any changes in the terms, conditions, dates or amounts cited in the SN should be directed to the other party's Negotiator /Administrator identified in Blocks #10 and #11.

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10. **Publications.** Subrecipient and its investigators are free to publish papers dealing with the results of the research project sponsored under this Subaward. However, Subrecipient must give NCSU's Project Director (Block #8) the opportunity to review such papers or presentations prior to their being released. NCSU agrees to complete such review within sixty (60) days. Subrecipient must include in every publication or presentation appropriate recognition of the support received from NCSU and the Prime Sponsor.
11. **Certifications and Assurances.** Subrecipient, by signing the SN incorporating these Terms and Conditions, certifies its compliance with any applicable regulatory requirements including but not limited to those listed below. Subrecipient agrees to immediately report to NCSU any change in its compliance status. Subrecipient must flow these requirements down to any lower tier subrecipients. See Appendix B of the Federal Demonstration Partnership Operating Procedures.
(http://www.nsf.gov/awards/managing/fed_dem_part.jsp.) for a complete description of the following:
1. 2 C.F.R. § 200 UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS
 2. Nondiscrimination statutes on the basis of race, color, national origin, sex, blindness, handicap, age, or disabilities.
 3. Common Federal Policy for the Protection of Human Subjects (45 CFR Parts 46 & 690).
 4. USDA Rules that implement the Laboratory Animal Welfare Act of 1966 (9 CFR Parts 1-4).
 5. Regulations for the Clean Air Act, 42 USC 7606, 40 CFR 6 & 32.
 6. Regulations for the Clean Water Act 33 USC 1368, as implemented by E.O. 11738.
 7. National Scenic Rivers Act of 1968, 16 USC1271, 40 CFR 6.
 8. For NSF & DHHS awards only, internal conflict of interest policy.
 9. E.O. 11246, & E.O. 11375 "Equal Employment Opportunity," per 41 CFR part 60.
 10. OMB Circular A-129 and 40 CFR 30.73, the parties are not delinquent on any Federal debt.
 11. The parties are in compliance with the Drug-Free Workplace Act of 1988, Public Law 100-690, 41 USC 701, 40 CFR 32 or equivalent.
 12. HIPPA Patient Privacy Rule, 45 CFR 160 & 164.
 13. Coastal Barriers Resource Act, 40 CFR 6.
 14. The Anti-Kickback Act of 1986, Pub. L. 99-634, amending 18 U.S.C. 874, 29 C.F.R. Part 3
 15. The Safe Drinking Water Act, 42 U.S.C. 300h-3(e)
 16. Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, 29 C.F.R. Part 5
 17. Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 – 330, 29 C.F.R. Part 5
 18. Environmental Protection Agency Regulations, 40 C.F.R. Parts 1 through 49
 19. Mandatory Standards & Policies contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871
 20. "Debarment and Suspension" Regulations under E.O. 12549 & 12689, 7 CFR 3017, 10 CFR 606 & 40 CFR 32, or equivalent.
 21. Prohibitions against lobbying as set forth in 7 CFR 3018, 31 USC 1352 and 18 USC 1913.
 22. The Hatch Act (5 U.S.C. s 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities in whole or in part supported by Federal Funds.
 23. Comply with environmental regulations that may be issued pursuant to:
 - a. Institution of environmental quality control measures under NEPA (PL 91-190 & EO11514.
 - b. Notification of violating facilities EO 11738

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- c. Protection of wetlands EO 11990
- d. Evaluation of flood hazards in floodplains EO 11988
- e. Assure project consistency under Coastal Zone Management Act of 1972 16 USC 1451
- f. Endangered Species Act of 1973, as amended PL 93-205
- g. National Historic Preservation Act of 1966, 16 USC470, EO11593
- h. Lead-Based Paint Poisoning Prevention Act 42 USC 4801
- i. Requirements governing the applicable Grant Program

(Abbreviations: CFR = "Code of Federal Regulations," USC = "United States Code," E.O. = "Executive Order," OMB = "Office of Management and Budget")

12. Termination.

A. NCSU and Subrecipient have the right to terminate the Subaward in whole or in part, without cause, with 30 days advance written notice to the other party.

