

SAMPLE

GRANT MRG-####

**MINERAL ROYALTY GRANT AGREEMENT BETWEEN
STATE OF WYOMING, OFFICE OF STATE LANDS AND INVESTMENTS
AND
CITY OF LANDER**

1. **Parties.** The parties to this Grant Agreement (Agreement) are the State of Wyoming, Office of State Lands and Investments (OSLI), whose address is: 122 West 25th Street, Cheyenne, Wyoming, 82001, and the grant recipient, City of Lander (Grantee), whose address is: 240 Lincoln St, Lander, WY 82520.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions by which OSLI shall provide grant funds approved by the State Loan and Investment Board (SLIB) to the Grantee under Chapter 3, Federal Mineral Royalty Capital Construction Account Grants (Rules), to be used for the Replacement Vac Truck (PROJECT).
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The term of the Agreement is from the Effective Date through the completion or termination of the PROJECT and disbursement, consistent with Chapter 3 § 9(c) of the State Loan and Investments Board's Rules. All services shall be completed during this term.
4. **Payment.**
 - A. OSLI agrees to pay the Grantee for the PROJECT described herein. Total payment under this Agreement shall not exceed four hundred thousand dollars (\$300,000). Payment shall be made in accordance with Attachment A, Special Conditions, which is attached to and incorporated into this Agreement by this reference, and within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Grantee shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Agreement.
 - B. No payment shall be made for work performed before the Effective Date of this Agreement. Should the Grantee fail to perform in a manner consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the Grantee performs its duties and responsibilities to the satisfaction of OSLI.
 - C. Except as otherwise provided in this Agreement, the Grantee shall pay all costs and expenses, including travel, incurred by Grantee or on its behalf in connection with Grantee's performance and compliance with all of Grantee's obligations under this Agreement.
5. **Responsibilities of Grantee.** The Grantee agrees:

- A. Grantee shall comply with the special conditions set forth in Attachment A.
- B. The granted funds shall be spent only for the described purpose or project in the submitted application, which is attached to and incorporated into this Agreement as Attachment B, Application. The granted funds shall not be spent for any other purpose or project.
- C. Requests for disbursements of funds shall be supported by adequate proof submitted by the Grantee showing that such obligations have been incurred for the purpose for which the grant was made, and are then due and owing.
- D. The Grantee will establish and maintain sufficient internal controls to ensure that grant funds are spent in accordance with this Agreement, SLIB rules, and all other state and federal laws.
- E. If any of the granted funds are not utilized for the above-described project or purpose, the Grantee shall repay such funds immediately to the SLIB. The Grantee further agrees to provide OSLI, upon request, a full and complete accounting as to the use and distribution of the granted funds; said accounting to be done in accordance with generally accepted accounting principles and shall be provided to the SLIB within a reasonable time.
- F. OSLI, or another approved designee of the SLIB, may perform an audit or examination of the books and records of the grant at any time and without notice, and that the SLIB or its designee may at any time without notice perform on-site visits and inspections of the project being funded.
- G. The Grantee shall comply with all applicable state and federal laws, rules, and regulations, including compliance with the provisions of Wyo. Stat. § 16-6-1001, if receiving funding from the Mineral Royalty Grant Program.

6. **Responsibilities of OSLI.** OSLI agrees:

- A. To furnish granted funds only as needed to discharge obligations incurred by the Grantee for its approved project, provided that the obligations incurred are eligible for funding under SLIB Chapter 3 rules, under this Agreement and other state law, and provided further that the Grantee is in compliance with this Agreement, SLIB rules, and all other state and federal laws.

7. **Special Provisions.**

- A. To request reimbursement for eligible expenditures, the Grantee must complete and submit Grant Draft Request (GDR) form, incorporated herein by this reference, (original signatures required) with a copy of each invoice detailing the expenditures, the SLIB share, and SLIB share of engineering. All GDR forms shall be signed by the Grantee's authorized signatories. By submission of a GDR, the Grantee hereby warrants that the signatories of the GDR form are authorized to sign

on behalf of the Grantee. The Grantee shall ensure that grant funds are spent in accordance with this agreement, and state and federal law.

