

OFFICE OF THE GOVERNOR

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GOVERNOR



STATE OF ALABAMA

ALABAMA DEPARTMENT OF ECONOMIC
AND COMMUNITY AFFAIRS

KENNETH W. BOSWELL
DIRECTOR

March 25, 2021

The Honorable Ralph Hellmich
Mayor of Foley
P.O. Box 1750
Foley, AL 36536

Dear Mayor Hillmich:

RE: 1VW21 06

I am pleased to enclose the above-referenced agreement. This agreement provides funding of **\$220,539.00** for your **Volkswagen Settlement Program - Large Trucks** project. Please sign and return it to the Alabama Department of Economic and Community Affairs (ADECA) Energy Division.

Thank you for your assistance and if you have any questions, please contact your Program Manager, Mary Blackmon, at mary.blackmon@adeca.alabama.gov or (334) 353-7556.

Sincerely,


Kenneth W. Boswell
Director

KWB:MEN:ap

Enclosure

cc: Mr. Darrell Russell

GRANT AGREEMENT

This Agreement is entered into by and between the **Alabama Department of Economic and Community Affairs (ADECA)**, hereinafter referred to as the "**Department**" and **City of Foley**, hereinafter referred to as the "**Subrecipient**." This Agreement consists of six (6) printed pages, Attachment (A) Scope of Work, Attachment (B) Project Budget, and the Proposal incorporated by reference, as described below.

- 1) **PURPOSE:** The purpose of this Agreement is to implement the project described in the Alabama Volkswagen Settlement Program proposal entitled "Volkswagen Settlement Program - Large Trucks," which is hereby incorporated by reference as part of this Agreement.
- 2) **FUNDING:** In no event shall the total amount to be paid by the Department to the Subrecipient under this Agreement exceed **\$220,539.00** for full and complete satisfactory performance unless there is a signed Amendment to this Agreement, see 19. AMENDMENTS.
- 3) **TERM:** This grant agreement shall commence on March 1, 2021, and shall expire on February 28, 2022.
- 4) **TERMINATION:** This Agreement may be terminated by either party with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination.
- 5) **DEBARMENT AND SUSPENSION:** The Subrecipient certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed from debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State of Alabama. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Subrecipient.

Subrecipients shall immediately notify the Department if any sub-contractor becomes debarred or suspended, and shall, at the Department's request, take all steps required by the Department to terminate its contractual relationship with the sub-contractor for work to be performed under this Agreement.

- 6) **NOT TO CONSTITUTE A DEBT OF THE STATE:** It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment No. 26.
- 7) **CONFLICTING PROVISION:** If any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of

this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.

- 8) **IMMUNITY AND DISPUTE RESOLUTION:** The parties to this agreement recognize and acknowledge that ADECA is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Article I, Section 14, Constitution of Alabama 1901. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by ADECA of such Constitutional Immunity.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For any and all other disputes arising under the terms of this agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

- 9) **DISCLAIMER:** The Department specifically denies liability for any claim arising out of any act or omission by any person or agency receiving funds from the Department whether by contract, grant, loan, or by any other means.

No Subrecipient, Contractor, or agency performing services under any agreement, contract, grant or any other understanding, oral or written, other than an actual employee of the Department, shall be considered an agent or employee of the State of Alabama or the Department or any division thereof. The State of Alabama, the Department, and their agents and employees assume no liability to any Subrecipient, contractor or agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any Subrecipient, contractor or agency, or any other person.

- 10) **ACCESS TO RECORDS AND RETENTION:** For the limited scope of this particular Agreement, the Director of the Department, the Chief Examiner of Public Accounts, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, and records of the Subrecipient for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to Subrecipient personnel for the purpose of interview and discussion related to such agreement.

Records shall be kept for a period of fifteen (15) years from the submittal of the final financial report or receipt of final payment with the exception of the following qualification, whichever is the latest: If any litigation, claim or audit is started before the expiration of the fifteen-year (15) period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The Subrecipient will provide the Department or any authorized

representatives access to any pertinent books, documents, papers or other records in order to make audits, examinations, excerpts and transcripts.

