

**STATE OF MINNESOTA
GRANT CONTRACT**

**DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
ECONOMIC DEVELOPMENT DIVISION**

Minnesota Investment Fund Grant Contract

CDAP-16-0018-H-FY17

~~\$935~~400,000

City of Shakopee

Anchor Glass Container Corporation

This Grant Contract is between the State of Minnesota, acting through the Department of Employment and Economic Development, Economic Development Division, 332 Minnesota St., Suite E200, St. Paul, MN 55101 ("STATE") and City of Shakopee, 129 Holmes Street S., Shakopee, MN 55379 ("GRANTEE").

Recitals

1. Under Minn. Stat. §116J.993 and 116J.994 which established the guidelines for providing business subsidies, and 116J.8731, which established the Minnesota Investment Fund, the State is empowered to enter into this Grant Contract.
2. The State is in need of local government to administer financial assistance to eligible projects in accordance with Minn. Stat. § 116J.8731 Minnesota Investment Fund; Minnesota Rules Chapter 4300; and policies and procedures developed by the State.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this Grant Contract to the satisfaction of the State.
4. The Grantee and State are entering into this Grant Contract for public purposes that include the creation or retention of jobs that pay quality wages, the enhancement of economic growth in the State of Minnesota and the expansion of the tax base of the local community where the business will locate or expand.

Defined Terms

Defined terms. As used in this Grant Contract, the following terms shall have the meanings set out respectively after such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Application" means the Grantee's application to the State for a Minnesota Investment Fund award for the purpose of providing a loan to Anchor Glass Container Corporation ("BORROWER").

"Benefit Date" means the date equipment financed through a Minnesota Investment Fund loan is fully operational or the date a building certificate of occupancy is issued for real property financed through a Minnesota Investment Fund loan.

"Compliance Date" is the date two years from the Benefit Date at which job creation/retention and wage goals by the Borrower must be completed or maintained.

“Full-Time Equivalent (FTE)” is one or more people working a sum of 2,080 hours in a calendar year.

“Loan Agreement” is a document between the Grantee and Borrower defining the terms and conditions of the Loan.

1. **Term of Agreement**

1.1 **Effective Date:** November 16, 2016

Per Minn. Stat. § 16B.98 subd. 5 and Minn. Stat. § 16B.98 subd. 7, no payments will be made to the Grantee until this Grant Contract is fully executed.

1.2 **Benefit Date:** May 30, 2017

1.3 **Compliance Date:** May 30, 2019

1.4 **Expiration Date:** August 30, 2019

1.5 **Survival of Terms.** The following clauses survive the expiration or cancellation of this Grant Contract: 8. Liability; 9. State Audits; 10. Government Data Practices; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction and Venue; 15. Data Disclosure; and Exhibit A 4. Repayments.

2. **Grantee’s Duties**

The Grantee, who is not a State employee, will:

2.1 Perform the duties specified in Exhibit A which is attached and incorporated into this Grant Contract.

2.2 Include in any contract and sub-grant, including the Loan Agreement with the Borrower, in addition to provisions that define a sound and complete agreement, such provisions that require contractors, sub-grantees and the Borrower to comply with applicable state and federal laws.

2.3 Ensure that all contractors and subcontractors performing work covered by this Grant are paid for their work that is satisfactorily completed.

2.4 Grantee shall make all reasonable efforts to collect and shall bear all costs associated with monitoring, servicing, reporting, and enforcing the terms of the Loan Agreement.

3. **Time**

The Grantee must comply with all of the time requirements described in this Grant Contract. In the performance of this Grant, time is of the essence.

4. **Consideration of payment**

4.1 **Consideration.** The State will pay the Grantee under this Grant Contract as follows:

a) **Compensation.** The Grantee will be reimbursed according to the approved Budget contained in Exhibit B, which is attached and incorporated into this Grant Contract.

b) **Total Obligation.** The total obligation of the State for all compensation and reimbursement to the Grantee under this Grant Contract will not exceed \$935,400,000.

4.2 **Payment Request.** The State will disburse funds to the Grantee pursuant to this Grant Contract, based upon payment requests submitted by the Grantee and reviewed and

approved by the State. Payment requests must be accompanied by supporting invoices that relate to the activities in the approved budget and the documentation detailed in Section 4.3 of this Grant Contract. The State will provide payment request forms.

If the Grantee has received invoices from the Borrower for expenditures made after Effective Date of this Grant Contract but before the Grant is closed or until all funds are disbursed, whichever is earlier, the Grantee shall submit those invoices to the State for review and approval no later than 25 days after the end date of the state fiscal year of June 30th. To ensure that all funds are drawn down by the expiration date of the Grant Contract, all Grantee payment requests must be received by the State at least 30 days prior to the Expiration Date.

