

REBATE GRANT AGREEMENT

The state of North Dakota, acting through its North Dakota Department of Environmental Quality, Air Quality Division (Grantor), has determined the services identified in the Scope of Service paragraph form an appropriate basis for the expenditure of funds allocated to Grantor.

City of Minot Fire Department (Grantee), 2111 10th Street SW, Minot, ND 58701, proposes to provide those services.

Grantor and Grantee therefore enter into the following Rebate Grant Program:

1) TERM OF THE AGREEMENT

This Agreement runs from January 1, 2021 through February 1, 2023. This Grant will not automatically renew.

2) SCOPE OF SERVICE

Grantee as an eligible entity for this funding, as a city that operates diesel-powered vehicles and/or equipment, shall use this award to partially fund the cost of a new diesel-powered firetruck in accordance with the requirements of the Volkswagen Settlement as outlined in the grant application. Award not to exceed 50% of the cost of a new firetruck.

The replaced old firetruck shall 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 of the engine. Scrapped shall also include the dismantling of the chassis by cutting the firetrucks' frame rails completely in half. The replaced old firetruck shall be scrapped within 90 days of receiving the new firetruck.

Prior to receiving reimbursement, the Awardee shall submit the following to the Department:

1. Invoice or other documentation showing the final price of the new firetruck.
2. Completed scrappage form certifying destruction of the old firetruck. (form to be provided by the Department)
3. Pictures of the old firetruck including the following:
 - a. side profile of the firetruck being scrapped

- b. VIN plate of the firetruck being scrapped
- c. engine tag of the firetruck being scrapped
- d. chassis rails cut in half
- e. engine block prior to destruction/hole being drilled
- f. engine block after destruction/hole has been drilled

3) COMPENSATION

Grantor, upon receipt and approval of Requests for Reimbursement reports will reimburse the Grantee for allowable expenses incurred. Total payment under this Agreement may not exceed \$290,503. Grantee shall submit its request for reimbursement upon completion of the project. The expenditures report for the periods ending June 30 must be received no later than July 15 of that year.

Semi-annual progress reports shall be submitted to the Department by January 15 and July 15 during the project period. The report shall include a brief description of the Awardee's progress toward completing the project, and/or any anticipated delays in completing the project during the project period. The report may be submitted electronically via email or mailed to the Department.

The final progress report and reimbursement request must be received by the Department by February 1, 2023. Reimbursement(s) will be processed upon Department approval of progress reports and information provided in the reimbursement request(s).

Payments will be processed at fifty (50) percent of the total expenditures reported. Fifty (50) percent matching funds is required by the Grantee.

Grantee is responsible for a cost share of \$290,503.

Total Project Costs including Grantor award and Grantee share is \$581,006.

4) GRANTEE'S UNDERSTANDING OF TERM OF FUNDING

Grantee understands that this Agreement is a one-time agreement, and acknowledges that it has received no assurances that this Agreement may be extended beyond its expiration date.

5) AUTHORITY TO CONTRACT

Grantee may not assign or otherwise transfer or delegate any right or duty without Grantor's express written consent, provided, however, that Grantee may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Grant, whether by merger,

reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom Grantor is prohibited from conducting business, Grantor shall have the right to terminate without cause.

Grantee may enter into subcontracts provided that any subcontract acknowledges the binding nature of this grant and incorporates this Grant, including any attachments. Grantee is solely responsible for the performance of any subcontractor with whom Grantee contracts. Grantee does not have authority to contract for or incur obligations on behalf of Grantor.

6) INDEPENDENT ENTITY

Grantee is an independent entity under this grant and is not a Grantor employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Grantee retains sole and absolute discretion in the manner and means of carrying out Grantee's activities and responsibilities under this Grant, except to the extent specified in this Grant.

7) STATE AUDIT REQUIREMENTS

All records, regardless of physical form, and the accounting practices and procedures of Grantee relevant to this Grant are subject to examination by the North Dakota Department of Environmental Quality, the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Grantee shall maintain all of these records for at least three (3) years following completion of this Grant and be able to provide them upon reasonable notice. Grantee, State Auditor, or Auditor's designee shall provide reasonable notice to Grantee prior to conducting examination.

8) RETENTION OF RECORDS

Grantee agrees to retain financial records for three years from the date of submission of the final expenditure report or if subject to audit, from the date the audit is completed and closed, whichever occurs later. Grantee must provide Grantor, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Grantee that are pertinent to the services provided under this grant. Program Records must be maintained for a period of six years or until an audit is completed and closed, whichever comes first.