B. The Subrecipient must stop work to the extent specified in the Notice of Termination on the date such notice is received from or issued to NCSU. Subrecipient may not place any orders or subcontracts for materials, services, or facilities, except as may be necessary for the completion of such portion of the work that is not terminated. NCSU agrees to reimburse the Subrecipient for all allowable costs of the work that has been performed prior to said notice of termination and all obligations relating to such work that cannot be canceled.

13. Liability. Each party is responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by applicable law.

14. Notices. Unless otherwise provided in the SN, official notices, from either party to the other, shall be deemed to have been fully given when made in writing, addressed/delivered to the individual shown on the SN, Block #11 for Subrecipient and Block #10 for NCSU. The parties agree that the following methods are acceptable for delivering official notices: Certified mail, return receipt requested, electronic mail with confirmation of receipt, Express courier service (e.g. FedEx or UPS) or fax with confirmation of receipt.

15. Assignment and Subcontracting. Subrecipient may not assign the Subaward nor any right, remedy, obligation or liability arising there under or by reason thereof nor may Subrecipient further subcontract any of the work to be performed under the Subaward without prior written approval from NCSU.

16. Use of Names. Either party may use the name of the other in a public announcement of the existence of the Subaward. Other than that, neither party to the Agreement may use the names, marks or symbols of the other or of the other party's employees in any manner, including public announcements, advertising, or promotional sales literature without the prior written consent of the other party.

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17. **Disputes.** In the event of a dispute or claim regarding any matter under the Subaward that is not disposed of by mutual agreement, the parties agree to pursue those necessary institutional and/or legal remedies as may be appropriate. Legal remedies may include pursuit of the dispute by either party in a court of competent jurisdiction. In this event, each party shall be responsible for all costs they incur as a result of such action. Subrecipient agrees to continue performance on a disputed matter until any such dispute is resolved.
18. **Inventions.**
- A. The parties agree to abide by the applicable United States regulations governing patents and inventions issued by the US Department of Commerce at 37 CFR 401, wherein the rights of the Federal Government are established. Any invention or discovery made or conceived in the performance of the research or other work (hereinafter called "Invention"), or any patent to be granted on such Invention shall be jointly or individually owned by Subrecipient and/or NCSU in accordance with the following criteria:
- 1) Title to any Invention made or conceived jointly by employees of both Subrecipient and NCSU in the performance of the Research (hereinafter called "Joint Invention") shall vest jointly in NCSU and Subrecipient.
 - 2) Title to any Invention made or conceived solely by employees of either Subrecipient or NCSU in the performance of the Research shall vest in the party whose employees or students made or conceived such Invention or discovery.
- B. The Subrecipient will, within 2 months after their inventor makes a written disclosure, submit a written report to the NCSU Administrator (Block 10), identifying the Subaward number, date of disclosure by Subrecipient's PI, and a brief (non-disclosing) description, identifying the purpose of the invention. Subrecipient will concurrently make a full disclosure directly to the Prime Sponsor in accordance with the Prime Agreement.
- C. The Subrecipient will submit a final invention report to NCSU concurrently with the final invoice. Subrecipient will use the forms prescribed by the Prime Sponsor (e.g. DD Form 882 or NASA Form C-3044). The list will identify all subject inventions, including the disclosure date(s) or stating that there were no inventions (negative report is required).
- D. The Subrecipient will, upon request, submit a written report concerning each patent filing, including: the filing date, serial number and title, a copy of the patent application, patent number, and issue date.
19. **Copyright.** The Subrecipient may copyright any work product, software or data that is subject to copyright and was first developed by or on behalf of Subrecipient under the Subaward. For such copyrights or copyrighted material (including any computer software and its documentation and/or databases), subject to its legal ability to do so, Subrecipient grants to the Federal Government the rights established in the Prime Agreement and

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grants to NCSU, an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, display, and perform publicly to the extent required to meet NCSU's obligations under its Prime Agreement and for the purposes of its noncommercial research and educational missions.