4.3 **Documentation.** The following information must be submitted and approved by the State before funds will be released:

- a) **Loan Documents.** Minnesota Investment Fund Loan Agreement, promissory note, amortization schedule, corporate guaranty of parent company, security agreement, and evidence of security UCC filings.
- b) **Lender Documents.** Documentation that participating lenders and or equity injections have closed on their financing:
 - 1) ~~Promissory note for~~ Forgivable loan of \$65,000 from the city of Shakopee
 - 2) Evidence of equity injection in the amount of \$15, ~~83~~00,000
- c) **Invoices.** Invoices or other documentation as approved by DEED Loan Officer for ~~\$2,000,000~~ 800,000 in equipment costs and evidence of expenditure of ~~\$14,300,000~~ 15,000,000 in leverage costs. Funds will be released on a cost-sharing ratio of ~~163~~% Grant funds to ~~84~~97% other funds. At least 75% of project costs must be expended or committed prior to request for reimbursement of MIF funds unless other mitigating factors are present.
- d) **Eligible Costs.** Eligible costs include the costs identified in Exhibit B of this Grant Contract that are incurred during the contract period.

5. **Conditions of Payment.**

All services provided by the Grantee under this Grant Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state or local law.

The State will not authorize disbursement of funds if there has been any adverse change in the Borrower's financial condition, organization, operations, or their ability to repay the project financing.

6. **Authorized Representative.**

The State's Authorized Representative is Lisa Dargis, Loan Officer, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-259-7446, lisa.dargis@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this Grant Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each payment request form submitted for payment.

The Grantee's Authorized Representative (~~Staff Contact~~) is Samantha DiMaggio, Economic Development Coordinator, 129 Holmes Street S., Shakopee, MN 55379, 952-233-9317, sdimaggio@shakopeemn.gov, or his/her successor. If the Grantee's Authorized Representative changes at any time during this Grant Contract, the Grantee must immediately notify the State.

7. Assignment, Amendments, Waiver, and Grant Contract Complete

7.1 Assignment. The Grantee shall neither assign nor transfer any rights or obligations under this Grant Contract without the prior written consent of the State, approved by the same parties who executed and approved this Grant Contract, or their successors in office.

7.2 Amendments. Any amendment to this Grant Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Grant Contract, or their successors in office.

7.3 Waiver. If the State fails to enforce any provision of this Grant Contract, that failure does not waive the provision or the State's right to enforce it.

7.4 Grant Contract Complete. This Grant Contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this Grant Contract, whether written or oral, may be used to bind either party. Where provisions of the Application are inconsistent with the other provisions of this Grant Contract, the other provisions of this Grant Contract will take precedence over the provisions of the Application.

8. Liability

Subject to the provisions and limitations of Minn. Stat. § 466, the Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this Grant Contract by the Grantee or the Grantee's agents or employees. This Clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this Grant Contract.

9. State Audit

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this Grant Contract or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of seven (7) years from the end of this Grant Contract, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10. Government Data Practices

10.1 Government Data Practices. The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. § Ch. 13, as it applies to all data provided by the State under this Grant Contract, as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this Grant Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of data referred to in this Clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with all applicable law.

11. Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12. Publicity and Endorsement

12.1 Publicity. Any publicity regarding the subject matter of this Grant Contract must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Grant Contract.

12.2 Endorsement. The Grantee and the Borrower must not claim that the State endorses its products or services.

13. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Grant Contract. Venue for all legal proceedings out of this Grant Contract, or its breach, must be in the appropriate state court with competent jurisdiction in Ramsey County, Minnesota.

14. Termination

14.1 Termination by the State. The State may immediately terminate this Grant Contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro-rata basis for approved costs incurred.

14.2 Termination for Cause. The State may immediately terminate this Grant Contract if the State finds that there has been a failure to comply with the provisions of the Grant Contract, legal documents required for disbursement have not been executed within 90 days of execution of this Grant Contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to distribute additional funds and requiring the return of all or part of the funds already disbursed.

14.3 Termination for Insufficient Funding. The State may immediately terminate this Grant Contract if:

- a) It does not obtain funding from the Minnesota Legislature;
- b) Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or electronic notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment determined on a pro-rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of lack of funding within a reasonable time of the State's receiving that notice.

15. Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved with the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

Other Provisions

16. Conflict of Interest

~~The Grantee shall comply with the Conflict of Interest provisions of Minn. Stat. §§ 471.87 and 471.88.~~ The STATE will take steps to prevent individual and organizational conflicts of interest in reference to Grantees per Minn.Stat.§16B.98 and Department of Administration, Office of Grants Management, Policy Number 08-01 Conflict of Interest Policy for State Grant-Making. When a conflict of interest concerning State grant-making is suspected, disclosed, or discovered, transparency shall be the guiding principle in addressing it.

