

**Master Agreement  
Between  
North Carolina Department of Environment and Natural Resources  
and  
University of North Carolina**

This Master Agreement is between the North Carolina Department of Environment and Natural Resources (DENR) and The University of North Carolina (UNC) (hereinafter “the parties”).

**WHEREAS**, the parties desire to facilitate and simplify the process of contracting with each other, and

**WHEREAS**, the parties agree to be bound by the terms and conditions contained in this Master Agreement, and

**WHEREAS**, it is anticipated that the parties will execute Task Orders between one another under this Master Agreement, and

**WHEREAS**, the parties desire to enter into this Master Agreement for the mutual benefits reasonably expected to be gained therefrom;

**NOW THEREFORE**, the parties hereto mutually agree as follows:

**I. Definitions:**

- A. Days: A day shall mean a calendar day.
- B. Deliverable: A Deliverable is a tangible item that is a product of Research and Development and shall be limited to those items specifically defined in the Scope of Work of each Task Order.
- C. DENR: DENR includes all offices, divisions, programs and affiliated entities such as environmental commissions that utilize DENR’s Division of Purchase and Services to oversee its contracting processes.
- D. Funding Source: A Funding Source is a third party which provides the funding to DENR which DENR uses to pay UNC for the services specified in a Task Order.
- E. Prime Agreement: An agreement between DENR and a Funding Source which provides funding for a Task Order.
- F. Research and Development: Research and Development means all research activities, both basic and applied, and all development activities. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the

subject studied. The term Research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other Research and Development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from Research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

- G. Task Order: A Task Order consists of an “DENR/UNC Task Order Form” and the appendices attached thereto which set out the elements deemed generally appropriate to establish meaningful and prudent contractual relationships which collectively constitute an obligation for DENR to pay on a cost reimbursement basis up to the amounts described and for UNC to perform the work defined. A copy of the “DENR/UNC Task Order Form” is attached hereto as Appendix 1.
- H. UNC: UNC includes all constituent institutions of UNC, the UNC General Administration or an affiliated entity of the UNC General Administration.

## **II. Modification of the Master Agreement**

The parties agree that the Master Agreement shall govern the parties’ performance under any Task Order. This Master Agreement may be modified only by written amendments by and between DENR and UNC, which have been duly executed by the authorized representative of each of the parties. A Task Order may not supersede the terms and conditions of the Master Agreement unless the Task Order expressly specifies the term or condition of the Master Agreement that is to be superseded.

## **III. Compliance with Applicable Laws**

- A. Certifications and Assurances: UNC, by signing a Task Order under this Master Agreement, certifies its compliance with any applicable regulatory requirements listed, but not limited to, those below. If additional regulatory requirements or modification to citations are necessary, they will be listed in a Task Order. UNC agrees to immediately report to DENR any change in its compliance status. UNC agrees to flow these requirements down to any lower tier recipient as appropriate. (CFR = “Code of Federal Regulations,” USC = “United States Code,” E.O. = “Executive Order,” OMB = “Office of Management and Budget”)
- 1) Regulations under E.O. 12549 & 12689, “Debarment and Suspension” 7 CFR 3017, 10 CFR 606 & 40 CFR 32, or equivalent.
  - 2) Prohibitions against lobbying as set forth in 31 USC 1352 and 18 USC 1913.
  - 3) Nondiscrimination statues on the basis of race, color, national origin, sex, blindness, handicap or age.

- 4) Common Federal Policy for the Protection of Human Subjects (45 CFR Parts 46 & 690).
  - 5) USDA Rules that implement the Laboratory Animal Welfare Act of 1966 (9 CFR Parts 1-4).
  - 6) Regulations for the Clean Air Act, 42 USC 7606, 1857 (h)7401, 40 CFR 6 & 32.
  - 7) Regulations for the Clean Water Act 33 USC 13681251, as implemented by E.O. 11738.
  - 8) National Scenic Rivers Act of 1968, 16 USC1271, 40 CFR 6.
  - 9) For NSF & DHHS awards only, internal conflict of interest policy.
  - 10) E.O. 11246, & E.O. 11375 "Equal Employment Opportunity," per 41 CFR part 60.
  - 11) OMB Circular A-129 and 40 CFR 30.73, the parties are not delinquent on any Federal debt.
  - 12) 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.
  - 13) HIPPA Patient Privacy Rule, 45 CFR 160 & 164.
  - 14) Coastal Barriers Resource Act, 40 CFR 6.
  - 15) The Anti-Kickback Act of 1986, Pub. L. 99-634, amending 18 USC 874, 29 CFR, 341 USC 51-58.
  - 16) The Safe Drinking Water Act, 42 U.S.C. 300h-3(e)
  - 17) Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, 29 C.F.R. Part 5
  - 18) Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 – 330, 29 C.F.R. Part 5
  - 19) Environmental Protection Agency Regulations, 40 C.F.R. Part 15
  - 20) 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
- B. If a state and a federal regulation conflict when DENR contracts federal funds to UNC for any work being accomplished through a Task Order under this Agreement, the Parties agree to give the highest order of precedence to the stricter regulation or, if one is not stricter than the other, then to the applicable federal regulation. The parties recognize that the administration of federal assistance funds is governed by the Office of Management and Budget (OMB) Circulars in conjunction with the federal awarding agency's grants management common rule. These regulations and rules are applicable based upon the type of entity that is performing the work, not upon the type of work being accomplished.