20. **Data Rights.** For Data and computer software created in the performance of this Subaward Agreement, Subrecipient grants to the Prime Sponsor the rights established in the Prime Agreement and grants to NCSU the right to use data to the extent required to meet NCSU's obligations under its Prime Agreement and for the purposes of its noncommercial research and educational missions.
21. **Confidentiality.**
- A. In the performance of the Project, it may be necessary for one party to disclose information that is proprietary and confidential to the disclosing party. All such information must be disclosed in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of Three (3) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that these restrictions do not apply to:
- (i) information that is or becomes publicly known through no fault of the receiving party;
 - (ii) information learned from a third party entitled to disclose it;
 - (iii) information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
 - (iv) information for which receiving party obtains the disclosing party's prior written permission to publish;
 - (v) information required to be disclosed by court order or operation of law, including, but not limited to, the North Carolina Public Records Law; or
 - (vi) information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.
- B. The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.

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22. **Law and Severability.** It is agreed that if either party is an agency of its respective state government, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues. Subrecipient agrees to comply with all relevant federal, state, county, and municipal executive orders, rules, regulations, laws and ordinances. In the event that any provision(s) of the Agreement are rendered void or illegal the remainder of its provisions shall remain in effect. Failure on the part of either party to exercise a right or remedy shall not preclude exercising them in the future.
23. **Survivability.** In the event of early termination of this Subaward, the parties agree that Articles 18 through 21 and the obligations inherent in them will survive the termination of this agreement for a minimum of 3 years.
24. **Export Controls.** The parties acknowledge that each is responsible for compliance with US Export Control regulations. In the event that either party becomes aware that the research work that is being or will be conducted, is or is likely to involve a technology that is subject to Export Controls, each party agrees to notify the other within three working days so that the situation can be evaluated and an appropriate course of action taken.
25. **Non-Construction and Vehicle Procurement Projects.**
Example of non-construction projects that are eligible for funding include:
- *Alternate fuel and advanced technology vehicle conversions
 - *Purchase of alternate fuel and advanced technology vehicles
 - *Onboard Idle Reduction Technologies, such as idle reduction equipment and auxiliary power units
 - *Diesel retrofits
 - *Education and Outreach initiatives
- *This list is not inclusive and the University may implement other emerging technology projects with the prior review and approval of the NC DOT and FHWA.
26. **Procurement of Goods and Services.**
In accordance with the 2 CFR 200 and the exemptions obtained by the US Department of Transportation, codified at 2 CFR 1201, the Subrecipient shall follow state regulations for procuring goods and services.
- Purchase of Vehicles**
The NC DOT, through the NC Department of Administration, Purchase and Contract Division, awards vehicle contracts to purchase vehicles for public use. These vehicle contracts comply with Federal Transit Administration (FTA) and State requirements.

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Subrecipients that are public entities may utilize these vehicle contracts to purchase public vehicles, with review and approval from NCSU and NCDOT.

Private entities that purchase vehicles must use a competitive procurement process to purchase vehicles. Private entities should follow 2 CFR 200.317 through 200.320, General Procurement Standards. Such procurements must be conducted through a competitive and open process without limitation of any contractors. Subrecipient agrees to maintain written procurement procedures and records of the procurement.

End of Terms and Conditions

APPENDIX C

NORTH CAROLINA

LOCALLY ADMINISTERED PROJECT -
FEDERAL

WAKE COUNTY

DATE: 04/03/2017

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: C-5702 A, B, and C

AND

WBS Elements: C-5702A 44907.1.1

C-5702B 44907.1.2

NORTH CAROLINA STATE UNIVERSITY

C-5702C 44907.1.3

FEDERAL-AID C-5702A CMAQ-000S(895)
NUMBER:

CFDA #: 20.205

Total Funds [NCDOT Participation] \$4,494,500

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an Agency of the State of North Carolina, hereinafter referred to as the "Department" and North Carolina State University hereinafter referred to as the "University".

WITNESSETH:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of Congestion Mitigation and Air Quality (CMAQ) funds to be available for certain specified transportation activities; and,

WHEREAS, the University has requested federal funding for Clean Fuel Advanced Technology (CFAT) Outreach, Awareness and Sub-Awards Program, hereinafter referred to as the Project, in Wake County, North Carolina; and,

WHEREAS, the CFAT Program is administered by the North Carolina Clean Energy Technology Center (CETC), a public service center of the University; and,

WHEREAS, subject to the availability of federal funds, the University has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$4,494,500 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the University for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the University has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The University shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the University and/or its contractors and agents. The Department will provide technical oversight to guide the University. The Department must approve any assignment or transfer of the responsibilities of the University set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The University shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, University or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the University and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the University, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The University, and/or its agent, including all contractors, subcontractors, or subrecipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the University to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the development and operation of a clean fuel advanced technology outreach and awareness program, including sub-awards for projects in eligible counties in North Carolina. The Project will be administered by CETC, a Public Service Center of the University, and CETC will be responsible for day to day management and implementation of the Project.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Outreach and Education Activities initiated by the University;
- Sub-Awards for eligible activities and to eligible partners as awarded by the University as further set forth in this Agreement.

