

Grant #: 2015-R1-NORMAN

**PUBLIC FLEET CONVERSION GRANT CONTRACT
BETWEEN THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS
AND
THE CITY OF NORMAN, OKLAHOMA**

This Grant Contract, by and between the Association of Central Oklahoma Governments, hereinafter referred to as "ACOG" and the City of Norman, Okla., hereinafter referred to as the "Grantee," is for the provision of reimbursement of certain costs incurred for the purchase of ten (10) new, dedicated compressed natural gas (CNG) vehicles as further defined in the "SCOPE OF SERVICES."

Amount of Grant not to exceed: Two hundred nine thousand, four hundred eighty-four (\$209,484).

The Grantee operates a public-sector fleet and is either an Oklahoma City Area Regional Transportation Study (OCARTS) member entity or a public school district whose district boundaries are contained partially or wholly within the OCARTS area.

Grantee Federal Employer Identification: 73-600-5350

A. SCOPE OF SERVICES

- A.1. The Grantee shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Grant Contract.
- A.2. The intention of ACOG in awarding these grant funds is to seed the advancement of alternative fuel vehicles, certain hybrid vehicles, and alternative fuel infrastructure as delineated by the Federal Highway Administration's Congestion Mitigation Air Quality funding guidelines within the Central Oklahoma region to reduce vehicle emissions and to support the Clean Air Act and its amendments.
 - A.2.a. Grantee agrees that all equipment, parts, vehicles purchased with ACOG Public Fleet Conversion Grants funds, hereinafter referred to as "ACOG CLEAN AIR Grants," will be new and unused.
 - A.2.b. Funds are intended to defray costs related to the purchase of ten (10) new, Model Year 2015, dedicated CNG vehicles further defined as:
 - Five (5) new, light duty, Ford F250 CNG Trucks
 - One (1) new, light duty, Ford F350 CNG Truck
 - Two (2) new, heavy duty, Peterbilt 365 CNG Refuse Trucks
 - One (1) new, heavy duty, Peterbilt 337 CNG Refuse Truck
 - One (1) new, heavy duty, Peterbilt 567 CNG Tractor Trailer
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 - A.2.c. Except for circumstances described in Section D.8., Grantee agrees that any and all liability of any kind stemming from the purchase and use of these vehicles remains with and will be the sole responsibility of the Grantee.
 - A.2.d. Grantee shall be solely responsible for all ongoing maintenance of the vehicle(s).

