



REBATE CONTRACT

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY (NDDEQ)

Contract Number G21.069	Start Date 7/1/2022	End Date 7/1/2024
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This Rebate Contract is not effective, and expenditures related to this contract should not be incurred until this Contract is fully executed by both parties. If attachments are referenced, they must be returned with the signed Contract. If attachments were not provided contact the Program Director identified below.

Title of Project/Program North Dakota Volkswagen Settlement Program	NDDEQ Project Coding 5511 EQ1256-11
Contractor Name City of Minot	Program Director Jim Semerad-Division of Air Quality
Address 1025 31 st Street SE	Address 4201 Normandy Street, 2 nd Floor
City/State/ZIP Code Minot, ND 58701	City/State/ZIP Code Bismarck, ND 58503-1324
Contact Name Jason Sorenson	Contact Name Keith Hinnenkamp
Telephone Number 701-857-4140	Telephone Number 701-328-5196
Email Address Jason.sorenson@minotnd.org	Email Address khinnenk@nd.gov

	NDDEQ Cost Share	Contractor Cost Share	Total Costs
Amount Awarded	\$84,088	\$84,088	\$168,176
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$84,088	\$84,088	\$168,176

Scope of Service

Contractor as an eligible entity for this funding, as a city that operates diesel-powered vehicles, shall use this contract to partially fund the cost of one new diesel-powered truck in accordance with the requirements of the Volkswagen Settlement program as outlined in the application. The NDDEQ cost share shall not exceed 50% of the cost of an eligible truck.

Reporting Requirements

Progress reports shall be provided to the NDDEQ upon request. The final progress report and reimbursement request must be received by the NDDEQ by July 1, 2024.

Special Conditions

The old truck being replaced shall be scrapped within 90 days of receiving the new truck. 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 truck frame rails completely in half.

Prior to receiving reimbursement, the Contractor shall submit the following to the NDDEQ:

1. Invoice or other documentation showing the final price of the new truck.
2. Completed scrappage form certifying destruction of the old truck. (The form will be provided by the NDDEQ.)
3. Photos of the old truck must be submitted as JPEG files and may not be in black and white or PDF scans. The following photos are required:
 - a. Side profile of the truck being scrapped
 - b. VIN plate of the truck being scrapped
 - c. Engine tag of the truck being scrapped showing the engine serial number and EPA family name
 - d. Chassis rails cut in half
 - e. Engine block prior to destruction/hole being drilled
 - f. Engine block after destruction/hole has been drilled

This Rebate Contract is subject to the following terms and conditions.

1. CONTRACTOR'S UNDERSTANDING OF TERM OF FUNDING

Contractor understands that this contract is a one-time contract and acknowledges that it has received no assurances that this contract may be extended beyond its expiration date.

2. ASSIGNMENT AND SUBCONTRACTS

Contractor may not assign or otherwise transfer or delegate any right or duty without State's express written consent, provided, however, that Contractor 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 Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom State is prohibited from conducting business, State shall have the right to terminate without cause.

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

3. INDEPENDENT ENTITY

Contractor is an independent entity under this Contract and is not a state 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. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract.

4. STATE AUDIT REQUIREMENTS

All records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Contract 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. Contractor shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. State, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.

5. RETENTION OF RECORDS

Contractor 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. Contractor must provide the State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Contractor that are pertinent to the services provided under this contract. Program Records must be maintained for a period of six years or until an audit is completed and closed, whichever comes first.

6. TERMINATION

a. Termination by Mutual Agreement

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

b. Early Termination in the Public Interest

State is entering into this Contract 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 Contract ceases to further the public policy of the State of North Dakota, State, in its sole discretion, by written notice to Contractor, may terminate this Contract in whole or in part.

c. Termination for Lack of Funding or Authority

State by written notice to Contractor, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) 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.

- 2) 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 Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

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

d. Termination for Cause.

State may terminate this Contract effective upon delivery of written notice to Contractor, or any later date stated in the notice:

- 1) If Contractor fails to provide services required by this Contract within the time specified or any extension agreed to by State; or
- 2) If Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of State provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7. CONTINGENT LIABILITY

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

8. 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.

9. INTEGRATION, MODIFICATION, AND SEVERABILITY

This contract constitutes the entire agreement between the Contractor and State. There are no understandings, agreements, or representations, oral or written, not specified within this contract. No alteration, amendment, or modification of this contract is effective unless it is reduced to writing, signed by the parties, and attached to the contract. If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, 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 Contract did not contain that term.

10. COLLATERAL CONTRACTS

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

11. COMPLIANCE WITH PUBLIC RECORDS LAWS

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

12. CONFIDENTIALITY

Contractor shall not use or disclose any information it receives from State under this Contract that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by State. State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that State 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 State and Contractor to maintain confidentiality of information under this section continues beyond the Term of this Contract.

13. ATTORNEY FEES

In the event a lawsuit is initiated by State to obtain performance due under this contract, and State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay State's reasonable attorney fees and costs in connection with the lawsuit.

14. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering into this Contract, State does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

15. APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract 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*.

16. SPECIAL CONDITIONS

Contractor shall meet all applicable special conditions as specified in the contract.

17. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor 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). Contractor 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. Contractor shall have and keep current at all times during the Term of this Contract all licenses and permits required by law. Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling State to terminate in accordance with the Termination for Cause section of this Contract.

18. 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.

19. SPOILIATION-PRESERVATION OF EVIDENCE

Contractor shall promptly notify State of all potential claims that arise or result from this Contract. Contractor 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 State the opportunity to review and inspect such evidence, including the scene of the accident

20. EVALUATION

State shall, throughout the effective dates on the contract, conduct an ongoing evaluation of Contractor's performance in carrying out the Scope of Service in the Contract. Compliance with Contract Requirements and Assurances will also be monitored. Such evaluation may include periodic site visits by State representatives to review progress made by Contractor in accomplishing stated goals and objectives.

21. CONTRACTOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, Contractor OR Subcontractor with or receive funds

to provided services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement 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))
- m. Build America, Buy America of the Infrastructure Investment and Jobs Act (P.L. 117-58, §§70911-70917)

22. DEBARMENT/SUSPENSION

Contractor certifies that neither Contractor, 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.

23. APPROVED VENDOR

If not a governmental agency or political subdivision of the State of North Dakota, Contractor 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.

24. SMOKE FREE

Any Contractor 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 Contractor is not in North Dakota, Contractor 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.

25. ENERGY AND ENVIRONMENTAL CONSERVATION

Contractor 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)).

26. 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 247-253).

27. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses. 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.

CONTRACTOR	STATE
Thomas Ross	L. David E. Glatt, P.E.
Mayor	Director
515 2 nd Ave. SW	4201 Normandy Street
Minot, ND 58702	Bismarck, ND 58503-1324

28. CERTIFICATION

Contractor certifies that their organization/agency will ensure all program managers are aware of and will comply with the requirements set forth in this Contract and that the individual(s) responsible for authorizing, expending, or accounting for contract funds will be provided access to the Contract.

Unique Entity ID (SAM)	Federal Taxpayer Identification Number (FEIN) SSN

29. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both parties.

CONTRACTOR	STATE OF NORTH DAKOTA
City of Minot	Acting through its Department of Environmental Quality
By:	By:
Thomas Ross	L. David Glatt, P.E.
Mayor	Director
Date:	Date: