Diesel Emissions Reduction Grant (DERG) Program for Equipment Replacement, Repower, Retrofit and Anti-Idle

Request for Proposals
August 17, 2016

The State of Ohio Environmental Protection Agency (Ohio EPA) is soliciting proposals from all public sector and private sector (with a public sponsor) diesel fleets that will undertake vehicle/equipment replacement, repower, or retrofit for the purpose of emissions reduction in eligible Ohio counties. Fleets may also apply for idle reduction equipment.

Ohio EPA
Diesel Emissions Reduction Grant Program
Office of Environmental Education
50 W. Town St. Suite 700
Columbus, OH 43215
Email: derg@epa.ohio.gov
Website: http://epa.ohio.gov/oeef/derg.aspx

Ohio Diesel Emissions Reduction Grant (DERG) Program
For Equipment Replacement, Repower, Retrofit & Anti-Idle

Table of Contents

SECTION 1: REQUEST FOR PROPOSALS (RFP) OVERVIEW
1.1 RFP Time Table
1.2 Project Background
SECTION 2: PROGRAM REQUIREMENTS
2.1 Fund Reimbursement Policy
2.2 Twenty Percent Match Requirement
2.3 Advertising and Bid Procedures
2.4 Buy America
2.5 PS&E Package and Federal Authorization
2.6 Record Maintenance
2.7 Non-Performance
SECTION 3: APPLICATIONS
3.1 Project Application
3.2 Communication and Inquiries
SECTION 4: ELIGIBIILITY
4.1 Project Type
4.2 CMAQ Program Eligibility
4.3 Ineligible Costs
4.4 Public Private Partnerships (PPP)
SECTION 5: PROJECT TYPES
5.1 Vehicle/Equipment Replacement
5.2 Equipment Repower (Engine Replacement)
5.3 Equipment Retrofit
5.4 Anti-Idle Equipment
5.5 Related infrastructure for fueling
SECTION 6: PROJECT SELECTION CRITERIA
SECTION 7: GENERAL REQUIREMENTS
7.1 Cost of Proposal
7.2 Confidentiality
SECTION 8: APPENDICES
Appendix A: Applicant Certification Statement
Appendix B: DERG Fleet Data Reporting Spreadsheet
Appendix C: DERG Eligibility Chart by Vehicle Type
Appendix D: Map of CMAQ Eligible Counties and Townships in Ohio
Appendix E: Sample Public-Private Partnership Agreement
Appendix F: Financial Requirements for Private Sector DERG Applicants
Appendix G: Sample Grant Agreements (LPA Agreement) for public and private sector projects
Appendix H: Diesel Vehicle/Equipment Useful Life Guidelines
Appendix I: Buy America Guidance and Certification Form

SECTION 1: REQUEST FOR PROPOSALS (RFP) OVERVIEW

1.1 RFP Time Table

Release of RFP: Wednesday August 17, 2016
Information Session: Wednesday September 7, 10:00 a.m.–12:00 p.m. at the Ohio Department of Transportation, 1980 W. Broad Street, Columbus, OH 43223
Applicant Conference Calls: Wednesday September 14, 10:00 a.m.
Tuesday September 20, 1:00 p.m.
Users dial in to 1-877-372-2917 enter meeting ID 47821#
Deadline to Submit Proposals: **October 7, 2016 5:00 p.m.**
Announcement of Awards: December 16, 2016

Awarded projects cannot commence until all federal requirements have been met, which can take several months. DERG funds may not be used to reimburse grant recipients for any grant expenses, including equipment purchased, prior to execution of the Local Public Agency Agreement and obtaining federal authorization to proceed with the scope of work, as explained in Section 2.5 below. Applicants should plan accordingly for scheduling equipment purchases and installations.

The DERG Committee reserves the right to adjust the dates listed above, for whatever reasons it deems appropriate. The Committee also reserves the right to request additional information to assist in the review process; to reject any and all applications and make no awards under this program or make fewer and smaller awards than anticipated; or to fund partial projects.

1.2 Project Background

The Ohio Environmental Protection Agency (Ohio EPA) in partnership with the Ohio Department of Transportation (ODOT) announces the seventh round of the Diesel Emissions Reduction Grant (DERG) Program. Invited to apply are all public agency owned diesel engine fleets and privately owned diesel engine fleets with a public sponsor (Public-Private Partnerships) that will undertake vehicle/equipment replacement, repower, retrofit, or installation of anti-idle equipment for the purpose of emissions reduction in eligible Ohio counties. Public-Private Partnerships (PPP) are defined in the Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality (CMAQ) Interim Program Guidance under MAP-21 issued November 12, 2013, http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2013_guidance/index.cfm. Examples of acceptable PPP agreements are provided in Appendix E of this document. A map of eligible Ohio counties and townships is provided in Appendix D of this document.

Funds will be made available under the DERG program, from the Ohio Department of Transportation FHWA CMAQ Program federal appropriation fund. The CMAQ program was created under the federal Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and reauthorized under the Transportation Equity Act for the 21st Century (TEA-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Moving Ahead for Progress in the 21st Century Act (MAP-21) and, most recently, the Fixing America's Surface Transportation (FAST) Act.

The total funding available for this competitive funding cycle is **$12,000,000** in federal CMAQ funds. **Approximately one third of those funds ($4,000,000) will be allocated to public transit projects** in keeping with the recommendations and needs identified by ODOT in the Ohio Statewide Transit Study of 2015. **Another approximately $4,000,000 will be allocated for school bus projects** in keeping with the need to protect children as one of the populations most vulnerable to the pollutants in diesel exhaust. **DERG applications will be considered for projects requesting at least fifty thousand dollars ($50,000) and not more than one million dollars ($1,000,000) in federal funds.**

The DERG eligibility chart included in Appendix C of this RFP and posted at http://www.epa.ohio.gov/Portals/42/documents/DERG/Appendix%20C%20DERG%20eligibility%20chart%202016.xls summarizes grant funding eligibility actions for on-road and off-road vehicles operated by public sector and private sector (or non-profit) entities. Private sector and nonprofit sector applicants must apply through a public sector partner such as a local government, public port authority, regional council of governments, or state agency such as the Ohio Air Quality Development Authority, Ohio Environmental Protection Agency, or Ohio Rail Development Commission. The Public Sponsor certifies that there is a public benefit to the proposed project, sufficient to justify the awarding of public funds to a private sector entity.

Three tenets associated with public financing of federal aid projects are **competition, transparency and documentation**. All applicants must commit to using appropriate methods of competitive purchasing. Private sector applicants in particular should understand that their applications and documentation regarding reimbursed expenses and purchases made with public funds become public records, and are subject to public record requests and external oversight agency compliance review. This information is not eligible for trade secret protection under Ohio law. Documentation regarding funded projects, including invoices submitted and approved for reimbursement, will reside in paper and electronic files in the Public Sponsor agency. Payment records at ODOT and Ohio EPA are also subject to public record requests and external oversight agency compliance review.

SECTION 2: PROGRAM REQUIREMENTS

2.1 Fund Reimbursement Policy

DERG is a reimbursement program and applicants must provide non-federal funding to cover expenses as they are incurred. Projects selected for funding will then be reimbursed *up to the amount authorized for that project* upon proper documentation that eligible expenses have already been paid by the awardee.

2.2 Twenty Percent Match Requirement

For projects that are selected, up to eighty percent (80%) of allowable project costs may be eligible for reimbursement from CMAQ funds, and only for allowable equipment purchases or work conducted ***after*** the project receives authorization from the US Department of Transportation and ***after*** invoices for work completed have been submitted by the awardee and approved by Ohio EPA or ODOT. Applicants are required to provide a minimum twenty percent (20%) in matching funds. Matching funds cannot be sourced from other federal funds or from in-kind services. Applications must include in the project scope description an explanation of the funding source that will be used to meet the match requirement, and a demonstration that the applicant can cover the full cost of the project prior to approval of the reimbursement. Applicants are encouraged to provide more than the minimum 20% match required, in order to score better in terms of cost effectiveness, as explained in Section 6 of this RFP.