- A.2.e. Grantee will prominently and visibly mark all ACOG CLEAN AIR Grants-funded vehicles, refueling or charging station(s) in such a way that promotes alternative fuels or clean fuel vehicle technology, and clean air. Acceptable station signage shall include station banners, flags, marquees, pump toppers and pump wraps or other prominent pump signage. Acceptable vehicle signage shall include vehicle wraps or partial wraps, prominent slogans affixed to the vehicles, and the like. This signage shall remain affixed to fuel dispensers, and vehicles until the grant-funded equipment and/or vehicles are retired from Grantee's fleet service.
- A.2.f. Grantee will visibly and distinctly label all ACOG CLEAN AIR Grants-funded vehicles with the following: **CLEAN AIR Vehicle funded in partnership with ACOG** or **CLEAN AIR Vehicle funded in partnership with the Association of Central Oklahoma Governments**.
- A.2.g. Grantee will visibly and distinctly label all ACOG CLEAN AIR Grants-funded infrastructure project with the following: **CLEAN AIR Fueling Project funded in partnership with the Association of Central Oklahoma Governments** or **CLEAN AIR Fueling Facility funded in partnership with the Association of Central Oklahoma Governments**.
- A.3. Grantee agrees that fleet size as a result of grant funding will be reduced or remain the same.
- A.3.a. Grantee will remove from the fleet, ten (10), conventional fuel vehicles further described below and will provide to ACOG a bill of sale, receipt of scrappage, or other like document(s) as proof of removal of these vehicles. Vehicles identified for removal from fleet include:
1. One (1), MY 1995, Ford Bronco, Class 2, gasoline truck; VIN 1FMEU15H5SLB07086
 2. One (1), MY 1995, Ford Bronco, Class 2, gasoline truck; VIN 1FMEU15H0SLB07089
 3. One (1), MY 1996, Dodge 1500, Class 2, gasoline truck; VIN 3B7HF13Z8TG173363
 4. One (1), MY 2002, Ford F250, Class 2, gasoline truck; VIN 1FTNF20L12ED12733
 5. One (1), MY 2002, Ford F450, Class 4, gasoline truck; VIN 1FDXF46S92EC19635
 6. One (1), MY 2001, Dodge 2500, Class 2, gasoline truck; VIN 3B7KC26Z01M583993
 7. One (1), MY 1998, IHC 4700, Class 7, diesel truck; VIN 1HTSCABN3WH505672
 8. One (1), MY 2007, IHC 7600, Class 7, diesel truck; VIN 1HSWYAHT18J681242
 9. One (1), MY 2007, Peterbilt 320, Class 8, diesel truck; VIN 3BPZHD9X47F717505
 10. One (1), MY 2007, Peterbilt 320, Class 8, diesel truck; VIN 3BPZLDOX07F717447
- A.4. **Progress Reports:** Grantee shall provide to ACOG quarterly project progress reports commencing with the end of the first quarter following signed acceptance of negotiated award contract and due no later than the 10th of the month following the end of each quarter based on a fiscal year beginning July 1; i.e., October 10, January 10, April 10, and July 10 until such time as all grant-funded vehicles, equipment and materials have been purchased and installed, and project is operational.
- A.5. **Annual Reports:** Grantee shall provide to ACOG a minimum of four (4) annual reports covering 12 full months of project operation each reporting period. The first annual report shall be due at the end of the year in which the project becomes operational. The maximum required annual reporting period shall not exceed five (5) years or 60 months. For projects that become operational on or prior to April 1 and that can report a minimum of nine (9) full months of first year operational data as listed in Sections A.5.a. and A.5.b., below, the first annual reporting period shall be considered as if it were a full 12 month period.
- A.5.a. Annual Reports for vehicle projects shall include odometer readings, fuel consumption records,

maintenance records, and written documentation of all other costs associated with each vehicle purchased with ACOG CLEAN AIR Grants funds.

- A.5.b. Annual reports for refueling/charging infrastructure projects shall include monthly volumes of fuel dispensed at the station(s), the number of city owned vehicles refueling at the station(s), maintenance records, and written documentation of all other costs associated with the station(s) equipment and installation purchased with ACOG CLEAN AIR Grants funds.

B. GRANT CONTRACT TERMS

- B.1. Grant Contract Terms: ACOG shall have no obligation for costs incurred by the Grantee outside the period commencing March 1, 2015 and ending July 15, 2016, hereinafter referred to as Part I of Contract Terms.

Reporting requirements as described in Sections A.4., A.5., A.5.a and A.5.b. of this Grant Contract shall be effective for the period commencing March 1, 2015 and ending not later than August 31, 2021, hereinafter referred to as Part II of Contract Terms.

C. PAYMENT TERMS AND CONDITIONS

- C.1. **Limitation of Liability:** In no event shall the maximum liability of ACOG under this Grant Contract exceed two hundred nine thousand, four hundred eighty-four (\$209,484)

- C.2. **Payment Methodology:** The Grantee shall be reimbursed for Allowable Costs related to the purchase of ten (10) new, dedicated CNG vehicles as described in Section A.2.b., not to exceed the maximum liability established in Section C.1.

- C.2.a Allowable Costs are defined as expenditures directly related to the Incremental Difference, each, of ten (10) new, dedicated CNG vehicles as described in Section A.2.b.

