

RECEIVED

MAR 22 2021

AIR QUALITY

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
ON-ROAD PROGRAM
MEMORANDUM OF AGREEMENT**

AWARDEE NAME: City of Norman

This Memorandum of Agreement (“Agreement”) is by and between the Oklahoma Department of Environmental Quality (hereinafter, “Lead Agency”) and City of Norman (hereinafter “Awardee”). The project to be completed is described below and shall be completed pursuant to the terms and conditions set forth below.

The Lead Agency and Awardee, in consideration of the mutual pledges below, agree to the following:

ARTICLE I. PURPOSE

1.1 The purpose of this Agreement is to provide financial assistance in order for Awardee to replace eligible diesel vehicles/engines to reduce nitrogen oxides (“NOx”).

1.2 On-Road Program is funded by the Volkswagen Diesel Emissions Environmental Mitigation Trust (“Trust”) and is operated in accordance with the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (“Trust Agreement”) and the Oklahoma Beneficiary Mitigation Plan (“BMP”).

ARTICLE II. DESCRIPTION OF THE APPROVED PROJECT

2.1 Awardee’s approved project will consist of:

Qty	Old Vehicle Description	New Vehicle Description	Amount
1	2003 Class 8 Diesel Transit Bus, fleet#5-0319, VIN 5FYD2LN193UO25068	Class 8 Electric Transit Bus	\$450,000.00

ARTICLE III. AWARDEE NOT EXCUSED

3.1 Upon entry of this Agreement, Awardee agrees, without limitation, to be bound by all terms and conditions of the Trust Agreement and its appendices, the Oklahoma BMP, and the On-Road Grant Solicitation. Failure by Awardee to comply with said terms and conditions could result in the forfeiture of awarded funds.

3.2 Nothing in this Agreement excuses Awardee from its obligation to comply with all applicable federal, state, and local statutes, rules, and/or ordinances. Compliance with all applicable federal, state, and local statutes, rules, ordinances, and the terms and conditions of this Agreement is the responsibility of the Awardee, without reliance on or direction by Lead Agency. Awardee agrees that it has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard.

ARTICLE IV. AWARD ACTIVITIES

4.1 Awardee agrees to complete all On-Road Program projects described herein and/or complete all purchases and submit all invoices for reimbursement no later than June 30, 2023. An extension may be granted subject to paragraphs 4.7 and 4.11 herein. Requests for extension must be received by Lead Agency no later than May 31, 2023.

4.2 Awardee agrees and represents that all vehicles/engines being replaced pursuant to this award are diesel fueled.

4.3 Awardee agrees that all vehicles/engines being replaced satisfy the requirements in the Program Eligibility section of the On-Road Grant Solicitation.

4.3.1. Awardee agrees that all vehicles/engines being replaced have an engine model year (EMY) 2009 or older.

4.3.2. Awardee agrees that all vehicles/engines being replaced have a Gross Vehicle Weight Rating (GVWR) that falls within the Federal Highway Administration Vehicle Classes 4-8.

4.3.3. Awardee agrees that all vehicles/engines being replaced are operational, registered and used in Oklahoma for two (2) years preceding the On-Road Grant Solicitation release.

4.4 Awardee agrees to implement the idling reduction program as described in its attached application.

4.5 Awardee agrees to make every effort to ensure the vehicles/engines being funded pursuant to this award remain in service in the State of Oklahoma for a minimum of five (5) years.

4.6 Awardee agrees to maintain and install, if applicable, all vehicles and equipment in accordance with manufacturer specifications.

4.7 Awardee must take title of the replacement vehicle/engine by no later than the end of the project period. Project periods will not be extended to complete any financing term that has not resulted in Awardee's ownership of title by the end of the project period.

4.8 Lead Agency reserves the right to conduct site visits in order to inspect vehicles and equipment subject to this Agreement at any time throughout the duration of this Agreement.

4.9 Awardee agrees to complete scrappage of all replacement vehicles/engines. Pursuant to Appendix D-2 of the State Environmental Mitigation Trust, "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 for all engines. If any Eligible Vehicle will be replaced as part of a project, "scrapped" shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half.

4.10 Awardee agrees that proof of scrappage will be provided to Lead Agency as a condition of and prior to reimbursement, and failure to provide adequate proof of scrappage shall result in forfeiture of awarded funds. Proof of scrappage includes photos of the engine block with a hole and, if applicable, the cut frame rails, including clear images of the vehicle identification numbers

(VIN). Awardee must submit a signed Scrappage Form and, if applicable, any documents received from the scrap yard. It is within Lead Agency's discretion to determine whether alternate proof of scrappage is acceptable.