Organizational conflicts of interest occur when:

- a Grantee is unable or potentially unable to render impartial assistance or advice to the State due to competing duties or loyalties.
- a Grantee's objectivity in carrying out the grant is or might be otherwise impaired due to competing duties or loyalties.
- a Grantee has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors.

Organizational conflicts include any individual part of the Grantee.

Individual conflicts of interest occur when:

- a Grantee uses his/her status or position to obtain special advantage, benefit, or access to the Grantee's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.
- a State employee is an employee or board member of a Grantee that is an immediate family member of an owner, employee or board member of the Grantee.

The State and the Grantee must act immediately upon any suggestion, inquiry, or intimation that an individual or organizational conflict of interest exists at any point in the grant process. Steps must be taken to identify and avoid or mitigate any potential conflicts. The conflict of interest guidelines continue throughout the life of the grant agreement.

The GRANTEE must complete and submit a Conflict of Interest Disclosure Form indicating whether or not a perceived, potential, or actual conflict of interest exists. If the GRANTEE identifies an actual, potential or perceived conflict of interest on the form, the GRANTEE must identify and submit its conflict of interest avoidance or mitigation plan. The STATE will review the form and the GRANTEE's individual or organizational conflict of interest avoidance

or mitigation plan and other relevant facts, if needed, to determine if an actual, potential or perceived conflict of interest exists, as defined by policy or other relevant law. If it does, the STATE will pursue appropriate actions to mitigate, neutralize, or avoid the potential, perceived or actual individual or organizational conflicts of interest. These may include, but not be limited to, termination of the grant agreement; disqualification from future State grant awards, if it is determined that it improperly failed to disclose a known individual or organizational conflict of interest or misrepresented information regarding such conflict; revising the GRANTEE's duties so that the conflict is mitigated; allowing the GRANTEE to propose the exclusion of task areas that create a conflict, if appropriate; allowing the individual with the conflict to be removed from taking any actions in relation to the grant agreement.

In cases where a perceived, potential, or actual individual or organizational conflict of interest is suspected, disclosed, or discovered by the GRANTEE throughout the life of the grant agreement, they must immediately notify STATE for appropriate action steps to be taken, as defined above.

Grantee is responsible for enforcement of this conflict of interest provision for any and all sub-grantees / sub-recipients of funding under this grant agreement. When a grantee gives funds to any sub-grantees or sub-recipients, DEED's conflict of interest requirements must be included in the grant agreements with any and all sub-grantees or sub-recipients and with all additional tiers of sub-grantees or sub-recipients. All of the above provisions apply to any sub-grantees and applicable language must be included in the grantee / sub-grantee agreements.

17. Successors and Assignees

This Grant Contract shall be binding upon any successors or assignees of the parties.

18. Minnesota Business Subsidy Law

This Grant Contract must comply with the Minnesota Business Subsidy Law, Minn. Stat §§ 116J.993-116J.995 as applicable.

19. Affirmative Action

The Grantee is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled.

20. Discrimination on Account of Race, Creed, or Color

The provisions of Minn. Stat. § 181.59 and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Agreement.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. § §16A.15 and 16C.05.

Signed: _____

Date: _____

SWIFT Contract/PO No(s)

3. STATE AGENCY

By: _____
(with delegated authority)

Title: _____

Date: _____

2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Distribution:

Agency

Grantee

State's Authorized Representative – Photo Copy

EXHIBIT A GRANTEE DUTIES

The Grantee, who is not a State employee, will,

1. Administer the project in accordance with the requirements of the Minnesota Investment Fund Program, Minn. Stat. § 116J.8731; Minn. Rules, Chapter 4300; and policies and procedures developed by the State.
2. Enter into a Loan Agreement with the Borrower for \$~~935~~400,000, ("LOAN") and assure the following conditions are included in such Loan Agreement:

2.1 Conditions

- a) Loan Term: 2 years
- b) Interest Rate: 3%
- c) Collateral: 1st position on equipment and/or fixtures
- d) The corporate guaranty of Glass Container Acquisition, LLC is required.