2.3 Advertising and Bid Procedures

Projects selected to receive funding must comply with all competitive bid standards. Applicants must employ procurement procedures as approved by Ohio EPA and ODOT. Applicants are ***strongly*** encouraged to become familiar with the ODOT Office of Local Programs Procedures and Guidance webpage at http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/LocalLetProcesses.aspx for guidance specific to the DERG program including project agreements and bid document templates. These procedures ensure compliance with ODOT and FHWA regulations and requirements. Specific steps in the procurement process are outlined in sections 2.4 and 2.5 below.

Information on the requirements for public advertising and competitive bidding of federal-aid projects can be found in the “Advertising, Sale and Award” chapter of the Locally-Administered Transportation Projects Manual of Procedures http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Locallet%20Manual/Advertising%20Sale%20Award%20Roles%20and%20Responsibilities.pdf.

2.4 Buy America

All DERG grant awardees must meet all applicable FHWA regulations, including Buy America regulations regarding steel and iron products and components. Since FHWA is unaware of any vehicle manufacturer that can certify that its vehicle is produced with 100% US steel and iron, all projects involving vehicle replacement must obtain a Buy America waiver. More details on FHWA Buy America requirements can be found on the ODOT Local Program Procedures and Guidance webpage at http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Forms/Revised%20Buy%20America%20Background%20and%20Waiver%20Request%20Process.pdf and in the Buy America Certification Form and Guidance in Appendix I of this RFP. ODOT will submit the Buy America Waiver Request to FHWA on behalf of the DERG Awardee, so applicants should include complete information to support this waiver request in their application package. The Buy America waiver process includes federal public notice and comment requirements, so awardees should allow three to six months for issuance of this waiver from FHWA, and understand that the process may take longer.

2.5 Plan Specifications and Estimates (PS&E) Package and Federal Authorization

Once the grant award is announced, and after applicable Buy America requirements are satisfied, the awardee must develop a PS&E package in consultation with ODOT and the awardee's Public Sponsor agency. Awardees should allow several weeks for preparation and ODOT review of this package. The PS&E Package includes all items needed to demonstrate compliance with applicable federal and state standards and requirements, and to obtain federal authorization to advertise for bids:

- LPA Agreement signed by the authorized representative of the public sponsor and ODOT;
- A completed Buy America Certification Form from the project sponsor;
- Documentation of ODOT approval to specify any proprietary products or sole source waivers;
- Approved environmental document certifying project compliance with the National Environmental Policy Act (NEPA);
- Local sponsor certification that Right of Way required for the improvement is controlled (if applicable);
- Any plans, or standards and/or specifications, as appropriate to the project;
- Itemized estimate of costs for the project, certified by the Public Sponsor to be a true and accurate estimate of anticipated costs; and
- Bid proposal document to guide procurement and establish requirements applicable to the contract. The bid proposal document must properly

incorporate any applicable state and federal contract provisions as provided by ODOT.

Once the PS&E package is approved, ODOT will request a federal authorization from the Federal Highway Administration (FHWA) for the project. NO advertisement for bids may be allowed and no project-related expenditures may be incurred prior to obtaining a federal authorization. If the project is advertised or work were to begin before the federal authorization is received, the project will become ineligible for reimbursement.

Once federal authorization is received, the project sponsor will be given permission to begin advertisement. Projects must be advertised at least 21 days between the original date of advertisement and the date that bids are opened. Advertisement of the bidding opportunity must be published in a newspaper of general circulation in the county where the activity for which bids are submitted will be conducted. The sponsor agency will determine the low and best bidder in accordance with the requirements established in the bid proposal document. The rejection of any or all bids, or award of the contract to a bidder that was not the apparent low and best bid, must first be approved by ODOT. The reason for selecting a bidder must be documented to ensure all pre-award requirements of the contract have been fulfilled.

2.6 Record Maintenance

DERG awardees will be required to maintain all financial and other project related documentation consistent with Sections 14.4 and 14.5 of the LPA Agreement. In addition, awardees that are Public Private Partnerships shall also provide annual documentation that the vehicle or equipment is being operated at least 65% of the time in an Ohio CMAQ-priority area for a period of five years. A map of the applicable Ohio CMAQ-priority area is contained in Appendix D to this RFP. DERG applicants should therefore include in the project narrative a detailed explanation of the technology and/or procedures they will use to track and verify the movements of fleet vehicles. Additionally, records regarding the utilization and maintenance must be kept for the useful life of the vehicle/equipment.

2.7 Non-Performance

Applicants should not apply for a DERG grant until they have firm project scopes, firm project schedules, and firm project fiscal commitments. They should also have dedicated staff, including a Person in Responsible Charge of the project, to ensure compliance with the requirements of this guidance and the LPA Agreement in development, delivery, and maintenance of the project. This person will also serve as the primary contact for ODOT and/or Ohio EPA to coordinate project milestones and accomplishments. ODOT and Ohio EPA will

not consider or approve more than one scope change from what was included in the submitted DERG application.

If Ohio EPA determines that an awardee is not making satisfactory progress implementing the project, Ohio EPA may, in consultation with the Ohio Department of Transportation and the US Department of Transportation, revoke the grant and reallocate the funds to another eligible project applicant. Progress will be measured against the following milestones:

- Submittal of a complete PS&E package within **90 days** of a letter issued by Ohio EPA notifying the applicant that the DERG grant is being awarded, or within 90 days of receipt of a Buy America waiver if applicable;
- Submittal of the first invoices for reimbursement of allowed expenses no later than **one year** from date the project LPA agreement is executed with ODOT; and
- Submittal of final invoices for reimbursement of allowed expenses no later than **two years** from the date the project LPA agreement is executed with ODOT.

SECTION 3: APPLICATIONS

3.1 Project Application

Applications must be submitted electronically to the Ohio Department of Transportation no later than 5:00 p.m. on October 7, 2016. Proposals must be submitted electronically to https://odot.formstack.com/forms/2016_derg. No faxed, e-mailed or hand-delivered submittals will be accepted. Late submittals will not be considered. Applicants who do not receive email confirmation of receipt of their application within one business day should call 614-644-2873 or email derg@epa.ohio.gov.

Those who are awarded a grant under this program may submit a new proposal during a subsequent grant cycle. Each new proposal will be reviewed based upon the criteria set forth in these guidelines, and in relation to the quality of other proposals received during the same grant cycle.

3.2 Communication and Inquiries

Prior to the deadline for submission, two conference calls have been scheduled for questions from prospective applicants, on the dates indicated in section 1.1 of this RFP. Call information and notes will be posted on Ohio EPA's DERG Website at: http://epa.ohio.gov/oeef/derg.aspx. Prospective applicants are also encouraged to contact program staff members Alan.Harness@epa.ohio.gov at (614) 644-4838 with technology questions, or Carolyn.Watkins@epa.ohio.gov at (614) 644-3768 with financial questions.

SECTION 4: ELIGIBIILITY

4.1 Project Type

Project types eligible for funding under DERG include the replacement, repower, retrofit, and/or installation of anti-idle equipment, of diesel powered public fleets[1] and Public-Private Partnership (PPP) fleets[2]. Projects funded under this program must affect surface transportation system travel consistent with the FHWA's CMAQ Interim Program Guidance under MAP-21 issued November 12, 2013.[3] Projects must result in reductions of oxides of nitrogen (NOx) and/or fine particulate matter ($PM_{2.5}$) emissions from pollutant sources. A chart summarizing eligibility by vehicle type is provided in Appendix C.

Projects must utilize engine systems certified by the United State Environmental Protection Agency (USEPA) and/or emission reduction or idle reduction technologies that have been verified by US EPA or the California Air Resources Board (CARB).

To be eligible for DERG grants, on-highway vehicles must be equipped with medium heavy-duty or heavy heavy-duty diesel certified engines. These engines are used in Class 5, 6, 7 and 8 vehicles, such as school and transit buses, refuse haulers, trucks, emergency and service vehicles. Note: all diesel powered school and public transit buses are eligible for DERG grants, regardless of the Class that the particular school bus falls into. See Figure 1 below for examples of all Class types.

Non-road vehicles or equipment working on Title 23 surface transportation construction projects based in Ohio CMAQ priority counties are DERG Program eligible. Only those costs associated with the vehicle/equipment components that produce emissions will be considered for funding.