4.10.1 **Acknowledgement.** Initials of Awardee BC

4.11 If Awardee wishes to change the scope or duration of the Approved Project in any way, the Awardee must submit an advance request in writing to the Lead Agency in accordance with the terms of this Agreement, including Article XIII herein, to be approved by Lead Agency. This requirement applies for any changes to the project, including timeline, budget, vehicle/engine or project item, staffing/contact information, and anything else deemed by the Lead Agency as pertinent to the project. It is within Lead Agency's discretion to accept requests for changes to the Approved Project after they have been made.

4.12 The award and project information will be posted online and made publicly available pursuant to paragraph 5.2.14 of the Trust Agreement. Signing this Agreement provides consent to release information associated with the project described herein, less any confidential business information verified and confirmed by Lead Agency (bids are not considered confidential business information).

4.13 Awardee agrees that no work shall begin on the project described herein before this Agreement is fully executed and Awardee has received a Notice to Proceed, or work commencement notification, from Lead Agency.

ARTICLE V. AGREEMENT DURATION

5.1 This Agreement will commence on the date it is signed by both parties and will terminate when all terms and conditions set forth herein are satisfied, subject to Article XI herein.

ARTICLE VI. FUNDS AND PAYMENTS

6.1 Lead Agency agrees to provide reimbursement to Awardee in the total maximum amount of 50 % of total costs directly associated with the completion of the Approved Project. In the event actual project costs exceed the projected amount specified in Awardee's application, the total amount reimbursed pursuant to this Agreement shall not exceed four hundred fifty thousand dollars (\$450,000.00). Any amount above that authorized by Lead Agency herein, or beyond the scope of the Approved Project, shall be the sole responsibility of the Awardee.

6.2 If Awardee's match is funded by another funding assistance program, such as a federal grant, Awardee must provide written confirmation from said assistance program stating specifically that said funds may be used as a match for Volkswagen settlement funds. Acceptable forms of written confirmation are official documents supporting the other funding assistance program, such as FAQs, Grant Solicitation, or guidance documents. The requirements of the Award Amounts section of the On-Road Grant Solicitation must be met with respect to matching funds. Volkswagen settlement funds may not be used to match other Volkswagen settlement funds.

6.2.1 Acknowledgement. Initials of Awardee BC

6.3 Reimbursement by Lead Agency to Awardee is limited to costs specified in paragraph 6.1 that are directly associated with the completion of the Approved Project, pursuant to the terms and conditions of this Agreement. Lead Agency will reimburse Awardee upon Awardee's completion of the project, scrappage of vehicles, and submittal of all documentation, including itemized invoices, receipts/proof of payment, proof of scrappage, proof of delivery and/or installation, and any other documentation deemed necessary by Lead Agency and/or the Trustee of the Trust.

6.4 Awardee shall submit invoices for payment to Lead Agency within sixty (60) days of the end of the month in which the Approved Project was completed and accepted by Lead Agency. Each invoice must include an itemized statement of work performed and any additional information requested by Lead Agency. Upon confirmation of receipt of purchased vehicles and/or installation of all equipment described in Article II, "Description of the Approved Project," Lead Agency will provide payment to the Awardee for costs directly associated with the Approved Project up to the amount identified in this Agreement within forty-five (45) days. Requests for payment are to be directed to:

Oklahoma Department of Environmental Quality
Toni Payne – AQD – On-Road Program
PO Box 1677
Oklahoma City, OK 73101-1677

6.5 No payments in advance of or in anticipation of completed installations and/or replacements pursuant to this Agreement shall be made by Lead Agency.

ARTICLE VII. REPORTS

7.1 Semiannual reporting is required to be submitted by Awardee to Lead Agency. Semiannual reports are due by 4 PM Central Time on June 15 and December 15 for the duration of the project. The final required reporting period is that within which funds are received by Awardee. If project work is still occurring during the last allowable project period, the final report is due on or before 4 PM Central Time on August 31, 2023. If an extension is granted, Awardee will continue reporting as described herein. The first reporting period commences upon execution of this Agreement. Lead Agency must be notified as expeditiously as possible if Awardee is not able to meet reporting deadlines. Failure to meet reporting deadlines may result in forfeiture of funding.