9) TERMINATION

a) Termination by Mutual Agreement or Notice

This Agreement may be terminated by mutual consent of both parties executed in writing.

b) Early Termination in the Public Interest

Grantor is entering into this Agreement for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this Agreement ceases to further the public policy of the state of North Dakota, Grantor, in its sole discretion, by written notice to Grantee, may terminate this Agreement in whole or in part.

c) Termination for Lack of Funding or Authority

Grantor by written notice to Grantee may terminate the whole or any part of this Agreement under any of the following conditions:

- i) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- ii) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- iii) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d) Termination for Cause

Grantor may terminate this Agreement effective upon delivery of written notice to Grantee, or any later date stated in the notice:

- i) If Grantee fails to provide services required by this Agreement within the time specified or any extension agreed to by Grantor; or
- ii) If Grantee fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of Grantor provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10) CONTINGENT LIABILITY

During the term of this grant, and for three years after this grant expires or is terminated, Grantee agrees to reimburse Grantor for any claims submitted by Grantor for federal financial participation in the cost of this grant to the extent those claims are disallowed by any federal agency for failure on the part of Grantee to comply with this grant or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Grantee prompt written notice of any disallowed claims subject to reimbursement by Grantee. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

11) DELAY OR FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the Party's reasonable control and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

12) INDEMNITY

Grantor and Grantee each agree to assume their own liability for any and all claims of any nature, including all costs, expenses, and attorneys' fees which may in any manner result from or arise out of this Agreement.

13) INSURANCE

Grantee shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools, or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- a) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with a minimum liability limit of \$1,000,000 per occurrence.
- b) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- c) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- a) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Grantee. The amount of any deductible or self-retention is subject to approval by the State.
- b) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- c) The insurance required in this Agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without 30 days' prior written notice to the undersigned Grantor representative.
- d) Grantee shall furnish a certificate of insurance to the undersigned Grantor representative prior to commencement of this Agreement. An updated, current certificate of insurance shall be provided in the event of any change to a policy.
- e) Failure to provide insurance as required in this Agreement is a material breach of contract entitling Grantor to terminate this Agreement immediately.

14) NOTICE

All notice or other communication required under this grant must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

GRANTOR	GRANTEE
L. David E. Glatt, PE, Director	Shaun Sipma, Mayor
Department of Environmental Quality	City of Minot
918 E. Divide Avenue	515 2 nd Avenue SW
Bismarck, ND 58501-1947	Minot, ND 58701

NOTE: This section is to be completed by the Grantee prior to returning to the Grantor.

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at North Dakota Century Code § 32-12.2-04.

15) INTEGRATION, MODIFICATION, AND SEVERABILITY

This grant constitutes the entire agreement between the Grantee and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this grant. No alteration, amendment, or modification of this grant is effective unless it is reduced to writing, signed by the parties, and attached to the grant. If any term of this grant is declared to be illegal or unenforceable by a court having competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this grant did not contain that term.

16) COLLATERAL CONTRACTS

If any inconsistency exists between this Agreement and other provisions of collateral contractual agreements that are made a part of this Agreement by reference or otherwise, the provisions of this Agreement control

17) WORKS FOR HIRE

Grantee acknowledges that all work(s) under this Agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Grantor all rights and interests Grantee may have in the work(s) it prepares under this Agreement, including any right to derivative

use of the work(s). All software and related materials developed by Grantee in performance of this Agreement for Grantor shall be the sole property of State, and Grantee hereby assigns and transfers all its right, title, and interest therein to State. Grantee shall execute all necessary documents to enable Grantor to protect State's intellectual property rights under this section.

18) WORK PRODUCT

All work product, equipment or materials created for Grantor or purchased by Grantor under this Grant belong to Grantor and must be immediately delivered to Grantor at Grantor's request upon termination of this Grant.

19) COMPLIANCE WITH PUBLIC RECORDS LAWS

Grantee understands that, in accordance with this grant's Confidentiality clause, Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records obtained or generated by Grantee under this grant may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Grantee agrees to contact Grantor promptly upon receiving a request for information under the public records law and to comply with Grantor's instructions on how to respond to the request.

20) CONFIDENTIALITY

Grantee shall not use or disclose any information it receives from Grantor under this grant that Grantor has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this grant or as authorized in advance by Grantor. Grantor shall not disclose any information it receives from Grantee that Grantee has previously identified as confidential and that Grantor determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of Grantor and Grantee to maintain confidentiality of information under this section continues beyond the Term of this grant.

21) ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By this award, Grantor does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. Grantor does not waive any right to a jury trial.

22) APPLICABLE LAW AND VENUE

This Agreement is governed by and construed according to the laws of the state of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

23) NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Grantee agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women). Grantee agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. Grantee shall have and keep current at all times during the Term of this grant all licenses and permits required by law. Grantee's failure to comply with this section may be deemed a material breach by Grantor entitling Grantor to terminate in accordance with the Termination for Cause section of this grant.