- C.2.b. Allowable Costs are further defined as excluding any other expenses such as personnel costs, fuel costs, mileage reimbursements, tag and title costs, vehicle and engine scrappage, vehicle auction, decorative vehicle badging or decals, or any expense other than the incremental cost difference of the vehicle(s).

- C.2.c. Incremental Difference or Incremental Cost is defined as the price differential between an Original Equipment Manufacturer (OEM) alternative fuel vehicle and its comparably equipped conventional-fuel counterpart; or between a hybrid vehicle and its non-hybrid counterpart or closest comparable non-hybrid vehicle produced by an OEM; or the price of conversion equipment, fuel tanks, and installation to equip a new, convention-fuel vehicle to run exclusively on alternative fuels; and any price premium attached to an OEM conversion-ready engine as compared to its conventional-fuel counterpart.

- C.2.d. The Grantee shall submit invoices accompanied by bills of sale and documentation as further described in Sections C.3.a. through C.3.d., below, prior to reimbursement of Allowable Costs.

- C.3. **Invoice Requirements:** Grantee shall invoice to ACOG, with all necessary supporting documentation, to:

ACOG

Attn: Eric Pollard, Clean Cities Coordinator
 21 E. Main Street, Suite 100
 Oklahoma City, OK 73104-2405
 Telephone: 405-778-6175; FAX: 405-234-2200
 Email: epollard@acogok.org

C.3.a. Each invoice shall clearly and accurately detail the following required information:

- (1) Invoice/Reference Number (assigned by the Grantee);
- (2) Invoice Date;
- (3) Grant Contract Number (assigned by ACOG to this Grant Contract);
- (4) Grantee Name;
- (5) Grantee Federal Employer Identification Number (as referenced in this Grant Contract);
- (6) Grantee Remittance Address;
- (7) Grantee Contact (name, phone, and/or fax for the individual to contact with invoice questions);
- (8) Complete Itemization of Reimbursement Requested which shall include Documentation of Paid Expenses and shall include each of the following:
 - i. An Itemized Bill of Sale for each vehicle purchased, including VIN number
 - ii. An Itemized Bill of Sale for each vehicle conversion, upfit, and/or engine repower to include separate line itemizations for the following:
 1. Labor costs
 2. Cost of each alternative fuel system equipment package (exclusive of fuel tanks)
 3. Cost of each onboard alternative fuel tank installation including the number of tanks installed per vehicle, size in gallon equivalents of each installed tank, and the price of each fuel tank
 - iii. Itemized Bill of Sale for all fueling infrastructure storage and dispensing equipment
 - iv. Itemized Labor, Installation and Construction costs for each fueling infrastructure project
 - v. Total Reimbursement Amount Requested

C.3.b. Each invoice shall be accompanied by a copy of the EPA emissions certification for each conversion, upfit, and/or engine repower

C.3.c. Each invoice shall be accompanied by proof of removal from fleet and/or scrappage of vehicle(s), as applicable.

C.3.d. Each invoice shall be accompanied by a digital photo file(s) of the project displaying required labeling and signage promoting alternative fuels or clean fuel vehicle technology, and clean air.

C.4. The Grantee understands and agrees that an invoice to ACOG under this Grant Contract shall include only reimbursement requests for actual expenditures as described in Section A.2.b. and Sections C.2., C.2.a., C.2.b. and C.2.c. of this Grant Contract subject to the liability limits of the Grant Award as described in Section C.1.

C.4.a. All invoices for reimbursement must be received by ACOG no later than July 15, 2016 to include

only expenses incurred during the period delineated as Part I of Contract Terms.

- C.4.b. The Grantee's failure to provide an invoice to ACOG by July 15, 2016, as required, shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and any and all financial and legal liabilities related to the awarded project shall be upon the Grantee and not the responsibility or liability of ACOG.
- C.5. **Payment of Invoice:** ACOG shall, within 90 days of receipt of invoice for eligible expenses relating to the purchase of vehicles, equipment, materials, labor and installation, as described in Sections A.2.b., C.2., C.2.a., C.2.b., and C.2.c. issue payment to Grantee for those eligible expenses.
- C.6. **Unallowable Costs:** The Grantee's invoice shall be subject to reduction for amounts included in any invoice which are determined by ACOG, on the basis of the terms of this Grant Contract and stated intent of the Grant Award, not to constitute allowable costs.