3. FUNDING

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the University with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse eighty percent (80%) of eligible expenses incurred by the University for its own or its subrecipients' eligible expenses up to a maximum amount of Four Million Four Hundred Ninety Four Thousand Five Hundred Dollars (\$4,494,500), as shown in Table 1 below. Eligible expenses shall include federal and non-federal costs as described herein. The University, or its subrecipients, shall provide a non-federal share of twenty percent (20%) as described below. The Department shall not be liable for costs that exceed the total estimated amount of federal funding.

The Department will allow the University to use unrecovered indirect costs at the approved indirect cost rate of twenty percent (20%) towards the non-federal match of the project. In addition, the Department will allow the use of third-party donations towards the non-federal match with the prior review and approval of the Department. The University shall document its cost share, including the unrecovery of indirect costs and/or third party donation costs, when requesting reimbursement.

TABLE 1: FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Costs \$	Non-Federal Percentage of Project Cost
Congestion Mitigation and Air Quality	\$4,494,500	80%	\$1,123,624	20%
Total Estimated Project Costs		\$5,618,124		

TABLE 2: COST ALLOCATION BY PROJECT

Projects	Phase of Work	Federal Funds Amount	Non-Federal Costs Amount	Fiscal Year Programmed
C-5702A	C-5702AA: Outreach and Education Activities	\$747,210	\$188,802	FFY 2017
	C-5702AB: Outreach and Education Activities	\$747,210	\$188,802	FFY 2018
C-5702B	Sub Awards FFY17	\$1,500,040	\$375,010	FFY 2017
C-5702C	Sub Awards FFY18	\$1,500,040	\$375,010	FFY2018
Total Estimated Project Costs		\$5,618,124		

WORK PERFORMED BY NCDOT

Expenses Incurred by Department for its work performed on Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the University under this Agreement. The Department will set aside three percent (3%) of the total estimated project costs, or \$168,542, (the "Set Aside") for such Department costs and associated non-federal share of the Project. Set Aside amounts are detailed in Table 3, below. Department activities shall further be related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the University's appropriate compliance with state and federal regulations.

TABLE 3: DETAILED BREAKDOWN OF FEDERAL AND NON FEDERAL COSTS

Phase of Work	80% Federal	20% Non-Federal Share			Total
	Federal Funds Amount	University Non-Federal Match Amount	University Non-Federal Share of Department Work	Total Non-Federal Funds	
FFY 2017					
C-5702AA: Outreach and Education Activities	\$724,794	\$181,198	\$0	\$181,198	\$905,992
C-5702AA Department Work Set Aside (3% of Phase Subtotal)	\$22,416	\$0	\$5,604	\$5,604	\$28,020
C-5702AA	\$747,210	\$181,198	\$5,604	\$186,802	\$934,012
C-5702B Sub Awards FFY17	\$1,455,039	\$363,760	\$0	\$363,760	\$1,818,799
C-5702B Department Work Set Aside (3% of Phase Subtotal)	\$45,001	\$0	\$11,250	\$11,250	\$56,251
C-5702B	\$1,500,040	\$363,760	\$11,250	\$375,010	\$1,863,800
2017 University Project Subtotal	\$2,179,833	\$544,958	\$0	\$544,958	\$2,724,791
2017 Department Work Set aside (3% of Phase Subtotal)	\$67,417	\$0	\$16,854	\$16,854	\$84,271
FFY 2017 total	\$2,247,250	\$544,958	\$16,854	\$561,812	\$2,809,062
FFY 2018					
C-5702AB: Outreach and Education Activities	\$724,794	\$181,198	\$0	\$181,198	\$905,992
C-5702AB Department Work Set Aside (3% of Phase Subtotal)	\$22,416	\$0	\$5,604	\$5,604	\$28,020
C-5702AB	\$747,210	\$181,198	\$5,604	\$186,802	\$928,408
C-5702C Sub Awards FFY18	\$1,455,039	\$363,760	\$0	\$363,760	\$1,818,799
C-5702C Department Work Set Aside (3% of Phase Subtotal)	\$45,001	\$0	\$11,250	\$11,250	\$56,251
C-5702C	\$1,500,040	\$363,760	\$11,250	\$375,010	\$1,863,800
2018 University Project Subtotal	\$2,179,833	\$544,958	\$0	\$544,958	\$2,724,791
2018 Department Work Set aside (3% of Phase Subtotal)	\$67,417	\$0	\$16,854	\$16,854	\$84,271
FFY 2018 total	\$2,247,250	\$544,958	\$16,854	\$561,812	\$2,809,062
Total University Project	\$4,359,666	\$1,089,916	\$0	\$1,089,916	\$5,449,582
Total Department Work Set aside (3% of Total)	\$134,834	\$0	\$33,708	\$33,708	\$168,542
Overall Total	\$4,494,500	\$1,089,916	\$33,708	\$1,128,624	\$5,618,124

In the event that the Department does not utilize all of the Set Aside funding, Department shall provide notice to University releasing those remaining Set Aside funds for reimbursement of eligible University project expenses at the above reimbursement rate. Such University reimbursement request shall document twenty percent (20%) cost share as described in section above entitled, Reimbursement For Eligible Activities. For all costs of work performed on the Project, whether incurred by the University or by the Department, the University shall provide the non-federal share.

The Department will bill the University for the non-federal share of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Funding, in accordance with Article 6, Reimbursement.

FUNDING AUTHORIZATION

When any phase of funding is authorized, the Department will notify the University in writing that funds have been authorized and can be expended. The University shall not initiate any work nor solicit for services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

C-5702A: OUTREACH AND EDUCATION INITIATIVES:

This project is set up for the University to undertake outreach and education initiatives to further the objectives of the project. Upon execution of the Agreement, the University shall present a plan of activities along with a cost estimate. Funding will be authorized based on the cost estimate provided. If actual costs exceed estimated costs, the University may request an amendment to the funding authorization; however, the total amount funded may not exceed the total available funding for outreach and education initiatives programmed in each fiscal year.

C-5702B AND C-5702C: SUBAWARDS

The University shall develop a program to solicit, review, and award applications for eligible clean fuel technology projects, as further defined in this agreement. Upon review and concurrence with selection by NCDOT and FHWA, a project break will be established under C-5702B or C-5702C, depending on the year awarded, with notification to the University. The University will develop a subrecipient agreement that references the proposed project break and outlines responsibilities as further detailed in this Agreement. Where the University is named as responsible party, all requirements will apply equally to subrecipients. Once a proposal for implementation has been provided

by subrecipients, including NEPA document and cost estimate, the University will request authorization for funding for that project. If actual costs exceed estimated costs, the University may request an amendment to the funding authorization, based on documented costs; however, the total amount funded for each group subaward may not exceed the total available funding for the subawards programmed in each fiscal year.

SUBRECIPIENT CONTRACTS

All contracts and subcontracts shall include and comply with the following contract provisions:

- All subrecipients shall comply with the requirements of Buy America unless a waiver is obtained from the Federal Highway Administration.
- Contract provisions noted at 2 CFR 200, Appendix II
- Contract Provisions related to Title, Use, Management, and Disposal of Vehicles and/or Equipment, as noted in this Agreement at Provision 5
- Other Provisions, noted in this agreement at Provision 9, shall be included as applicable.
- Useful Life related to any vehicles or equipment acquired.

The University shall submit draft subrecipient contracts for review by the Department prior to the University executing subrecipient contracts.

4. PERIOD OF PERFORMANCE

C-5702A: EDUCATION AND OUTREACH INITIATIVES

The University shall have one year from the date of authorization of the funding for C-5702AA and C-5702AB, respectively, to complete all work associated with each project. Any funding not reimbursed at the end of each sub-project phase will revert back to the Department. The University may use an additional six months to prepare reimbursement requests and submit to the Department; however, all expenditures must be incurred no later than one year after the funding authorization date.