- 11) ASSIGNABILITY: The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Department thereto. Provided, however, that claims for money due, or to become due to the Subrecipient from the Department under this Agreement may be assigned to a bank, a trust company, or other financial institution through a valid court order and without such approval. Notice of such assignment or transfer shall be furnished promptly to the Department.
- 12) CONTINGENCY CLAUSE: It is expressly understood and mutually agreed that any Department commitment of funds herein shall be contingent upon receipt and availability by the Department of funds under the program for which this Agreement is made.
- 13) CONFLICT OF INTEREST: A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the firm or organization selected for award: (1) the individual, (2) any member of the individual's immediate family, (3) the individual's partner, or (4) an organization which employs or is about to employ any of the above. The Subrecipient certifies by signing this Agreement that no person under its employ or control who presently performs functions, duties, or responsibilities in connection with the Department of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement nor will the Subrecipient hire any person having such conflicting interest.
- 14) AUDIT REQUIREMENTS: All Subrecipients of Federal funds must follow the Audit requirements identified in the Office of Management and Budget Uniform Administrative Requirements, 2 CFR Part 200, Subpart F – Audit Requirements. Additionally, if any Subrecipient receives more than \$500,000, collectively, in State General Fund appropriations in their fiscal year, from ADECA, they must have an audit in accordance with Government Auditing Standards (the Yellow Book) and Generally Accepted Auditing Standards established by the AICPA.

Nothing contained in this agreement shall be construed to mean that ADECA cannot utilize its auditors regarding limited scope audits of various ADECA funds. Audits of this nature shall be planned and carried out in such a way as to avoid duplication or not to exceed the audit coverage limits as stated in the Uniform Administrative Requirements.

Copies of all required audits must be submitted to:

Alabama Department of Economic and Community Affairs
ATTENTION: Audit Section
P. O. Box 5690
Montgomery, Alabama 36103-5690

Or Emailed to: audit@adeca.alabama.gov

And an additional copy to:

Alabama Department of Examiners of Public Accounts
ATTENTION: Audit Report Repository
P. O. Box 302251
Montgomery, Alabama 36130-2251

All entities that have a single audit must submit the reporting package and data collection form to the Federal Audit Clearinghouse in accordance with 2 CFR Part 200, Subpart F §200.512.

- 15) **AUDIT EXCEPTIONS/UNRESOLVED QUESTIONED COSTS/OUTSTANDING DEBTS:** The Subrecipient certifies by signing this Agreement that it does not have any unresolved audit exceptions, unresolved questioned costs, or finding of fiscal inadequacy as a result of project monitoring. It further certifies that no money is owed to any division of the Department or to the Federal government under any program where it has not arranged a repayment plan.
- 16) **SUSPENSION OF PAYMENTS:** Payments under this Agreement may be suspended in the event that there is an outstanding audit exception under any program administered by any division of the Department, or in the event there is an amount owing to any division of the Department, or an amount owing to the Federal government under any program administered by any division of the Department that is not received in a reasonable and timely manner.

Should the Subrecipient incur an unresolved audit exception or have unresolved questioned costs or finding of inadequacy as a result of any project monitoring by any division of the Department, then the Department shall not enter into any other contract, agreement, grant, etc., with said Subrecipient until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved.

The Department shall not enter into another contract, agreement, grant, etc., with any individual, agency, company, or government under any program administered by any division of the Department that has not arranged a repayment schedule.

- 17) **DISCLOSURE STATEMENT:** Unless otherwise exempt under § 41-16-82, Code of Alabama 1975, a disclosure statement must be submitted to the Department for any and all proposals, bids, contracts or grant proposals in excess of \$5,000.
- 18) **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** In addition to the provisions provided herein, the Subrecipient shall be responsible for complying with any and all other applicable laws, ordinances, codes and regulations of the Federal, State and local governments.

In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

By signing this Agreement, the parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

19) AMENDMENTS: The Subrecipient may request amendments and/or major modifications to various portions of this Agreement including amendments and/or modifications to the Scope of Work and Project Budget. All requests for amendments and/or modifications must be submitted in writing to the Department and be approved by the Department in writing prior to implementation. Some amendments and/or modifications may require an amendment to this Agreement. Any changes to the project award amount must be made in the form of an amendment to this Agreement.

