

**South Dakota
VW Program
Rebate Agreement**

Recipient	City of Deadwood 102 Sherman St Deadwood SD 57732	Establishment of Trust MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1) and (Dkt. No. 3228-1)	ID Number VW6 0003
Type	Plow/sanding truck	Spending Authority SDCL 34A-1-64	Date of Offer 7/14/21
Contact	Robert Nelson 605.578.3082		Maximum Rebate Amount \$70,202.00
Project Title/Description South Dakota VW Truck Program This agreement provides a rebate to City of Deadwood under the VW Trust Fund Program. This project will help replace old diesel trucks. The primary goal of the project is to facilitate the improvement and protection of the ambient air quality throughout South Dakota.			
Rebate Conditions The recipient covenants and agrees that it will expeditiously initiate and timely complete the project above described in accordance with this agreement by December 30, 2022. The recipient warrants, represents, and agrees that it will comply: (1) with any special conditions set forth in the guidelines and (2) with the attached Assurances, Terms, and Conditions which is incorporated herein by reference.			
Offer The State of South Dakota hereby offers a rebate to City of Deadwood in an amount up to <u>0.5</u> of all approved costs incurred up to and not exceeding \$70,202.00 for the support of the approved project as described above. Such rebate may be terminated by DANR without further cause if the recipient fails to provide timely affirmation of the agreement by signing under the Acceptance section and returning this page of the signed agreement to the email or mailing address listed below by August 13, 2021.			
Signature of Award Official		Typed Name and Title Hunter Roberts, Secretary	Date
Please check if you are Accepting or Declining this Rebate Agreement			
<p>_____ Accepting In accepting this agreement and any rebate made pursuant thereto, (1) the undersigned represents that he/she is duly authorized to act on behalf of the recipient, and (2) the recipient agrees (a) to comply with the provisions of this agreement, and (b) any rebates found by the State of South Dakota to have been overpaid will be refunded or credited in full to the State. To the best of my knowledge and belief, data in this agreement are true and correct.</p> <p>_____ Declining In declining this agreement, the undersigned represents that he/she is duly authorized to act on behalf of the recipient. To the best of my knowledge and belief, data in this agreement are true and correct.</p>			
Signature of Designated Official		Typed Name and Title	Date

Submit this page of signed agreement to project manager at:

Barb.regynski@state.sd.us or
VW Rebate Program
Barb Regynski
SD DANR – AQ Program
523 E Capitol
Pierre, SD 57501

Assurances, Terms, and Conditions

The recipient entering into this agreement with DANR must follow the specific performance criteria as specified in this agreement to ensure compliance with statutory and audit requirements. All services or work carried out under this agreement must be completed within the scope, time frames, and funding limitations specified by the agreement. Upon signing of the agreement by DANR, a copy of the executed agreement will be returned to the applicant, at which time the agreement will be considered awarded.

The eligibility criteria for existing trucks to be **replaced** are as follows:

- The existing truck to be replaced must be an in-use class 4-8 diesel-powered local freight truck engine model year 1992-2009 owned by any South Dakota state or local governmental agency.
- The existing truck being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement.

The eligibility criteria for **new replacement** trucks are as follows:

- **Recipient should receive the new truck by December 1, 2022.**
- Any new diesel or alternate fueled or all-electric vehicle, with the engine model year 2020 or newer. The replacement must be of the same type and class.

REPLACEMENT TRUCKS REQUIREMENTS

- Purchase of new trucks may not occur prior to both parties signing the agreement. Submit a copy of the purchase order to DANR when the truck has been ordered. Rebates will be made on a reimbursement basis for eligible expenses incurred and paid by the recipient. A cost may not be considered incurred until the replacement truck has been received and accepted by the recipient.
- The recipient must ensure that the replaced truck is permanently disabled or scrapped and maintain documentation on how the replaced truck was permanently disabled or scrapped. This should include drilling a hole in the engine block and cutting the chassis rails in half. Please keep a written record signed by both the recipient and the party disabling or scrapping the truck.
- Applicant submits invoice or receipts, record of truck being disabled or scrapped (Certificate of Disposal Form) and colored photos, the DANR Request for Reimbursement Form, and engine certificate if needed. DANR will review the information for compliance with all rebate requirements.
- Payment will be issued upon verification (documentation and/or DANR staff site visit).
- DANR maintains the right to monitor the project periodically and to do on-site verification.

STATE CONDITIONS

TERM

The recipients' services under this Agreement shall commence on the signing of the agreement by the State and ends December 30, 2022, unless sooner terminated or extended pursuant to the terms hereof.

HOLD HARMLESS AND INDEMNIFICATION

The recipient agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

COMPLIANCE WITH EXECUTIVE ORDER 2020-01 (Only Applicable to Agreements in Excess of \$100,000)

By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

LICENSING AND STANDARD COMPLIANCE

The recipient will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

NOTICES

Any notice or other communication required under this Agreement shall be in writing and sent to the contact listed on the signature page of this agreement. Notices shall be given by and to the VW Truck Program on behalf of the State, and by the Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

SEVERABILITY

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

SUPERCESSION

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

ASSIGNMENT AND AMENDMENT

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

CLAIMS AND PAYMENT

By December 30, 2022, the end date of this agreement, the grantee shall submit all claims for rebates due and payable under this agreement.