2.2 Job Creation and Wages

- a) The Borrower identified 280 full time equivalent (FTE) base jobs that must be maintained through the Compliance Date^[1].
- b) The Borrower will retain 280 permanent non-contract FTE jobs, all paying at least \$20.39 per hour or more in cash wages, exclusive of benefits, and \$21.57 per hour including Benefits on the Compliance Date. Benefits are defined as one or more of the following: health, dental, life and disability insurance, retirement program and profit sharing paid by the Borrower.
- c) If the Borrower fails to meet the job retention goal and wage level commitments on the Compliance Date, the Grantee may, after holding a public hearing, extend the grant period for one year from the Compliance Date, after approval by the State. If, after the extension, the Borrower fails to meet the job retention goal and wage level commitment, the Borrower will be required to repay the Grantee all or a proportional share of the Loan funds on an accelerated term, and loan forgiveness will be reduced at a rate of \$~~18,700~~13,333 per job not retained.
- d) In the event that no jobs are retained by the Borrower on the Compliance Date, the Grantee will be required to return all loan funds to the State.

2.3 Payment of Prevailing Wages to Contractors

Minn. Stat. § 116J.871 applies if a business receives \$500,000 or more in State loan funds and the State funds are used for construction, installation (including equipment), remodeling and repairs.

2.4 Surety Deposits Required for Construction Contracts

Minn. Stat. § 290.9705, pertains to foreign corporations that perform construction work in Minnesota and applies if state funds are used for construction.

2.5 Job Listing Agreement

Minn. Stat. § 1161L.66, subd. 1, applies when a business or private enterprise receives \$200,000 or more per year in funds from the State. When applicable, the business or private enterprise shall agree to enter into a Job Listing Agreement with the MN Department of Employment and Economic Development.

2.6 Loan Forgiveness

If the job retention goals and wage level commitments detailed in Sections 2.2 in Exhibit A of this Agreement are met on the Compliance Date, the Loan will be forgiven.

3. Require the Grantee's attorney to review the loan agreement, promissory note, security agreement, guaranty and/or other documents, if any, considered necessary to secure the loan to ensure they are valid, binding and enforceable.
4. If applicable, retain 40% of each principal and interest payment made by the Borrower, up to \$100,000. Repay to the State 60% of each principal and interest payment made by the Borrower until the Grantee has received \$100,000 in repayments. Once the Grantee has received \$100,000 in repayments, the Grantee will repay the State 100% of every payment on the loan until paid in full. In the event the loan is not paid in full, principal and interest the Grantee retains will be reduced proportionally and returned to the State.
5. The Grantee will establish and maintain a revolving loan fund (RLF) consistent with the requirements 2. In the Recitals section of this Grant Contract and State RLF Guidelines published by DEED. The Grantee must retain financial control and decision making authority regarding the use of repayments from the loan. Upon approval by the State, the Grantee may loan or grant money from its RLF to a regional development commission, or other regional entity, or statewide community capital fund to capitalize or to provide the local match required for capitalization of a regional or statewide RLF.
6. Reporting
 - a) Minnesota Investment Fund Annual Progress Reports
 - 1) Submit to the State annual progress reports on forms provided by the State until the project goals have been met or until the Compliance Date, whichever is later. These reports must be submitted January 25th of each year for the period ending December 31, for as long as the project remains open. A final Progress Report is required within 25 days of the Compliance Date.
 - 2) The final report must be submitted no later than 25 days after the Compliance Date.
 - 3) The State, at its discretion, may require the submittal of additional progress reports.
 - 4) Information required in these reports may include, but is not limited to the following:

● Permanent jobs created	● Hourly base wage	● Date of hire
● Job titles	● Hourly value of benefits	● Benefits provided
● Project expenditures	● Status of project	● Status of payments
● Payroll Report		
 - b) Minnesota Business Assistance Form (MBAF) Reports
 - 1) Submit to the MN Department of Employment and Economic Development, Office of Economic Analysis, no later than April 1st of each year until the project goals have

been met.

7. Keep financial records, including properly executed contracts, invoices, receipts, vouchers, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures made pursuant to this Grant Contract. Accounting methods must be in accordance with generally accepted accounting principles.
8. Complete the project in accordance with the approved budget within the time frames specified in this Grant Contract.
9. Promptly notify the State of any proposed material change in the scope of the project, budget or completion date, which must be approved by the State, prior to implementation.
10. Have on file the necessary documentations to show that all project funds have been used for the items stated in the application.

Exhibit B
Approved Budget

Use of Funds	MIF	Bank	Equity	City	Other	Total
Property Acquisition						\$0
Site Improvement						\$0
Building Renovation						\$0
Construction						\$0
Machinery & Equip.	\$400,000		\$15,843,397	\$65,000		\$16,308,397
Roads						\$0
Water						\$0
Sewer (Sanitation)						\$0
Other						\$0
Total	\$400,000	\$0	\$15,843,397	\$65,000	\$0	\$16,308,397