Freight and intermodal capital projects, including maritime vessels, locomotives, and airport service vehicles are also DERG Program eligible. Maritime vessels may have one or more engines for propulsion and/or auxiliary power. Locomotives may include line-haul or switcher locomotives. The transportation function of these freight/intermodal projects needs to be emphasized.

---

[1] Including but not limited to: school buses, mass transit vehicles, refuse collection trucks, government fleets.
[2] Including but not limited to: trucks, locomotives and non-road construction equipment.
[3] FHWA's CMAQ program guidance is available at http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2013_guidance/index.cfm

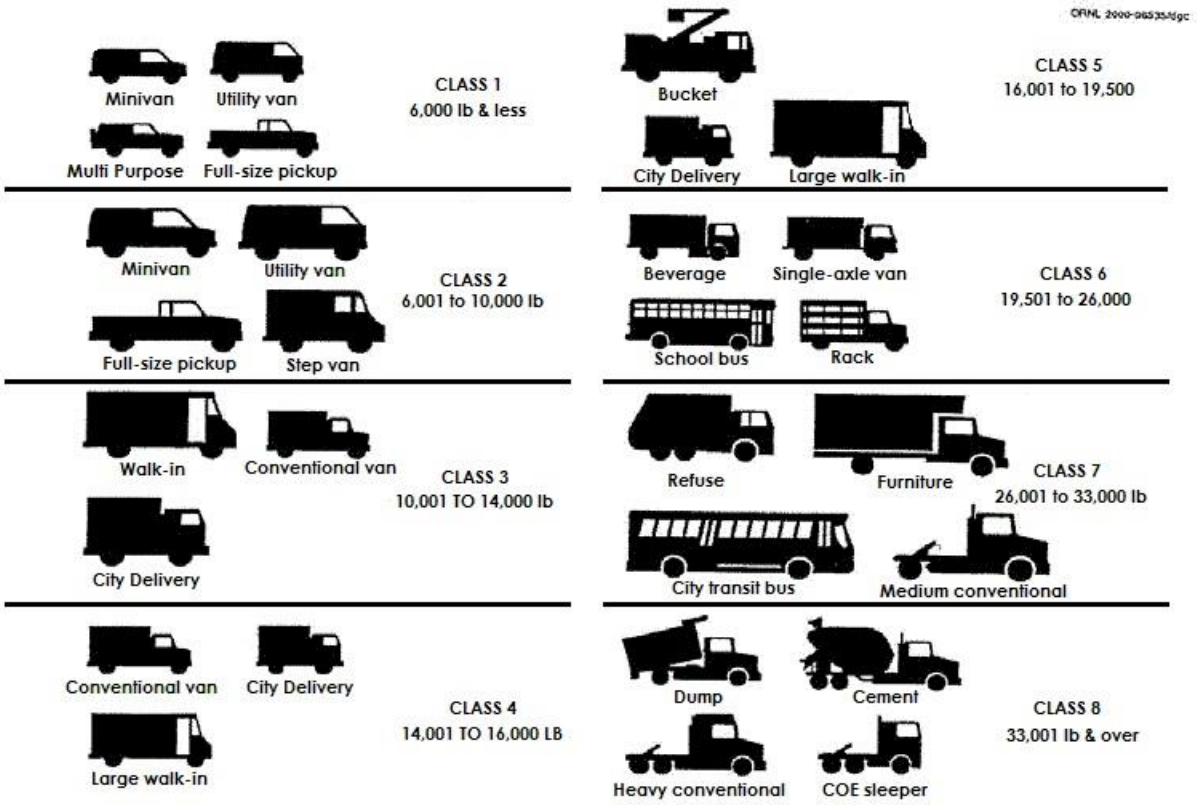


Fig. 1. Truck types by gross vehicle weight (GVW). *Source: Commercial Carrier Journal* (http://www.ccjmagazine.com).

4.2 CMAQ Program Eligibility

Prior to final project selection by the DERG committee, the FHWA must issue a formal CMAQ program eligibility determination on each proposed project. FHWA's eligibility determinations are based on documentation project sponsors prepare describing the project scope, its consistency with FHWA's CMAQ program eligibility guidance, and a quantitative analysis of the mobile source emission reductions that will result from project implementation.

CMAQ program eligibility documentation includes the following items:

- Narrative description of the project scope;
- Narrative description of project's consistency with FHWA CMAQ eligibility guidance;
- Project location;
- Project cost;
- Project sponsor; and
- Quantitative analysis of mobile source emission reductions in tons/year resulting from project implementation using USEPA's Diesel Emission

Quantifier (DEQ) tool at https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq. Ohio EPA intends to use the DEQ to estimate emission reductions for proposed projects, so applicants should submit both the input and the results of their DEQ analysis with their application. If the DEQ *does not allow* for an appropriate emission reduction calculation for a specific technology such as locomotive and maritime projects, the applicant may utilize US EPA approved emission factors and provide a detailed explanation of the emission reduction calculations. In cases where the DEQ *does* provide an analysis for a particular technology, but the applicant feels that more recent USEPA certified emission factors will produce a more realistic estimate of emission reductions, the applicant may suggest emission reduction calculations using the updated USEPA certified emission factors. Please contact Alan.Harness@epa.ohio.gov or 614-644-4838 in order to determine whether a manual calculation is appropriate for a particular project. The applicant should submit inputs and results of both the DEQ analysis and their alternate emission reduction calculation, including the specific equations and US EPA emission factors used in the calculation along with a copy of the reference material. Ohio EPA will review the calculations and, if deemed acceptable, will apply the most appropriate emission factors to all comparable projects under consideration for funding in the same grant cycle in order to make funding recommendations.

Note: When running the DEQ, choose "No" to the following question: "Do you want to estimate the total cost effectiveness of the project?" Cost-effectiveness for purposes of DERG awards will instead be calculated using the procedure described below.

For calculating emissions on maritime and port projects, applicants should also consult http://www.epa.gov/cleandiesel/documents/ports-emission-inv-april09.pdf

Cost-Effectiveness: For the purpose of this program, cost-effectiveness shall be calculated by the cost of the federal share (grant award amount) of the project and dividing by the sum total of the annual NOx and $PM_{2.5}$ emission reductions (tons/year), as determined by the DEQ analysis or manual emission reduction calculations using US EPA approved emission factors. Cost-Effectiveness = Federal Share of Project Cost/Sum Total of NOx & $PM_{2.5}$ Emission Reductions.

Note: For those projects involving just an engine replacement (replace old engine with a new engine) the total project cost shall consist of the engine and associated engine components (e.g., engine, transmission, and radiator, and any other engine components that are a vital part of the engine's operation).

For those projects involving a complete vehicle replacement the total project cost shall be based on the complete cost of the entire vehicle (i.e., engine and chassis). However, as indicated on the DERG eligibility chart, a number of fleets are only eligible for partial replacement costs, i.e., up to 80% of the costs associated with the components of the replacement vehicle that reduce

emissions. This typically includes the engine and engine management software.

Equipment must be operated in CMAQ-eligible areas of Ohio for at least sixty-five percent (65%) of the time. Grant *applicants* should show in the project narrative that the vehicles proposed for replacement, repower or retrofit have been registered (if applicable) and operating within Ohio for the most recent year. Grant *awardees that are Public-Private Partnerships* will be required to provide annual written reports for five years, documenting that the replacement, repowered or retrofitted vehicles or equipment were operated at least 65% of the time in the CMAQ-eligible areas in Ohio. Written records must be maintained with the owner/operator of the approved project for a minimum 5 years.

A map of CMAQ-eligible Ohio counties and townships is included in Appendix D of this RFP.