7.1.1 Acknowledgment. Initials of Awardee BC

ARTICLE VIII. FINANCIAL AUDITS

8.1 Upon reasonable notice to the Awardee, Lead Agency or any duly authorized representative thereof shall have the right to examine all pertinent documents of the Awardee to ensure that Grant Funds committed pursuant to this Agreement are expended only for purposes related to the Approved Project.

8.2 Awardee agrees to maintain all supporting documentation and required records for the five (5) years the vehicle/engine is required to be in operation.

8.3 Authorized personnel of the Lead Agency, the State Auditor and Inspector, or any other entities/agents designated by Lead Agency shall have the right of access to any and all documents, books, papers, accounting procedures, practices, or any other items relevant to the services provided or activities conducted under this Agreement. Awardee agrees to provide Lead Agency with a copy of any audit by a state, federal agency, or other entity that pertains to this Agreement.

8.4 When applicable, Awardee shall comply with the audit requirements in 2 C.F.R. Part 200, Subpart F.

ARTICLE IX. SEVERABILITY

9.1 Each article of this Agreement is an independent article and each is considered severable. If a court of competent jurisdiction finds any article or part of an article to be unconstitutional, void, or ineffective for any cause, that provision shall not be deemed to affect the validity or constitutionality of any other article or parts thereof.

9.2 This Agreement shall not be changed, modified, terminated, or discharged, in whole or in part, except by written agreement signed by both parties hereto, or their respective successors or assignees.

ARTICLE X. COOPERATION AND ASSENT

10.1 Awardee shall cooperate with Lead Agency to provide documentation of achievement of the purpose of this Agreement. If, at any time, Lead Agency determines that Awardee has delayed the Approved Project, failed to act or to cooperate, or unreasonably withheld its agreement or assent, Lead Agency may limit or terminate all or part of this Agreement.

ARTICLE XI. TERMINATION

11.1 The Lead Agency may terminate this Agreement for cause at any time upon written notice to the Awardee. Notice will be given to the individual named as the Awardee's contact identified below. In the event of termination, the Awardee will be entitled to reimbursement for all eligible costs incurred under this Agreement up to the time of termination. Termination does not release the Awardee from compliance with other appropriate provisions of this Agreement.

11.2 Termination for cause will be based on one or more of the following reasons:

- i. The Awardee has significantly deviated from its obligations under this Agreement without Lead Agency's written approval;
- ii. The Awardee fails to cooperate or show sufficient progress toward completion of the Approved Project;
- iii. In the case of inadequate funding on the part of the Lead Agency.

ARTICLE XII. LEAD AGENCY/AWARDEE CONTACTS

12.1 The name, title, street and mailing addresses, telephone, and email address for the Lead Agency contact is:

Toni Payne - Project Manager
Printed or Typed Name and Title

707 N. Robinson, Oklahoma City, OK, 73101
Street Address, City, State, Zip

PO Box 1677, Oklahoma City, OK, 73101-1677
Mailing Address

(405) 702-4168
Telephone

toni.payne@deq.ok.gov
Email Address

12.2 The name, title, street and mailing addresses, telephone, and email address for the Awardee contact is:

Taylor Johnson, Public Transit Coordinator
Printed or Typed Name and Title

PO Box 370, Norman, OK 73070
Street Address, City, State, Zip

Mailing Address (if different)

4405-217-7761
Telephone

Taylor.johnson@normanok.gov
Email Address

ARTICLE XIII. NOTICES

13.1 Any notice given by either party to the other pursuant to this Agreement shall be in writing and sent to the contact person as identified in Article XII.

ARTICLE XIV. GOVERNING LAW AND VENUE

14.1 The validity, enforceability, and interpretation of this Agreement shall be determined and governed by the laws of the State of Oklahoma. Lead Agency and Awardee agree that the venue of any action in district court for the purposes of interpreting, implementing, or enforcing this Agreement will be Oklahoma County, Oklahoma.

14.2 Lead Agency and Awardee have caused this Agreement to be executed by their duly authorized representatives, and this Agreement shall be deemed effective on the latter of the two dated signatures affixed below:

FOR LEAD AGENCY:

for Robert Simpson
SCOTT A. THOMPSON - EXECUTIVE DIRECTOR
Oklahoma Department of Environmental Quality

DATE: 4/1/2021

FOR AWARDEE:

City of Norman

DATE: 3/9/2021

Brea Clark, Mayor
[Printed Title]

ATTEST:

Brea Clark
[Signature]

Brenda Hall
City Clerk

Approved by the City of Norman Legal Department by

Christy Luckabaugh Date: 3/3/21