24) LIMITATIONS ON APPROPRIATIONS AND SPENDING AUTHORITY

Continuation of this contract beyond June 30 of any odd numbered year is contingent on continued legislative appropriation of funds for the purposes of this contract. If those appropriations are not forthcoming, State will notify Contractor as soon as possible and the contract will terminate on June 30 of that year. State will neither be penalized nor incur any liability because of termination of the contract as provided above.

25) SPOILIATION-NOTICE OF POTENTIAL CLAIMS

Grantee shall promptly notify Grantor of all potential claims that arise or result from this grant. Grantee shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect such evidence, including the scene of the accident.

26) EVALUATION

Grantor shall, throughout the effective dates on the grant, conduct an ongoing evaluation of Grantee's performance in carrying out the Scope of Service in the award. Compliance with grant Requirements and Assurances will also be

monitored. Such evaluation may include periodic site visits by Grantor representatives to review progress made by Grantee in accomplishing stated goals and objectives.

27) ASSURANCES

In connection with furnishing supplies or performing work under this grant, persons who contract with or receive funds to provide services to Grantor are obligated and agree to comply with all local, state, and federal laws, regulations and executive orders related to the performance of this grant including the following:

- a) Fair Labor Standards Act, Equal Pay Act of 1963,
- b) Titles VI and VII of the Civil Rights Act of 1964,
- c) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency,
- d) Age Discrimination Employment Act of 1967,
- e) Age Discrimination Act of 1975,
- f) Drug-free Workplace Act of 1988,
- g) Americans with Disabilities Act of 1990,
- h) Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving,
- i) Section 504 of the Rehabilitation Act of 1973,
- j) Executive Order 13043, Increasing Seat Belt Use in the United States,
- k) Hatch Act (5 U.S.C. 1501-1508 and 7324-7328)
- l) Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g))

28) APPLICABLE COSTS

Unless otherwise authorized by federal law, the charges to be made by Grantee do not include costs financed by federal monies other than those generated by this grant.

29) DEBARMENT/SUSPENSION

By signing this grant, Grantee certifies that neither Grantee, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by any Department or Agency of the State or Federal Government.

30) APPROVED VENDOR

If not a governmental agency or political subdivision of the State of North Dakota, Grantee must be an approved vendor with the Office of Management

and Budget within the State of North Dakota as required by N.D.C.C. § 54-44.4-09.

31) RESTRICTIONS FOR LOBBYING

Grantee assures that:

- a) No federal funds from this agreement will be paid by for on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract; the making of any federal grant, the making of any federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any grant funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, Grantee agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- b) Grantee shall require that the language of the Grantee Assurances in this Attachment be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall comply with these Grantee Assurances.
- c) Public Law No.104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any state legislative body itself.

Governmental entities are prohibited by law from lobbying. Activities designed to influence action in regard to a particular piece of pending

state or federal legislation are considered lobbying. That includes lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts that are directed at inducing the public to contact their elected representatives to urge support of, or opposition to, pending legislation.

The North Dakota attorney general has determined that governmental entities may provide the public with neutral factual information but may not, without express legislative authority, expend public funds for the purpose of influencing the result of an election issue, including initiated measures.

No part of any funding may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence election issues or pending legislation.

32) SMOKE FREE

Any Grantee that conducts business in North Dakota will abide by N.D.C.C. § 23-12-09 through N.D.C.C. § 23-12-11. Further, if Grantee is not in North Dakota, Grantee will provide a smoke-free workplace and promote the nonuse of tobacco products in areas including office space, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias and other public space

33) ENERGY AND ENVIRONMENTAL CONSERVATION

Grantee must give preference, to the extent practicable and economically feasible, to products and services that conserve natural resources and protect the environment and are energy efficient. (40CFR 30.44(a))

34) RESOURCE CONSERVATION AND RECOVERY ACT

Section 6002 of the Resource Conservation and Recovery Act requires preference be given in procurement programs to the purchase of specific products containing recycled materials pursuant to the Environmental Protection Agency guidelines (40CFR Parts 247

35) EQUIPMENT

Subject to the obligations and conditions set forth in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D, §200.313, title to equipment acquired under a grant will vest upon acquisition in the Grantee

36) FEDERAL EXPENDITURE REQUIREMENTS

Grantee agrees to keep financial records necessary to fully disclose the complete financial status of the grant. Grantee must submit documentation supporting request for reimbursement for review by Grantor or its agents, upon request. Additionally, Grantee agrees to spend all federal assistance received from Grantor in accordance with applicable laws and regulations such as but not limited to 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is made a part of this grant by reference.

City of Minot

By _____

DATE

Its _____

45-6002126

Grantee's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL
QUALITY

By _____

L. DAVID GLATT, P.E.
DIRECTOR

DATE