#### **IV. Examination of Records**

UNC must retain financial records, supporting documents and other records pertinent to a Task Order in accordance with applicable laws and policies for at least three (3) years from the date of submission of the final expenditure report. Records pertaining to audits, appeals, litigation or settlement of claims arising out of performance of a Task Order must be retained in accordance

with applicable laws and policies, but at least three years or until such audits, appeals, litigation or claims have been settled and all final action taken, whichever is later. UNC agrees that DENR has the right to inspect, review and audit all financial records, supporting documents and other documents applicable to a Task Order at all reasonable times, unless such disclosure is prohibited by law.

## **V. Audit**

Audits will be conducted in compliance with standards established by the North Carolina Office of State Auditor and where applicable OMB Circular A-133.

## **VI. Amendments to Task Orders**

Task Orders may be modified only by written amendments by and between DENR and UNC, which have been duly executed by the authorized representative of each of the parties. The DENR Contract Administrator and UNC Principal Investigator may make minor modifications that do not: (a) change the intent of the Task Order including the UNC Scope of Work; (b) increase or decrease UNC's total compensation; (c) change the method of payment; (d) increase or decrease the total cost of the project; (e) change the starting or ending dates of the Task Order; or (f) change any Principal Investigator identified as such by name or title or any other person identified as "Key Personnel" in a Task Order. The DENR Contract Administrator and the UNC Principal Investigator may make minor modification to the project budget, provided the modification does not exceed \$5,000 or 10% of the total approved budget and the modification is not subject to prior approval from the funding source. Such minor modification must be recorded in writing and signed by the DENR Contract Administrator and the UNC Principal Investigator and placed on file with the appropriate contract office, disbursing office, DENR's Director of Purchase and Services, and UNC's Contract Administrator.

## **VII. General Characteristics of Contracts**

- A. Types of Contracts Covered: Two types of contracts are governed through this Master Agreement: 1) service contracts for the procurement of technical services to be provided to DENR by UNC in order for performance goals to be met by DENR, and 2) grant contracts for the award of financial assistance to UNC for the provision of research and/or development activities under a federal or state grant program administered by DENR.
- B. Contract Processes: Service contracts will be processed in accordance with requirements of the Funding Source, as well as the requirements of the State of North Carolina for procurement of services. Grant contracts will be processed in accordance with the

requirements of the Funding Source, as well as DENR's grant administration requirements.