Ohio CMAQ-eligible counties (or parts of counties). A project must be located in at least one of these counties or geographic locations (in the case of partial counties) in order to be considered for CMAQ funding			
Adams (p)	Cuyahoga	Lake	Portage
Allen	Delaware	Lawrence	Scioto
Ashtabula	Fairfield	Licking	Stark
Belmont	Franklin	Lorain	Summit
Butler	Gallia (p)	Lucas	Trumbull
Clark	Geauga	Madison	Warren
Clermont	Greene	Mahoning	Washington
Clinton	Hamilton	Medina	Wood
Columbiana	Jefferson	Miami	
Coshocton (p)	Knox	Montgomery	
(p) = partial PM2.5 nonattainment county			

4.3 Ineligible Costs

Ineligible costs include but may not be limited to:

- Operating expenses and fuel costs, including incremental costs of fuel.
- Any project required by any law or other legally binding agreement.
- Work done or purchases made prior to official notice of FHWA project authorization.
- Costs incurred for work or purchases not included in the approved project scope.
- Installation costs incurred from in-kind services or by an unauthorized vendor.
- Administrative costs.

4.4 Public Private Partnerships

Private sector applicants must apply through a public sponsor (Ohio local government or state agency) who can attest to the public benefit of awarding public dollars to a private sector entity. For PPPs, partnerships must have a legal, written agreement executed between the public agency and the private or non-profit entity before a CMAQ-funded project application can be approved for funding. These agreements should be developed under relevant State contract law and should specify the intended use for CMAQ funding; the roles and responsibilities of the participating entities; and how the disposition of land, facilities, and equipment will be carried out should the original terms of the agreement be altered (e.g., due to insolvency, change in ownership, or other changes in the structure of the PPP). If an applicant is a PPP, a copy of the required written agreement clearly identifying the partners must be included at the time the application is submitted, or the application will not be evaluated. A copy of the final *signed and executed* agreement must be provided no later than 14 days after the application deadline, or the application will not receive further consideration. A sample template for a public-private partnership agreement is provided in Appendix E.

SECTION 5: PROJECT TYPES

Type	Description	Limitations	Maximum Funding
Vehicle/Equipment Replacement	Replacing old vehicles/equipment with new vehicles/equipment, including replacing with alternatively fueled vehicles as identified in section 301 of the 1992 Energy Policy Act	New vehicles or equipment must meet newer emission standards than old vehicles or equipment. Verification that old vehicles or equipment have not been returned to service	80% of total project cost or engine component costs subject to provisions of CMAQ and this RFP; less core or scrap value and less other governmental financial purchase contributions
Repower (Engine Replacement)	Removing the engine from a piece of equipment and replacing it with a new, rebuilt, or remanufactured engine	Engines must meet a newer emission standard; verification that old engine is remanufactured or permanently destroyed	80% of equipment invoiced cost less core value or scrap value and 80% of installation by an outside vendor
Retrofit	Adding on emission reduction technologies to reduce pollution	Retrofit technology must be verified by US EPA or CARB	80% of equipment invoiced cost less core value or scrap value and 80% of installation by an outside vendor
Anti-Idle	Adding anti-idle technologies to vehicles/equipment to reduce pollution; and truck stop electrification	Idle Reduction technology must be verified by US EPA or CARB	80% of equipment invoiced cost less core value or scrap value and 80% of installation by an outside vendor

5.1 Vehicle/Equipment Replacement

Vehicle or equipment replacement[4] involves permanently removing an old vehicle or machinery from service, and replacing it with a new vehicle or machinery,

[4] Including but not limited to: trucks, locomotives and non-road construction equipment. Non-road vehicles or construction equipment must be working on a surface transportation construction project (Title 23) based in Ohio nonattainment or maintenance areas to be eligible. Only those costs associated with the vehicle/equipment components that produce emissions will be considered for funding.

including alternatively fueled vehicles as identified in section 301 of the 1992 Energy Policy Act. Because construction equipment tends to have a very long life span, and in the past decade the federal government has implemented increasingly stringent emission standards for both on-road and off-road diesel equipment, upgrading to new model year diesel equipment has a significant air quality benefit.

On-road transportation vehicles, non-road vehicles and construction vehicles/machinery will qualify under this project if the vehicle or equipment is and will continue to operate at least 65% of the time in Ohio CMAQ-eligible counties.

Non-road vehicles or construction equipment must be working on surface transportation construction projects (Title 23) within Ohio CMAQ-eligible counties to be eligible. Only those costs associated with engine components that produce emissions will be considered.

In order to be eligible for funding for vehicle or equipment replacement, the award recipient must verify that the machinery to be replaced is currently in proper working condition **with at least five (5) years of remaining useful life**. For public transit agency replacement projects, vehicles will follow the Federal Transit Administration (FTA) replacement guidelines. Additionally, the replacement vehicle/equipment must be used for the same or similar purpose as the retired equipment.

Grant agreements involving replacement of a full vehicle or equipment will include a provision for disposal of the engine block through an OEM or authorized remanufacturer and a process to verify the retirement of this vehicle/equipment. The grant awardee will be required to provide documentation verifying that the old vehicle/equipment has not been returned to service. Grant awardees may use the "DERG Original Equipment Certificate of Destruction" form posted on the DERG program Website, http://www.epa.ohio.gov/oeef/derg.aspx. Ohio EPA may consider requests for waivers from this engine disposal requirement for appropriate purposes, such as the donation of the replaced vehicle to a diesel engine maintenance education program at an Ohio career technical center. Waiver requests must demonstrate that the proposed DERG project will not result in a net increase of emissions in Ohio or surrounding airsheds. Ohio EPA will not grant blanket waivers to send replaced vehicles to other states and countries.

Eligible expenses for reimbursement for vehicle replacements under this program include:

- The invoice cost of a replacement vehicle (subject to FHWA eligibility approval) including delivery charges, less scrap value of decommissioned vehicle/equipment;
- Costs to remove and dispose of fluids in the decommissioned vehicle/equipment, less any payments received for reuse of such fluids; and
- Other costs directly related to the project, subject to prior approval.

Note: FHWA will not approve CMAQ funding to finance the entire cost of private fleet or public agency general services replacement vehicles. FHWA will approve CMAQ funding only for replacement vehicle components that contribute to the vehicles' emission characteristics. See FHWA's CMAQ guidance issued April 6, 2011, posted at: (http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/cmaqaltfuel.cfm); and additional CMAQ Interim Program Guidance under MAP-21 issued November 12, 2013, posted at http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2013_guidance/index.cfm

Applicants should pay careful attention to the different types of vehicles eligible for replacement in the DERG eligibility chart included in Appendix C of this RFP. In the DERG program, **"full replacement"** means that DERG funds can be used to reimburse up to 80% of the full vehicle replacement costs. **"Partial replacement"** means that DERG funds can only be used to reimburse up to 80% of the costs associated with the components of the replacement vehicle that reduce emissions. This typically includes the engine and engine management software.

Under the DERG program, grant recipients for replacement projects will be reimbursed up to 80% of the total project cost subject to CMAQ restrictions and the DERG RFP, less the core value or scrap value and other governmental financial purchase contributions. FHWA will make the final determination of what the allowable federal share of each project will be.

What should be included in the project scope description when applying for replacement vehicles?

Vehicle or equipment replacements are designed to obtain emission reductions by removing high-emitting vehicles or equipment from service, and replacing them with newer, cleaner vehicles or equipment. For replacement vehicle projects, the project scope description narrative section of the DERG application should discuss the following specific points:

- Describe the size, location, and type of project (full or partial replacement) and how it is consistent with FHWA CMAQ eligibility guidance.
- Describe the vehicle/machinery to be replaced and how, when, and where it is used. Include engine data and VIN numbers for all to-be-replaced vehicles in the fleet data spreadsheet in Appendix B.
- Describe the vehicle/machinery to be acquired and how, when, and where it will be used.
- Early replacement: show that the vehicle is not being replaced as part of normal fleet turnover. Explain when the vehicle would normally have been scheduled for replacement.