20) PROPERTY MANAGEMENT AND SCRAPPAGE: Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000. Equipment acquired under this agreement with funds awarded by the Department shall be managed in accordance with guidance developed by the ADECA Energy Division and published in the ADECA Energy Division's *Property Management Manual for Volkswagen (VW) Settlement Beneficiary Mitigation Funds*. Equipment must be used for the intended purpose and in the same geographic area for a minimum of five (5) years from the date of acquisition.

Existing equipment being replaced or repowered through this agreement must be scrapped. Scrapped shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an eligible project, scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half.

21) REPORTING: The Subrecipient shall submit to the Department semiannual reports on programmatic and fiscal operations. These reports shall be submitted in the form and manner determined by the Department. It is expressly agreed that full compliance with programmatic, fiscal and reporting requirements is a condition for the continuation of funds under this Agreement. Failure to submit such reports in a timely manner could result in the termination or suspension of funds. At a minimum, the report shall include the following information:

A. SEMIANNUAL REPORTS: The Subrecipient shall submit semiannual reports of project activities and progress to date in accomplishing the scope of work. Reports shall include a complete description of the project status (including actual or projected completion date), development, implementation, and any modification to the project. The report shall be submitted to the ADECA Energy Division program manager. The semiannual reports are due as follows:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 – June 30	July 15
July 1 – December 31	January 15

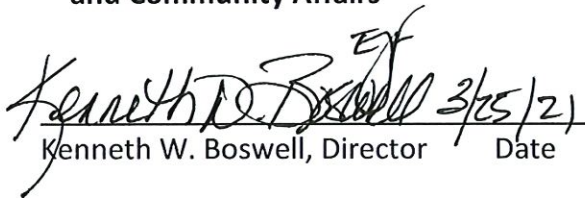
- B. FINAL REPORT: In addition to any reports required above, a final narrative report is required. The report shall provide a summary of the total work performed and a comprehensive description of the accomplishments and results achieved. The report shall be submitted to the ADECA Energy Division program manager no later than thirty (30) days following the completion or termination of this Agreement.

If any report is deemed to be seriously deficient, or if the Subrecipient has failed to make satisfactory progress as determined by the ADECA Energy Division program manager, the Department may reduce or withhold a percentage of any invoice based upon the percentage of original contractual obligations completed.

The Subrecipient will adhere to and comply with all terms of the State of Alabama's Volkswagen Environmental Mitigation Trust Beneficiary Mitigation Plan as well as any applicable requirements outlined in the Environmental Mitigation Trust Agreement for State Beneficiaries-Attachment A.

IN WITNESS WHEREOF, THE DEPARTMENT AND THE SUBRECIPIENT HAVE EXECUTED THIS AGREEMENT AS EVIDENCED BY THE SIGNATURES BELOW:

**Alabama Department of Economic
and Community Affairs**

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Kenneth W. Boswell, Director 3/25/21 Date

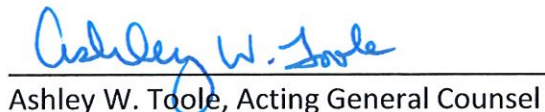
City of Foley

Authorized Official

Date

Title

*This Agreement has been reviewed for
content, legal form, and complies with all
applicable laws, rules, and regulations of the
State of Alabama governing these matters.*


Ashley W. Toole, Acting General Counsel

Attachment A
SCOPE OF WORK
March 1, 2021

The Subrecipient shall perform the following tasks:

- A. To replace 2 diesel class 8 trucks
- B. Submit invoice(s) as referenced in the Subgrant Agreement
- C. Prepare and submit quarterly reports as referenced in the Subgrant Agreement
- D. Prepare and submit a final narrative report as referenced in the Subgrant Agreement
- E. Any and all provisions contained in the proposal as submitted, or negotiated, and not specifically referenced by this Scope of Work

Attachment B
PROJECT BUDGET
March 1, 2021

Cost Categories	Project Award Amount	Nonfederal Contribution	Total Project Amount
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Supplies & Materials	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$220,539.00	\$118,753.00	\$339,292.00
Other	\$0.00	\$0.00	\$0.00
Indirect Cost	\$0.00	\$0.00	\$0.00
TOTAL	\$220,539.00	\$118,753.00	\$339,292.00