C-5702B AND C-5702C: SUBAWARDS

Each sub award request by the University will have a proposed completion date to complete all work associated with the sub award, request reimbursement from University, and have University request reimbursement from the Department.

All sub awards must be complete and all invoicing submitted to the Department no later than three years after the initial sub award authorization is made.

5. NON-CONSTRUCTION AND VEHICLE PROCUREMENT PROJECTS

The University shall implement all non-construction-type projects in accordance with the provisions set out below. For any subawards, the University shall enter into a project agreement with each subrecipient that outlines these responsibilities as further defined. Where the University acts as the subrecipient to the Department, then the subrecipient shall act as subrecipient to the University.

EXAMPLE PROJECTS

Examples of non-construction projects that are eligible for funding include:

- Alternative fuel and advanced technology vehicle conversions
- Purchase of alternative fuel and advanced technology vehicles
- Onboard Idle Reduction Technologies, such as idle reduction equipment and auxiliary power units
- Diesel retrofits
- Education and Outreach initiatives, for example, activities that promote new or existing transportation services, developing messages and advertising materials (including market research, focus groups, and creative), placing messages and materials, evaluating message and material dissemination and public awareness, technical assistance, programs that promote the Tax Code provision related to commute benefits, transit "store" operations, and any other activities that help forward less-polluting transportation options

The above example list is not inclusive and the University may implement other emerging technology projects with the prior review and approval of the Department and FHWA.

PLANNING / ENVIRONMENTAL DOCUMENTATION

All projects implemented by the University, or any subrecipient, must comply with requirements of the National Environmental Policy Act (NEPA) and other appropriate environmental laws and regulations. All documentation shall be submitted to the Department for review and concurrence.

Most projects under this Agreement will qualify as a Type I Non-Ground Disturbing Categorical Exclusion and NEPA requirements may be met by the completion of a checklist.

PROCUREMENT OF GOODS AND SERVICES

In accordance with 2 CFR 200 and the exemptions obtained by the US Department of Transportation, codified at 2 CFR 1201, the University shall follow state-approved procedures when procuring goods and services. The University shall submit all procurement proposals for review and approval by the Department prior to initiating work.

PURCHASE THROUGH THE STATE CONTRACT

The Department, through the North Carolina Department of Administration, Purchase and Contract Division, awards vehicle contracts to purchase vehicles for public use. These vehicle contracts comply with Federal Transit Administration (FTA) and State requirements. The University may utilize these vehicle contracts to purchase public vehicles, but must provide assurance that contracts also meet Federal Highway Administration (FHWA) requirements. For vehicles not included in these contracts, the University shall conduct a competitive procurement process in accordance with this Agreement.

TITLE, USE, MANAGEMENT AND DISPOSAL OF PROPERTY AND/OR VEHICLES

- The University agrees to use Project property for appropriate purposes and in accordance with Property Standards denoted in 2 CFR 200.310—316. The University shall maintain all project equipment at a high level of cleanliness, safety, and mechanical soundness in accordance with the minimum maintenance requirements recommended by the manufacturer. All subrecipients of the University shall comply with property management requirements as indicated above.
- The University and the Department will agree on an appropriate useful life for the Project property (vehicles and equipment). The University will use Project property continuously and appropriately throughout the useful life of that property. Upon the end of the period of useful life, the University, or other non-federal subrecipient, may dispose of Project property.
- The Certificate of Title to all vehicles purchased shall be in the name of the University or subrecipient.
- When useful life of vehicles or equipment are met, or when the equipment or vehicles are no longer needed for the program and there is no other appropriate federal program to use the property, then the entity may dispose of the property. For property with a fair-market value of more than \$5,000, the Department shall be

entitled to eighty percent (80%) of the proceeds from a sale, less a handling fee of \$500 or 10% of the proceeds, whichever is less.

PLANNING / ENVIRONMENTAL DOCUMENTATION

For any project that has the potential for environmental impacts, the University shall prepare the environmental and/or planning document, including any environmental permits, needed for the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The University shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The University shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the University shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The University shall bear all costs associated with penalties for violations and claims due to delays.
- The University shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the CETC, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

6. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Outreach and Education activities initiated by the University;
- Sub-Awards for eligible activities and to eligible partners as awarded by the University.

REIMBURSEMENT GUIDANCE

The University shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the University shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm. Reimbursement to the University shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the University and subrecipients with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

• WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the University prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

• NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the University costs that exceed the total funding per this Agreement and any Supplemental Agreements.

• UNSUBSTANTIATED COSTS

The University agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

• WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$4,494,500 available to the University under this Agreement. The Department will bill the University for the non-federal share of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

BILLING THE DEPARTMENT

- **PROCEDURE**

The University may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the University certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the University is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the University shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The University may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the University is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

7. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The University is responsible for submitting quarterly Project evaluation reports in accordance with the Department's guidelines and procedures that detail the progress achieved to date for the Project.

PROJECT RECORDS

The University shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the University shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

8. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the University to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The University agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government University (Federal or State). By execution of this agreement, the University certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The University shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The University is solely responsible for all agreements, contracts, and work orders entered into or issued by the University for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for Congestion Mitigation and Air Quality funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the University for this Project are not used in accordance with the terms of this Agreement, the Department will bill the University.

TERMINATION OF PROJECT

If the University decides to terminate the Project without the concurrence of the Department, the University shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the University shall arrange for an annual independent financial and compliance audit of its fiscal operations. The University shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the University's fiscal year ends.

REIMBURSEMENT BY UNIVERSITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the University to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, and fully understands its contents.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give

favours to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

9. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the University.

Signatures on following page.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the University by authority duly given.

L.S. ATTEST:

NORTH CAROLINA STATE UNIVERSITY

on behalf of the

NORTH CAROLINA CLEAN ENERGY
TECHNOLOGY CENTER

BY:

Wendy J. Moore

TITLE:

Wendy J. Moore
Sr. Contract Negotiator
NCSU Sponsored Programs
4/13/2017

BY:

Sherrie E. Settle

TITLE:

Sherrie E. Settle
Director
Sponsored Programs
NC State University

DATE:

4-13-2017

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Federal Tax Identification Number

North Carolina State University

Remittance Address:

Office of Contracts and Grants

Box 7214, Raleigh, NC 27695-7214

DEPARTMENT OF TRANSPORTATION

BY:

[Signature]
(CHIEF ENGINEER)

DATE:

4/18/17

APPROVED BY BOARD OF TRANSPORTATION ITEM O:

10/6/10

(Date)

Cornell Law School

APPENDIX D

CFR › Title 41 › Subtitle C › Chapter 102 › Subchapter B › Part 102 › Subpart E › Section 102-34.270

41 CFR 102-34.270 - How long must we keep a Government-owned motor vehicle?

§ 102-34.270 How long must we keep a Government-owned motor vehicle?

You must keep a Government-owned motor vehicle for at least the years or miles shown in the following table, unless it is no longer needed and declared excess:

TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years ¹	Or miles ¹
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity	n/a	280,000
City	n/a	150,000
School	n/a	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500-23,999 pounds GVWR	7	60,000
24,000 pounds GVWR and over	9	80,000
4- or 6-wheel drive motor vehicles	6	40,000

¹ Minimum standards are stated in both years and miles; use whichever occurs first.

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APPENDIX E

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of August 11, 2017

Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Subject Group

Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart D—Post Federal Award Requirements

PROPERTY STANDARDS

§200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§200.311 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

[78 FR 78608, Dec. 28, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

§200.312 Federally-owned and exempt property.

(a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (f)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12959, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal Government.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

§200.313 Equipment.

See also §200.439 Equipment and other capital expenditures.

(a) **Title.** Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) **Use.** (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §200.307 Program Income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) **Management requirements.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$600 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 76884, Dec. 18, 2014]

§200.314 Supplies.

See also §200.453 Materials and supplies costs, including costs of computing devices.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§200.315 Intangible property.

(a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."

(d) The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

[76 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

§200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

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APPENDIX F

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of August 11, 2017

Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Subject Group

Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart D—Post Federal Award Requirements

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new

equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 78885, Dec. 19, 2014; 80 FR 43308, July 22, 2015]

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the

nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78808, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(I) A complete, adequate, and realistic specification or purchase description is available;

(II) Two or more responsible bidders are willing and able to compete effectively for the business; and

(III) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(I) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(II) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(III) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(IV) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§209.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or

pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

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