- Explain in detail how the applicant will demonstrate that the project meets the percent (%) and duration (years) of equipment operation in the Ohio CMAQ-eligible counties.
- Show that the original vehicle or equipment is working properly and performing its intended function in normal duty service;
- Explain how the applicant will ensure that the original vehicle or equipment is scrapped or remanufactured;
- Show that the replacement vehicle is serving the same function and has the same gross vehicle weight and similar horsepower as the original, and explain how it will be maintained in accordance with manufacturer specifications;
- If a commitment is being made by the applicant to use biodiesel or other alternative fuels in the diesel engine fleets, document the percent of use.
- Describe the applicable emission standard or tier level for the old and new engines, using the **certificates of conformity** issued from US EPA to the engine manufacturer. The certificate of conformity lists the engine family name and the engine model year. The EPA engine family name is displayed on the emission control information label on the engine. By checking the engine family names and engine model year emission standards, one can confirm the applicable emission standard or tier level.
- The emissions reduction methodology must be defined, and the inputs, calculations and results provided. Include quantitative analysis of mobile source emission reductions estimated to result from project implementation.
- Show the complete costs, emission reduction (both $PM_{2.5}$ and NOx), and estimated **cost-effectiveness ($/ton of both $PM_{2.5}$ and NOx removed)**, and all detailed calculations that support your application for these grant funds.
- Attach any supplemental engineering data sheets, and any detailed support information to aid your application.

<u>What kind of recordkeeping will be required for replacement vehicle projects?</u>

Grant recipients for vehicle replacement projects funded under the DERG program will be expected to keep on file the following kinds of documentation, and to produce this documentation upon request:

• Approved Fleet Data Reporting Spreadsheet for the old diesel vehicles and fleet data for the new vehicles.
• Document that each vehicle is performing its intended function and that the original vehicle(s) are fully operational and not already due for replacement.
• Document fleet turn-over practices through historic records. Document age of vehicles to be replaced and period for early retirement.

• Invoices of all completed work. Invoices for replacement vehicles should include the vehicle components and specific engine configuration installed, including the model year or tier level, and a list of all parts, including engine exhaust controls.
• Copies of EPA certificates of conformity for existing and new engine configurations.
• Evidence that the engine of the old vehicle or equipment was rendered permanently disabled or returned to the original engine manufacturer to be remanufactured to the next EPA standard. Documentation should include the engine serial number and vehicle identification number, and photos illustrating how the engine and chassis were disabled. Ohio EPA representatives may request to observe the destruction process to ensure that it is properly documented. If returned to the engine manufacturer, obtain a letter documenting that the engine is remanufactured to a more stringent EPA standard.
• Documentation of any program income earned, including the sale of original vehicle or equipment parts and record of program income generated by sale thereof.
• Confirm the level of emission reduction achieved by the vehicle replacement matches or exceeds the level described in the grant application's project narrative. Emission reduction is based on the period associated with early retirement, so include a final comparison with normal fleet turn over and the in-service date for the replacement vehicle or machine.

Grant recipients for Public Private Partnership Projects will also be required to report annually to Ohio EPA for a period of five years, confirming that the replacement vehicle is operating at least 65% of the time in Ohio CMAQ-eligible counties.

5.2 Equipment Repower (Engine Replacement)

An equipment repower involves removing the engine from a piece of equipment and replacing it with a new, rebuilt, or remanufactured engine (including compressed natural gas or propane repowers). Because new engines meet more stringent emission standards than older engines, a repower can provide a significant air quality benefit without the cost of replacing an entire piece of machinery.

Any change to the original configuration of a certified vehicle or engine, including alternative fuel conversion, is a potential violation of the Clean Air Act section 203(a)(3) prohibition against tampering (42 U.S.C. §7522 (a)(3)). The tampering prohibition is important because poorly designed modifications can increase emissions. However, US EPA has established protocols through which conversion manufacturers may seek exemption from the tampering prohibition by

demonstrating that emission controls in the converted vehicle or engine will continue to function properly and that pollution will not increase as a result of conversion. Please see the Final Rule and Information for Clean Alternative Fuel Conversion Manufacturers for detailed information about these protocols. Prospective DERG applicants should consult with Alan.Harness@epa.ohio.gov about whether their proposed repower project is US EPA compliant before submitting an application.

Engine repowers may use new engine configurations certified to emission standards, or remanufactured engines representative of a previously certified engine configuration. Generally, an engine upgrade involves the removal of parts on a certified engine configuration and replacement with parts that cause the engine to represent an engine configuration which is certified to meet more stringent federal emission standards.

DERG grants can reimburse a portion of the cost to purchase and install a lower emissions engine and associated equipment, minus the scrappage value of the old engine. To be eligible for DERG funding, new engines must be certified by US EPA or CARB as agreed to by US EPA. Information on certified engines may be found at:

http://www.arb.ca.gov/msprog/onroad/cert/cert.php and

https://www3.epa.gov/otaq/certdata.htm

Eligible rebuilt or remanufactured engine components must meet or exceed Original Equipment Manufacturer (OEM) specifications.

Project agreements involving a replacement of a higher emissions engine should include a provision for disposal of the engine block and a process to verify the retirement of the older engine, unless Ohio EPA grants a written waiver from this requirement. Applicants requesting a waiver must explain in detail how the alternate disposition will be documented, and how the applicant will ensure that the proposed alternate disposition will not result in a net increase in emissions.
On-road transportation vehicles, non-road vehicles and construction equipment working on surface transportation construction (Title 23) projects within an Ohio nonattainment or maintenance area will qualify for funding if operated at least 65% of the time in Ohio CMAQ-eligible counties.

In order to be eligible for funding for equipment repower, the award recipient must demonstrate that the equipment to be repowered is currently in proper working condition. Before receiving reimbursement, the award recipient must document that the engine was removed and shipped to an authorized remanufacturing center, or that the engine in the old equipment has been permanently destroyed so that it cannot be sold or reused.

Eligible expenses for reimbursement for repower under this program include:

- Invoice cost of new engine including delivery charges, less the replaced engine's core or scrap value;
- Invoice cost of additional equipment that must be installed with the new engine;
- Costs to remove and dispose of hazardous fluids less any payments received for reuse of such fluids;
- Installation costs **if installed by an authorized outside vendor**;
- Reengineering costs by an authorized outside vendor, **if** the vehicle or equipment must be modified for the new engine to fit; and
- Other costs directly related to the project, subject to prior approval. See section 5.5 pertaining to infrastructure components.

The cost of purchasing and installing the new engine and required equipment minus the core value will constitute the cost of the equipment repower.

Under the DERG program, grant recipients will be reimbursed up to 80% of the equipment invoiced cost, less the core value or scrap value, and up to 80% of the installation invoiced cost performed by an authorized outside vendor**. A vendor authorized by the Original Equipment Manufacturer (OEM) should be used for engine repowers. Work performed by a vendor or other party not authorized by the OEM is not eligible for reimbursement under CMAQ or the DERG program.**

Applications for conversion from a diesel fuel to a dual fuel system will no longer be considered for DERG funding.

<u>What should be included in the project scope description when applying for engine repowers and upgrades?</u>

For engine repower or upgrade projects, the project scope description section of the DERG application should describe the size, location, and type of project and how it is consistent with FHWA CMAQ eligibility guidance. Discuss the following specific points:

- Existing and replacement engine certified configuration. Describe the equipment to be repowered and how and when it is currently and will be used. Include engine data and VIN numbers for all to-be-replaced engines in the fleet data spreadsheet in Appendix B.

- Pre- and post-emission standard levels for $PM_{2.5}$ and NOx. Newer engines or higher tier engines are not necessarily cleaner engines, so it is important to check the actual emission standard level of the current (existing) and new engines to ensure the repower product is reducing emissions for $PM_{2.5}$ and NOx. Emission standard levels are based on the engine model year for on-highway engines, and for nonroad engines the

horsepower and model year of the engine will determine the tier level. Check the emissions tables for on-road and nonroad engines and vehicles, posted at https://www.epa.gov/emission-standards-reference-guide to ensure that the proposed repower will result in an emissions reduction.

- **Certificates of Conformity**. Applicants should consult the certificates of conformity issued from US EPA to the engine manufacturer for the existing engine prior to submitting the grant application. If the existing engine is so old as to pre-date emission regulations, it will not have a certificate of conformity and alternative documentation of the engine age is acceptable. When conducting a repower, the entire configuration needs to be replaced, which must include a complete engine and emission control system to the design specifications of the certified engine configuration. Award recipients will be required to provide copies of the certificates of conformity issued from US EPA to the manufacturer of the new engine.

- Explain how the applicant will ensure the old engine is scrapped or appropriately remanufactured.

- Explain how the applicant will ensure that invoices will include all parts of the certified engine configuration.

- Early repower: show that the engine is not being repowered as part of normal fleet turnover.

- Show that the original engine is working properly and performing its intended function in normal duty service.

- If a commitment is being made by the applicant to use biodiesel or other alternative fuels in the diesel engine fleets, document the percent of use.

- To be considered cost effective, show that the engine has a high annual use (>1000 hours or 50,000 miles for most vehicles, or 5,000 miles for school buses.)

- ***Note for locomotive and marine repowers****:* locomotive and maritime projects need to emphasize the transportation function of the project. Depending on the availability of certified engine rebuild kits, regulations may require that marine engines at or above 600 kW and locomotive engines be upgraded to a lower emission level at the time of rebuild. Consequently, a repower project in a marine or locomotive application may overlap with an operator's requirement to install a certified engine upgrade kit at the time of rebuild. In this case, the project would be considered a mandated measure, and would not be fundable under the DERG program. Before applying for the grant, the applicant should

confirm that a marine or locomotive engine replacement project is not simply going to achieve the same benefit already required with a certified engine upgrade kit. Identify when the original locomotive or marine engine was rebuilt last, when it is due for rebuild next, and if a certified rebuild kit is available.

- ***Note for alternative fuel repowers including plug-in and electric vehicles****:* Conventional original equipment manufacturer (OEM) vehicles altered to operate on propane, natural gas, methane gas, ethanol, or electricity are classified as aftermarket alternative fuel vehicle (AFV) conversions. In the United States, all vehicle conversions (except pure battery electric vehicles) must meet applicable US EPA or California Air Resources Board (CARB) standards. US EPA issues Certificates of Conformity that cover a "test group"—specific vehicle or engine models for certain model years that are modified to operate on an alternative fuel. An aftermarket conversion may only be performed on a vehicle if a Certificate of Conformity or CARB certification has been issued for that vehicle's test group. The EPA refers to a vehicle converter as a "small volume manufacturer." The vehicle converter holds the Certificate of Conformity. An individual or entity wishing to convert a vehicle to operate on an alternative fuel must go through a company or organization associated with a certificate holder, and the work must be performed by a licensed technician associated with that company. It is the responsibility of the certificate holder to ensure the equipment is properly installed. To be eligible for DERG funding, only certified alternative fueled engines are acceptable, the EPA engine family must be documented, and all applicable regulatory procedures must be followed in the conversion.

What kind of recordkeeping will be required for engine repower and upgrade projects?

DERG grant awardees with engine repower projects will be expected to keep on file the following kinds of documentation, to produce this documentation upon request, and to report annually to Ohio EPA confirming that the repowered engine is operating at least 65% of the time in Ohio CMAQ-eligible counties:
.

- Approved Fleet Data Reporting Spreadsheet for the old diesel engines and data for the new engines.
- Documentation that each vehicle is performing its intended function and that the original engine(s) are fully operational and not already due for replacement or rebuild. This should include documentation of daily miles driven or hours of operation.
- When requesting bids for replacement engines, require documentation that a certified engine configuration will be installed, including all components such as after treatment devices and emission control technologies.

- Invoices of all completed work, showing the specific engine configuration installed, including the model year or tier level.
- A list of all parts included in the repower, especially any exhaust controls.
- Copies of US EPA **certificates of conformity** for existing engine configurations at the time of application, and for new engine configurations when reimbursement is requested**.**
- Evidence that the old engine was rendered permanently disabled or returned to the original engine manufacturer to be remanufactured to the next EPA standard. Documentation should include the engine serial number and vehicle identification number, and photos illustrating how the engine was disabled. If returned to the engine manufacturer, obtain a letter documenting that the engine is remanufactured to a more stringent EPA standard.
- For locomotive or marine engine projects, documentation regarding the original engine, rebuild history, and availability of rebuild kits. Print current lists of certified rebuild kits to document that no kits are currently available. If a kit is available, document how the project is acceptable according to RFP requirements.

5.3 Equipment Retrofit

Exhaust emission controls (often called after-treatment technologies) include pollution control devices installed in the exhaust system. After-treatment technologies are some of the most common retrofit technologies because many can be added to the exhaust system of a vehicle or nonroad machine with little or no impact on engine operation. Common types of exhaust controls include:
• Diesel oxidation catalyst (DOC)
• Diesel particulate filter (DPF)
• Partial flow filter (PFF)
• Selective catalytic reduction (SCR) system

Crankcase emission controls are technologies that filter gasses, particles and oil from the original crankcase vent tube so they are not released into the atmosphere. Crankcase emission controls are often called closed crankcase ventilation (CCV) system when the filtered gases are routed back into the engine intake.

An equipment retrofit involves installation of an emission-reduction technology in an existing piece of equipment. To be eligible for funding, retrofit technologies must be verified by US EPA or the California Air Resources Board. Information on verified technologies may be found at:
http://epa.gov/cleandiesel/verification/verif-list.htm and http://www.arb.ca.gov/diesel/cv.htm .

US EPA provides helpful information about clean diesel technologies and options to reduce emissions at https://www.epa.gov/cleandiesel/learn-about-clean-diesel.

- Invoice cost of retrofit kit or add-on device including delivery charges;
- Invoice cost of additional equipment that must be installed;
- Installation costs if installed by an authorized outside vendor;
- Reengineering costs by an authorized outside vendor, if the vehicle or equipment must be modified for the retrofit, less any scrap or resale value; and
- Other costs directly related to the project, subject to prior approval.

Under the DERG program, grant recipients will be reimbursed up to 80% of the retrofit equipment invoiced purchase cost including delivery charges, and up to 80% of invoiced installation cost if performed by an authorized outside vendor. This may include re-engineering costs by an authorized outside vendor, if the vehicle or equipment must be modified for retrofit, less any scrap or resale value. Applicants with retrofit projects that may include re-engineering costs are encouraged to discuss the specifics with Ohio EPA before applying. A vendor authorized by the Original Equipment Manufacturer (OEM) should be used for retrofit projects. Work performed by a vendor or other party not authorized by the OEM is not eligible for reimbursement under CMAQ or the DERG program.

What should be included in the project scope description when applying for equipment retrofits?

Note that some after-treatment technologies require that exhaust reaches certain temperatures to operate properly, and many have specific maintenance requirements. The project description narrative section of the DERG application should discuss how the applicant will ensure that the original vehicle is in proper condition prior to the installation, how the applicant will work with the installer to ensure that the equipment selected is appropriate and verified for the receiving vehicle, and that the equipment is installed properly. The narrative should also demonstrate how the applicant intends to meet the equipment manufacturer's maintenance requirements and schedule.

- Describe the size, location, and type of project and how it is consistent with FHWA CMAQ eligibility guidance. Include quantitative analysis of mobile source emission reductions resulting from project implementation, using US EPA's Diesel Emission Quantifier (DEQ) tool at https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq. Show the complete costs, emission reductions (both $PM_{2.5}$ and NOx), emission reduction/$ ratios, and all detailed calculations.

- List the percent (%) and duration (years) of equipment operation in the Ohio CMAQ-eligible counties.
    - If a commitment is being made by the applicant to use biodiesel or other alternative fuels in the diesel engine fleets, document the percent of use.
    - Describe how the applicant will ensure that contract bid requests are written correctly so that an appropriate technology is purchased and installed. The

narrative should also demonstrate how the applicant intends to meet the equipment manufacturer's maintenance requirements and schedule.

What kind of recordkeeping will be required for equipment retrofit projects?

DERG grant recipients with engine retrofit projects will be expected to keep on file the following kinds of documentation, to produce this documentation upon request and to report annually to Ohio EPA confirming that the retrofitted engine is operating at least 65% of the time in Ohio CMAQ-eligible counties:

- Approved Project Fleet Description Spreadsheet. At the time of technology installation, grantee should also record the date and mileage of the vehicle.
- Copies of either the EPA Verification Letter or the CARB Executive Order for the specific technologies used in the project.
- Documents from vendors regarding inspection of vehicles and acceptability of the engine and vehicle condition.
- Request for Proposals/Bids for equipment specifying equipment name, model, make, year, for which engine family and model years.
- For DPF projects, retain data logging results and analysis showing that each vehicle complies with exhaust temperatures required for the technology.
- Invoices of all completed work.