- C. Facilities and Administrative Costs Recovery: Task Orders shall include total project costs including facilities and administrative costs, also referred to as indirect cost or overhead, at a rate of 15% of total direct costs.. DENR will include those facilities and administrative costs in its reimbursement to UNC unless the Funding Source has the authority to limit or disallow facilities and administrative costs.
- D. Fiscal Matters: Whether costs are allowable on a Task Order under this Master Agreement will be determined in accordance with OMB Circular A-21 "Cost Principles for Educational Institutions" and any other applicable laws and regulations. Costs for which prior approval is required will be contingent upon DENR receiving like approval of those specific costs from the Funding Source. In the event UNC does not comply with OMB Circular A-133, DENR may withhold payment of invoices pending favorable resolution of the noncompliance issue.
- 1) Invoices must be presented with the same level of cost detail that was in the approved budget with the Scope of Work in the Task Order, including the major cost categories of salaries/wages, fringe benefits, equipment, travel, materials and supplies, contractual services, fixed charges, other direct costs and F&A. Supporting documentation will not be required with invoices, however, UNC will maintain supporting documentation in accordance with the OMB Circular A-21. This documentation is subject to Audit under the requirements of this Agreement. DENR shall make all reasonable efforts to accept or reject UNC's invoice within thirty (30) days after presentation. DENR shall reimburse UNC for effort performed under a Task Order as described on the DENR/UNC Task Order Cover Sheet within fourteen (14) days of acceptance of an invoice.
  - 2) If, after DENR has reimbursed UNC for an expenditure, the Funding Source or its authorized representative rules through audit exception or other formal review that the expenditures from funds allocated to UNC for direct and/or indirect costs were not made in compliance with stated terms and conditions of a Task Order, then UNC shall reimburse DENR in the amount of the disallowed expenditure within thirty (30) days.
  - 3) A Task Order is not binding on the parties until DENR has fully executed the Task Order, which signifies it has allocated and encumbered sufficient funds to cover the compensation due UNC under the Task Order. The parties to a Task Order under this Master Agreement agree and understand that the payment of the sums specified in a Task Order is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to DENR. The parties further agree that in the event that funds obligated to a contract under this

Master Agreement should not become available prior to the performance of obligations by UNC, the result shall be a termination without cause.

- E. Equipment: Equipment shall be defined and ownership addressed in each Task Order.
- F. Task Order Form: Pursuant to the requirements of OMB Circular A-133, DENR is responsible for providing the following information on the Task Order Form: identifying federal awards with the Catalog of Federal Domestic Assistance Title and Number, Award Name and Number, the name of the federal agency, award year, and whether the award is for Research and Development. If some of this information is not available, DENR shall provide the best information available to describe the Federal Award.

### **VIII. Ownership of Contract Products, Results, and Intellectual Property**

- A. Ownership of Deliverables: Any deliverables resulting from a Task Order under this Master Agreement shall be property of DENR, and UNC shall not distribute or reproduce for profit or allow others to profit from the Deliverables of a Task Order under this Master Agreement. UNC retains a perpetual, royalty-free, non-exclusive, paid-up license to use, publish, and distribute the Deliverables created through a Task Order under this Master Agreement for its own internal and noncommercial education, instruction and research purposes or North Carolina State Government purposes.
- B. Copyright: Ownership of copyright in any and all copyrighted works, including but not limited to data resulting from work performed in a Task Order under this Master Agreement, shall belong to UNC. UNC hereby grants to any Funding Source rights as specified in the Prime Agreement and to DENR a perpetual royalty-free non-exclusive, paid up license to use, publish and distribute results of such work for its own internal and noncommercial education, instruction and research purposes or North Carolina State Government purposes only.
- C. Data Rights: For data or computer software created in the performance of a Task Order under this Master Agreement, UNC grants to the Prime Sponsor the rights established in the Prime Agreement and grants to DENR the right to use data exclusively for its own internal and noncommercial education, instruction and research purposes or North Carolina State Government purposes. UNC shall prepare and maintain data in a format accessible by Prime Sponsor or DENR as specified in each Task Order.
- D. Publication: UNC and its investigators are free to publish papers concerning the results of the Research and Development project, if any, sponsored by a Task Order under this Agreement. However, DENR must be given thirty (30) days to review such papers prior to any publication thereof, to protect its proprietary, confidential or patentable information. DENR must respond to UNC within thirty (30) days of receipt of the

notification of proposed publication or public disclosure, otherwise the publication will occur.

- E. **Patents and Inventions:** Any invention or discovery made or conceived in the performance of a Task Order under this Master Agreement (Invention), and any patent granted on such Invention shall be jointly or individually owned by UNC and/or DENR in accordance with the following criteria:
- 1) Title to any Invention made or conceived jointly by employees of both UNC and DENR in the performance on a Task Order under this Agreement (Joint Invention) vests jointly in UNC and DENR.
  - 2) Title to any Invention made or conceived solely by employees or students of either UNC or DENR in the performance of a Task Order under this Master Agreement vests in the party whose employees or students made or conceived the Invention.
- F. **Similar Research:** Nothing in a Task Order under this Master Agreement may be construed to limit the freedom of UNC or of its researchers who are participants under the Task Order from engaging in similar research made under grants, contracts, or agreements with parties other than DENR.