REBATE CONDITIONS

- A. **Emissions Control Technologies** - Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs.
- B. **Semi-Annual Reporting and Environmental Results** – Semi-annual progress reports will be required from DANR. Semi-annual reports are considered project status reports and will address the progress made achieving the work plan goals. In general, semi-annual reports will include summary information on technical progress and expenditures, and planned activities for next reporting period. Semi-annual reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.
 - Jan 1 – June 30 Reporting Period: report due date July 30
 - July 1 – December 31 Reporting Period: report due date January 30If a project start date falls within a defined Reporting Period, DANR must report for that period by the given due date. This semi-annual reporting schedule shall be repeated for the duration of the award agreement.

C. **Use of Funds Restriction –**

1. **Expenses Incurred Prior to the Budget Period:** Recipient agrees that funds under this award cannot be used to cover expenses incurred prior to the budget period defined in this assistance agreement.
2. **Fleet Expansion:** Recipient agrees that funds under this award cannot be used for the purchase of vehicles to expand a fleet. Vehicle replacement projects are eligible for funding on the condition that the following criteria are satisfied:
 - a. The vehicle being replaced must be fully operational and in current, regular service.
 - b. The replacement vehicle will continue to perform the same function and operation as the vehicle that is being replaced.
 - c. The replacement vehicle will be of the same type and similar gross vehicle weight rating or horsepower as the vehicle being replaced.

Highway: The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 4, 5, 6, 7, or 8). The engine's primary intended service class must match the vehicle's weight class. The vehicle, equipment, and/or engine being replaced must be scrapped or rendered permanently disabled within ninety (90) days of being replaced.

- i. Cutting a three-inch by three-inch hole in the engine block (the part of the engine containing the cylinders) is the preferred scrapping method.
 - ii. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles.
 - iii. Evidence of appropriate disposal is required in a final assistance agreement report submitted to DANR and includes a signed certificate of disposal and colored digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable.
 - iv. Scrapped engines and equipment and vehicle components may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, tires, etc.). If scrapped or salvaged engines, vehicles, equipment, or parts are to be sold, program income requirements apply.
3. **Highway Model Year:** Recipient agrees that funds under this award cannot be used to replace a medium-duty, or heavy-duty highway vehicle with engine model year 1991 and older or 2010 and newer.

D. **Delays or Favorable Developments** - The recipient agrees that it will promptly notify the VW Truck Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the VW Truck Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

E. **Program Income** - Program income means gross income received by the recipient that is directly generated by a rebate supported activity or earned as a result of the award during the period of performance. Under the VW Truck Program, program income is generally limited to the sale of scrapped vehicle/equipment. "Period of performance" is the time between the start and end dates of the period of performance as included in the rebate award.

Program income earned during the project period shall be retained by the recipient and is authorized to be used to meet the cost-sharing or matching requirement of the rebate award. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

- F. **Equipment Use, Management, and Disposition** - The equipment use, management, and disposition instructions are applicable to rebate agreement recipients acquiring vehicles under this award. State and local governmental agencies may use, manage and dispose of equipment acquired in accordance with state laws and procedures.

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. Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this rebate agreement in the project or program for which it was acquired as long as needed. When acquiring replacement equipment, the recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

- G. **Procurement Procedures** - The recipient must follow applicable procurement procedures.
1. **Public Notification** - Not later than 60 days after the date of the award of a rebate by DANR, DANR shall publish on the Web site of the State the total number and dollar amount of rebates provided, as well as a breakdown of the technologies funded through the rebates.

- H. **Mandatory Cost-Share Requirement** - This award is based on estimated costs requested in the recipient's application. While actual total costs may differ from those estimates, the recipient may not use rebate funds to provide more than the cost-share percentages outlined below, as applicable, of the final equipment costs. DANR's participation shall not exceed the total amount of funds awarded or the maximum cost-share percentages of the estimated equipment costs as outlined below, as applicable. Recipients must satisfy any applicable cost-share requirements. The cost-share requirements are as follows:

1. Certified Vehicle/Equipment Replacement:
 - a. VW trust funds can cover up to 50% of the cost of an eligible replacement vehicle powered by a 2020 model year or newer certified engine; recipients are responsible for the mandatory cost-share of at least 50% of the cost of an eligible replacement vehicle or piece of equipment.
 - b. Low-NOx : VW trust funds can cover up to 60% of the cost of an eligible highway replacement vehicle powered by a 2020 model year or newer engine certified to meet CARB's Optional Low-NOx Standards of 0.1 g/bhp-hr, 0.05 g/bhp-hr, or 0.02 g/bhp-hr NOx. Engines certified to CARB's Optional Low NOx Standards may be found by searching CARB's Executive Orders for Heavy-duty Engines and Vehicles, found at: www.arb.ca.gov/msprog/onroad/cert/cert.php. Recipients are responsible for the mandatory cost-share of at least 40% of the cost of an eligible replacement vehicle.

- c. All-Electric: VW trust funds can cover up to 70% of the cost of an eligible all-electric replacement vehicle or equipment. Recipients are responsible for the mandatory cost-share of at least 30% of the cost of an eligible all-electric replacement vehicle or piece of equipment.

The eligible acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance and freight may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

- I. **Leveraging** - The recipient agrees to provide the proposed leveraged funding that is described in its application. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, DANR may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then DANR may reconsider the legitimacy of the award.