5.4 Anti-Idle Equipment

Anti-idle equipment consists of installation of idling reduction technologies in order to reduce pollution. Idle reduction technologies reduce unnecessary idling of the main drive engine of diesel vehicles or equipment and/or are designed to provide services (such as heat, air conditioning, and/or electricity) to vehicles and equipment that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary.

Only anti idle technologies that have been verified by US EPA will be eligible for reimbursement with DERG funds. US EPA's Verified Idle Reduction Technology List is posted at
http://www3.epa.gov/smartway/forpartners/technology.htm#tabs-4
To date, US EPA has verified devices in the following categories of idle reduction technologies:

Electrified Parking Spaces (EPS) / Truck Stop Electrification (TSE)
Shore Connection Systems and Alternative Maritime Power (SCS/AMP)
Shore Connection Systems for Locomotives (SCS)
Auxiliary Power Units and Generator Sets (APU/GS)
Fuel Operated Heaters (FOH) aka Direct Fired Heaters (DFH)
Battery Air Conditioning Systems (BAC)
Thermal Storage Systems (TSS)
Automatic Shut-down/ Start-up Systems

Eligible expenses for reimbursement for anti-idle equipment under the DERG program include:

- Invoice cost of anti-idle kit or add-on device including delivery charges;
- Installation costs if installed by an authorized outside vendor;
- Reengineering costs by an authorized outside vendor, if the vehicle or equipment must be modified for the anti-idle technology; and
- Other costs directly related to the project, subject to prior approval.

Applicants with anti-idle projects that may include re-engineering costs are encouraged to discuss the specifics with Ohio EPA before applying.

What should be included in the project scope description when applying for idle reduction technology?

Project requests should identify the preferred technology and show that it is on US EPA's SmartWay Verified Idle Reduction Technology List for the specific vehicles in your project. For example, APUs are verified for only certain types of on-highway vehicles.

- Describe the size, location, and type of project and how it is consistent with FHWA CMAQ program eligibility guidance. Include quantitative analysis of mobile source emission reductions resulting from the project.
- List the percent (%) and duration (years) of equipment operation in the Ohio CMAQ-eligible counties.
- Show the complete costs, emission reductions, cost effectiveness in $/ton of $PM_{2.5}$ and NOx removed, and all detailed calculations.
- If a commitment is being made by the applicant to use biodiesel or other alternative fuels in the diesel engine fleets, document the commitment.
- Describe how the applicant will ensure that contract bid requests are written correctly so that an appropriate technology is purchased and installed. The narrative should also demonstrate how the applicant intends to meet the equipment manufacturer's maintenance requirements and schedule.
- Truck stop electrification and other projects involving the installation of equipment at stationary locations should include documentation of ownership or control of the property or a signed memorandum of agreement with the property owner governing the installation, maintenance and ownership of the equipment; as well as discussion and photo documentation of site accessibility, use and security. If applicable, the documentation of legal contract compliance must be supplied with this application.

What kind of recordkeeping will be required for idle reduction projects?

- Approved Project Fleet Description Spreadsheet. At the time of technology installation, grantee should also record the date and mileage of the vehicle.

- Request for Proposals/Bids for equipment and invoices that specify the equipment name, model, make, year, for which engine family and model years.
- Invoices of all completed work. Invoices should include the technology type, make and model.

5.5 Related Infrastructure for Fueling

Ohio EPA is primarily interested in supporting projects that result in direct reductions in emissions, and will consider funding infrastructure components allowable under CMAQ such as fueling stations ***only*** in conjunction with other project components that provide immediate emission reductions, such as vehicle or engine replacements and/or repowers, and ***only*** if the fueling infrastructure is to be made available to the public at least 20 hours per week. Proposals requesting funding for infrastructure components must demonstrate ownership or legal control of the property; demonstrate that the requested infrastructure is not already in place and reasonably accessible locally; and include in the narrative a description of all required local, state and federal permits and a realistic schedule for securing these permits. Infrastructure components that Ohio EPA deems to have a time horizon longer than eighteen months will not be considered.

SECTION 6: PROJECT SELECTION CRITERIA

Due to the competitiveness of the program, not all eligible projects will be approved for funding.

DERG program project applications will be evaluated consistent with the FHWA CMAQ guidance eligibility criteria and ranked consistent with the scoring parameters below. Project selection for the DERG Program will be accomplished by a committee comprised of staff from Ohio EPA and ODOT, with final project selections approved by the Ohio EPA Director. Decisions of the Director are final. Selected projects must also receive an eligibility determination from the Federal Highway Administration.

The primary evaluation of eligible applications will be based on the following parameters:

(a) Projected emission reductions of particulate matter ($PM_{2.5}$) and oxides of nitrogen (NOx), reported in tons per year.

(b) Cost effectiveness of the emission reductions: The federal share of the total project cost described in the application will be divided by the estimated total emission reduction of $PM_{2.5}$ and NOx to determine the cost effectiveness of the project, in dollars per ton of reduced emissions.

Applicants are encouraged to provide a stronger local match than the minimum 20% required, in order for the project to score better in terms of cost effectiveness.

Secondary criteria considered by Ohio EPA and ODOT in making grant awards will include promoting project and fleet diversity, and geographic funding diversity. The committee may also consider an applicant's past performance on DERG- or DERA-funded projects, and the amount of DERG funding an applicant has already received. Proposals from previous DERG recipients who did not make satisfactory progress implementing their projects, as defined in Section 2.7 of this RFP, will not receive consideration. Proposals from applicants who have already received three DERG grants may receive lower priority consideration for funding.

SECTION 7: GENERAL REQUIREMENTS

7.1 Cost of Proposal

The cost of preparing and submitting proposals in response to this RFP are solely the responsibility of the applicant. The program shall not reimburse or contribute, in any way, to the cost of the preparation and delivery of the proposal.

7.2 Confidentiality

All information submitted in response to this RFP shall be public information unless a statutory exception exists which would thereby determine that the information cannot be released to the public. Any information submitted with the proposal, which the applicant feels is a trade secret must be conspicuously designated as such and shall be treated accordingly if the information is determined to be a trade secret under the laws of the State of Ohio. It is the applicant's sole duty to identify and mark such passages it deems to be trade secrets. All submitted proposals will become the property of the Ohio EPA and any information submitted in response to this RFP will not be returned to the applicant. Information on the price paid for vehicles or equipment purchased to be reimbursed with public funds from the DERG program is not eligible for trade secret protection.

SECTION 8: APPENDICES

The appendices that follow include supplemental information and forms that must be uploaded as attachments to the online DERG 2016 Application Form, at https://odot.formstack.com/forms/2016_derg.

Appendix A:

DERG Applicant Certification Statement

to be completed, signed, and uploaded as an attachment
to the online DERG Application Form at
https://odot.formstack.com/forms/2016_derg

DERG Applicant Certification Statement

Certification Questions

1. Does the applicant and/or company have any outstanding financial liabilities with state or local governments in Ohio? Does the applicant and/or company owe: a.) Any delinquent taxes to the State of Ohio (the "State"), a state agency or a political subdivision of the State such as a city or county? b.) Any monies to the State or a state agency for the administration or enforcement of the environmental laws of the State? c.) Any other monies to the State, a state agency or a political subdivision of the State that are past due? d.) Is the company the subject of any existing tax lien?

   ☐ Yes ☐ No

2. Has the applicant, related companies, or any officers: a.) been convicted of a felony b.) Been convicted of or enjoined from any violation of state or federal securities law? c.) been a party to any consent order or entry with respect to an alleged state or federal securities law violation? d.) been a defendant in a civil or criminal action?

   ☐ Yes ☐ No

If you have answered yes to any of the above, please provide a detailed explanation including, but not limited to, the location, amounts, and case identification numbers (if applicable) on a separate sheet.