D. STANDARD TERMS AND CONDITIONS

- D.1. **Required Approvals:** ACOG is not bound by this Grant Contract until it is approved by the appropriate government entity legal signatory in accordance with applicable laws and regulations.
- D.2. **Notice to Proceed:** Reimbursable costs cannot be incurred until Grant Contract is executed and a letter of Notice to Proceed is issued to Grantee.
- D.3. **Modification and Amendment:** This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by ACOG.
- D.4. **Termination for Cause:** If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, ACOG shall have the right to terminate the Grant Contract and withhold any and all award funds for reimbursement regardless of any financial liability for equipment or services incurred by the Grantee. Notwithstanding the above, the Grantee shall not be relieved of liability to ACOG for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. **Records:** The Grantee shall maintain documentation for all purchases and installations under this Contract. The books, records, and documents of the Grantee, insofar as they relate to money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by ACOG, the Oklahoma Department of Transportation and/or Federal Highway Administration, the Oklahoma State Auditor and Inspector, or their duly appointed representatives.
- D.6. **Progress Reports:** The Grantee shall submit brief, quarterly progress reports to ACOG throughout Part I of Contract Terms in addition to annual reports as described in Sections A.4. through A.5.b.
- D.7. **ACOG Liability:** ACOG shall have no liability except as specifically provided in this Grant Contract.

- D.8. Force Majeure: The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.9. State and Federal Compliance: The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.10. Governing Law: This Grant Contract shall be governed by and construed in accordance with the laws of the State of Oklahoma.
- D.11. Completeness: This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and discussions between the parties relating hereto, whether written or oral.
- D.12. Severability: If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

E. SPECIAL TERMS AND CONDITIONS

- E.1. Conflicting Terms and Conditions: Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts: All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

ACOG:

Eric Pollard, Clean Cities Coordinator
21 E. Main Street, Suite 100
Oklahoma City, OK 73104-2405
Telephone: 405-778-6175; FAX: 405-234-2200
Email: epollard@acogok.org

Grantee:

The Honorable Cindy Rosenthal, Mayor
The City of Norman
201 West Gray Street
Norman, OK 73069
Telephone: (405) 366-5402

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Hold Harmless: To the extent that Oklahoma law permits, the Grantee agrees to hold harmless ACOG as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Grantee, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Grantee further agrees it shall be liable for the reasonable cost of attorneys for ACOG in the event such service is necessitated to enforce the terms of this Grant Contract or otherwise enforce the obligations of the Grantee to ACOG.

Likewise, ACOG agrees to hold harmless Grantee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of ACOG, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. ACOG further agrees it shall be liable for the reasonable cost of attorneys for Grantee in the event such service is necessitated to enforce the terms of this Grant Contract or otherwise enforce the obligations of ACOG to Grantee.

In the event of any such suit or claim, the Grantee shall give ACOG immediate notice thereof and shall provide all assistance required by ACOG in ACOG's defense. ACOG shall give the Grantee written notice of any such claim or suit, and the Grantee shall have full right and obligation to conduct the Grantee's own defense thereof. Nothing contained herein shall be deemed to accord to the Grantee, through its attorney(s), the right to represent ACOG in any legal matter.

IN WITNESS WHEREOF:

The City of Norman

Grantee Legal Entity Name

Grantee Signature

Date

Cindy Rosenthal, Mayor

Printed Name and Title of Grantee Signatory (above)

John G. Johnson, Executive Director
Association of Central Oklahoma Governments

Date

APPROVED BY CITY OF NORMAN LEGAL DEPARTMENT
BY _____ DATE _____