- B.** Disbursement requests submitted will be paid by percentage only, and not paid in full. The percentage of payment is based on the amount approved by the SLIB as a percentage of the total eligible project cost given in the application. The SLIB's disbursement percentage for this project is forty percent (50%).
- C.** According to Chapter 3, Section 5(d)(iii) of the Rules, the maximum amount reimbursable for engineering costs is limited to twenty percent (20%) of the grant amount approved, if applicable eighty thousand dollars (\$80,000.00).
- D.** If the SLIB provides additional funding for this project, OSLI will recalculate the disbursement percentage and will make disbursements based upon that percentage. OSLI will allow additional payments to bring the SLIB's disbursement percentage to the current percentage approved by the SLIB.
- E.** The Grantee shall keep OSLI staff informed on all aspects of the project and shall direct the Grantee's engineer to submit or make available for inspection, such reports, designs, or plans on the progress of the work and on the results of tests of materials and workmanship requested by OSLI staff.
- F.** Except in the case of vehicle purchases, the Grantee shall submit to OSLI the following materials prior to issuing an advertisement for bids:
- (i) An attorney's title opinion, a letter and documents from a title company or abstractor, or other proof and certification acceptable to the OSLI that all access, easements, and rights-of-way for the construction and long term operation and maintenance of the PROJECT have been secured and recorded;
 - (ii) Engineer's cost estimate and proposed construction budget for the PROJECT;
 - (iii) Any and all appropriate permits issued by the Wyoming Department of Environmental Quality; and
 - (iv) The Grantee's proposed advertisement for bids from the Grantee's engineer, including the rules and standards to be used to establish the qualification of bidders, to determine whether submitted bids are responsive to the advertisement for bids, to determine whether bidders are qualified for the preference under Wyo. Stat. § 16-6-101, *et seq.*, and to determine the lowest responsible bid.
- G.** Upon receipt of the plans, specifications, title opinion, and permits required by Section 7(F), above, OSLI shall review the documents and notify the Grantee of

any deficiencies. If OSLI determines that the Project as proposed may reasonably be expected to be constructed with the funds available, OSLI shall notify the Grantee in writing. Upon receipt of OSLI's notice to proceed, the Grantee may initiate the bidding process. If the Grantee initiates the bidding process without prior written notification by the OSLI, the Grantee shall bear all costs resulting from said action.

- H. The Grantee shall keep OSLI staff informed on a contractor's plan for use of a Retainage Account pursuant to Wyo. Stats. §§ 16-6-702, -704, and -705. The Grantee shall provide to OSLI a Retainage or Interest Bearing account documentation in order for OSLI to send retainage funds to the Grantee for deposit in the contractor's identified retainage account.
- I. Grantee shall require a completed Affidavit Acknowledging Payment to Materialmen, Subcontractors and Laborers (available at <http://lands.wyo.gov>) from Prime Contractor with all requests for progress payment beginning with the second request pursuant to Wyo. Stat. § 16-6-1001(a)(iv).
- J. Grantee shall submit Final Payment Documentation to OSLI pursuant to Wyo. Stats. §§ 16-6-116, -117, and 15-1-113(h), to the extent those provisions are applicable to the Project.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties shall be incorporated by written instrument, executed by all parties to this Agreement.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Grantee shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of OSLI.
- D. **Audit and Access to Records.** OSLI and its representatives shall have access to any books, documents, papers, electronic data and records of the Grantee which are pertinent to this Agreement.

- E. Compliance with Laws.** The Grantee shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- F. Entirety of Agreement.** This Agreement, consisting of eight (8) pages; Attachment A, Special Conditions, consisting of one (1) page, Attachment B, Application, consisting of twelve (12) pages; and the Grant Draft Request (GDR) form consisting of one (1) page, provided in Excel format, represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.
- G. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes completely beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- H. Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- I. Independent Contractor.** The Grantee shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the Grantee shall be free from control or direction over the details of the performance of services under this Agreement. The Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Grantee or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or OSLI or to incur any obligation of any kind on behalf of the State of Wyoming or OSLI. The Grantee agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Grantee or the Grantee's agents or employees as a result of this Agreement.
- J. Nondiscrimination.** The Grantee shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the

Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement.

- K. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.
- L. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- M. **Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming, OSLI, and SLIB expressly reserve sovereign immunity by entering into this Agreement and the Grantee expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- N. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- O. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- P. **Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- Q. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- R. **Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the Grantee of

an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to OSLI.

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SAMPLE

9. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

STATE OF WYOMING, OFFICE OF STATE LANDS AND INVESTMENTS:

Date

GRANTEE:
City of Lander

Date

Mayor

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Date