## **IX. Key Personnel**

- A. DENR designates the Director of its Division of Purchase and Services to be responsible for all matters relating to the administration of the Task Order including but not limited to proposing and executing modifications to the Task Order in accordance with Paragraph VI of the Master Agreement. UNC shall designate a Contract Administrator to be responsible for all matters relating to the administration of the Task Order including but not limited to proposing and executing modifications to the Task Order in accordance with Paragraph VI of the Master Agreement.
- B. DENR shall designate a Contract Administrator as the technical point of contact for each Task Order. The Contract Administrator shall review UNC's performance of the Task Order, review requests for modifications to the Task Order from UNC in accordance with Paragraph VI of the Master Agreement, and accept or reject invoices.
- C. UNC shall designate a Principal Investigator as the technical point of contact for each Task Order. The Principal Investigator shall be responsible for the overall technical matters of a Task Order and shall have the authority to propose minor modifications in accordance with paragraph VI of the Master Agreement.
- D. UNC shall not hire, employ or contract with any person currently employed by DENR to furnish any material or perform any service on a Task Order without first assuring

compliance with applicable laws of the State of North Carolina and regulations of the State Personnel Commission relating to dual or secondary employment by State employees. In the event UNC hires, employs, or contracts with any employee of DENR to perform services set forth in the Task Order, that fact will be immediately reported in writing with reference to the Contract Number, to DENR's Director of its Division of Purchase and Services.

**X. Subcontracting**

UNC shall not subcontract work to be performed under a Task Order without the prior written approval of DENR's Contract Administrator.

**XI. Contract Transfer**

UNC shall not transfer any interest in this agreement without prior written agreement from DENR.

**XII. Liability**

The parties' liability for torts is limited in accordance with the North Carolina Tort Claims Act, N.C. General Statute Sec. 143-291, *et seq.* In the event of claims against either party by a third party arising out of a Task Order under this agreement, the party whose actions gave rise to the claim shall be responsible for the defense of the claims and any ultimate liability therefore; provided, however, that neither party may waive the other's claims of sovereign immunity or similar defenses. The parties shall consult over the appropriate handling of such claims, and, in the event they cannot agree, shall seek the guidance of the Office of the Attorney General.

**XIII. Performance and Termination**

A. Expiration: A Task Order under this Agreement shall terminate without action by either party on the date specified in the Task Order.

B. Early Termination

- 1) Either party may terminate a Task Order under this Agreement without cause by giving thirty (30) days written notice to the other. In that event, all finished or unfinished deliverables prepared by UNC shall, at the option of DENR, become DENR's property and DENR shall reimburse UNC for all costs properly incurred, including non-cancelable obligations, through the termination date of the Task Order.

- 2) Either party may terminate a Task Order under this Agreement for cause in the event the other party fails to fulfill its obligations under the Task Order in a timely and proper manner by giving the other party written notice specifying the failure and the effective date of the termination. In that event, all finished or unfinished deliverables prepared by UNC shall, at the option of DENR, become the DENR's property and DENR shall reimburse UNC for all costs properly incurred including non-cancelable obligations through the termination date of the Task Order.
- C. Waiver of Default: Waiver by either party of any default or breach in compliance with the terms of a Task Order under this Master Agreement by UNC shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of that Task Order unless incorporated into a written modification signed by authorized representatives of the parties and attached to that Task Order.

#### **XIV. Severability**

In the event any term or condition of the Master Agreement is negated or vacated for any reason whatsoever all other provisions of the Master Agreement shall remain fully valid and enforceable.

#### **XV. Governing Law**

The laws of the State of North Carolina govern validity and interpretation of the provisions, terms, and conditions of the DENR/UNC Master Agreement and all Task Orders issued thereunder.

#### **XVI. Incorporation**

The parties mutually agree to set forth in attachment or incorporation by reference this Master Agreement in subsequent Task Orders by and between the parties hereto.

#### **XVII. Survivability**

Articles IV, V, VIII, XIV, XV and XVI of the DENR/UNC Master Agreement and others as outlined in an individual Task Order will survive the termination of this Master Agreement.

[Signatures on Separate Page]

IN WITNESS WHEREOF, the parties have caused this Master Agreement to be executed as of the date first written by their duly authorized representative.

THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

William G. Laxton  
Signature

7/5/07  
Date

William Laxton Dep. Secretary  
Name, Title

THE UNIVERSITY OF NORTH CAROLINA

Harold L. Martin, Jr.  
Signature

7/23/07  
Date

Harold L. Martin, Jr. VPA  
Name, Title

REVIEWED AS TO FORM:

[Signature]  
UNC Legal Affairs