3. Public-Private Partnerships (PPP) must have a legal, written agreement in place between the public agency and the private or non-profit entity before a CMAQ-funded project may be implemented. These agreements should be developed under relevant State contract law and should specify the intended use for CMAQ funding; the roles and responsibilities of the participating entities; and how the disposition of land, facilities, and equipment will be carried out should the original terms of the agreement be altered (e.g., due to insolvency, change in ownership, or other changes in the structure of the Public Private Partnerships). I am a PPP and have attached the required documentation to this application.

   ☐ Yes ☐ No

Certification Statement

*Instructions: Please have the Authorizing Agent read the Statement of Certification below, **check every applicable box**, and sign the certification statement in Table 2-1, row a. If the application is being submitted by a Public-Private Partnership, have the official representative of the Project Sponsor also sign the certification statement as the Co-Applicant in Table 2-2, row at. Upload the signed Certification Statement as an Attachment in the online DERG Application form at https://odot.formstack.com/forms/2016_derg . If the project is selected for funding, this*

statement will become a legally binding exhibit in the grant agreement.

I certify that to the best of my knowledge the information contained in this application and in the supplemental material is correct and complete. I certify that the funding requested satisfies the eligibility requirements for this Program as represented in the Request for Proposals and related materials. I certify that I understand that the funding under this Program is subject to restrictions and other conditions listed in the Program Request for Proposals, including (inter alia):

☐ The applicant will use the funding under this Program for the specific purposes defined in the Program Request for Proposals.

☐ The applicant certifies that the vehicles and equipment to be purchased, repowered, or retrofitted with pollution control or anti-idle equipment under this Program conform to the Program requirements defined in the Program Request for Proposals.

☐ **The applicant will maintain the new vehicle, engine or pollution control equipment for a minimum period of five years from the date of delivery or installation.** As needed, the applicant will avail itself of the warranty in order to ensure that the equipment funded under this Program remains in good working order for at least five years following installation.

☐ The applicant will not use funding under this Program to purchase hardware or services for which the applicant has received, or will receive, payment from another source or under another program.

☐ The applicant will submit a closing activity and fiscal report to Ohio EPA or the Ohio Department of Transportation upon completion of the project, an interim progress report every six months for the duration of the project if required by the terms of the grant contract, and for Public-Private Partnership Projects, an annual report for five years after completion of the project confirming that DERG-funded vehicles or equipment are being operated in CMAQ-eligible Ohio counties in accordance with the requirements defined in the Program Request for Proposals.

☐ The applicant will provide the Ohio EPA and Ohio Department of Transportation access to vehicles and equipment being funded by this Program, facilities where the vehicles and equipment are located, and documentation related to funding received from this Program, based on reasonable notice of a request for such access.

☐ The applicant will use only fuel that is compatible with the equipment purchased or installed with funding from the Program, per the manufacturer’s specifications.

☐ The applicant has received approval from the organization’s governing body, to apply and make use of the funding under this program.

☐ The applicant will follow applicable state and federal guidelines to competitively procure the products and services funded under this project.

☐ At the time of fund disbursal, the applicant will have in place an emission reduction program, such as an anti-idling program, to reduce air pollution emissions.

☐ Where applicable under ORC 3517.13(I) or ORC 3517.13(J), the applicant's Authorizing Agent or spouse has not made, within the two previous years, one or more contributions totaling in excess of $1,000 to the Governor or his campaign committees.

☐ Where applicable, the applicant is in compliance with the Federal Drug-Free Workplace Act of 1988 (41 USC Section 701, et seq.); state ethics laws and conflict of interest laws; and state regulations covering non-discrimination in hiring and affirmative action (ORC 125.111).

☐ I authorize Ohio EPA to make any necessary inquiries to verify the information that I have presented. I acknowledge that the information in this application is not confidential and may be released as required by the Program.

☐ As an authorized agent of the Applicant, I hereby submit this Application to the State of Ohio, Environmental Protection Agency. I understand that any false statement in this record may subject the Applicant and Signer to criminal prosecution. I understand that additional information may be requested. I also understand that this document in no way constitutes a commitment of funds by the State of Ohio for any of its programs.

☐ I hereby represent and certify that the foregoing and attached information, to the best of my knowledge and belief, is true, complete and accurately describes the proposed activity/project for which the financial assistance is being sought. I am aware of Ohio Revised Code Sections 9.66(C) and 2921.13(D)(1) which outline penalties for falsification which could result in the return of all monies received and the forfeiture of all current and future financial assistance benefits as well as a fine of not more than $1,000 and/or a term of imprisonment of not more than one hundred and eighty (180) days. I further agree to inform the Ohio Environmental Protection Agency of any changes in the foregoing information, which may occur prior to the time the Applicant, and the Ohio Environmental Protection Agency or Ohio Department of Transportation execute an Agreement. Further, I hereby authorize the Ohio Environmental Protection Agency to contact the Ohio Department of Transportation to confirm statements contained within this application and to review applicable confidential records.

☐ The undersigned warrants, certifies and represents that certain information in their application may be subject to the Open Public Records Act.

Table 2-1. Applicant Certification Signature

a. Signature of Applicant Authorizing Agent:	
b. Date:	
c. Name *(typed)*:	
d. Title or relationship to applicant organization:	
e. Contact Information *(If different than the person identified in Table 1-1 of the Application)*:	

Table 2-2. Co-Applicant Certification Signature (Required if the applicant is a Public-Private Partnership)

a. Signature of Co-Applicant (Public Sponsor):	
b. Date:	
c. Name *(typed)*:	
d. Title or relationship to applicant organization:	
e. Contact Information:	

Appendix B:

Fleet Data Reporting Spreadsheet

to be completed and uploaded as an attachment to the online DERG Application Form at https://odot.formstack.com/forms/2016_derg

Ohio Diesel Emission Reduction Grant Program

Fleet Data Reporting Spreadsheet

Fleet Name:

Contact Name:

Vehicle Information: (List the existing diesel vehicles/equipment to be addressed in this DERG Project)

Make	Model	Model Year	VIN #	Vehicle Class	Engine Type	Engine Horse Power	Clean Diesel Option	Fuel Type	Estimated gallons consumed annually	Estimated Annual Miles	Estimated # Idling hrs./day	Average # days per year vehicle is in use	Anticipated Remaining Years of Service

Fuel Type Key:
D = Diesel
B = Biodiesel (i.e. B5, B11, B20)

Clean Diesel Option Key:

DOC = Diesel Oxidation Catalyst	DFH = Direct Fired Heater
DPF = Diesel Particulate Filter	APU = Auxiliary Power Unit
CCV = Closed Crankcase Ventilation	VRL = Vehicle replacement
RPR = Engine Repower	OTH = Other (explain in narrative)

Appendix C:

DERG Eligibility Chart by Vehicle Type

DERG Eligibility 2016					
Vehicle Type	Replacement		Repower	Retrofit	Anti-idle[3]
	Full	Partial			
Public On-Road Vehicles					
School Bus	X		X	X	X
Refuse truck	X		X	X	X
Government Fleet (general services)		X	X	X	X
Government Fleet (roadway maintenance)	X[2]		X	X	X
Mass transit vehicle	X		X	X	X
Private On-Road Vehicles					
Short haul truck		X	X	X	X
Shuttle		X	X	X	X
Bus		X	X	X	X
Public Off-Road Vehicles					
Title 23 construction equipment	X		X	X	X
Private Off-Road Vehicles					
Title 23 construction equipment		X	X	X	X
Private Alternative Fuel Vehicle (AFV)					
Short haul truck		X[1]	X	X	X
Shuttle		X[1]	X	X	X
Bus		X[1]	X	X	X
Freight					
Locomotive		X	X	X	X
Maritime[4]		X	X	X	X

1 Only 80% of the cost difference between the AFV and comparable conventional fuel vehicle is eligible. Source: CMAQ Program Guidance, pg 17.

2 In addition to vehicles used for roadway maintenance, other vehicles that provide a dominant transportation function are eligible for replacement; this includes paratransit, freeway courtesy vans tow/trucks, incident management patrol vehicles, and others. Source: MHWA Memo, Federal Cost Principles, April 2011

3 Anti-idle projects technologies include: direct-fired heaters, auxiliary power untis (APUs) or automatic engine idle systems, and truck stop electrification.

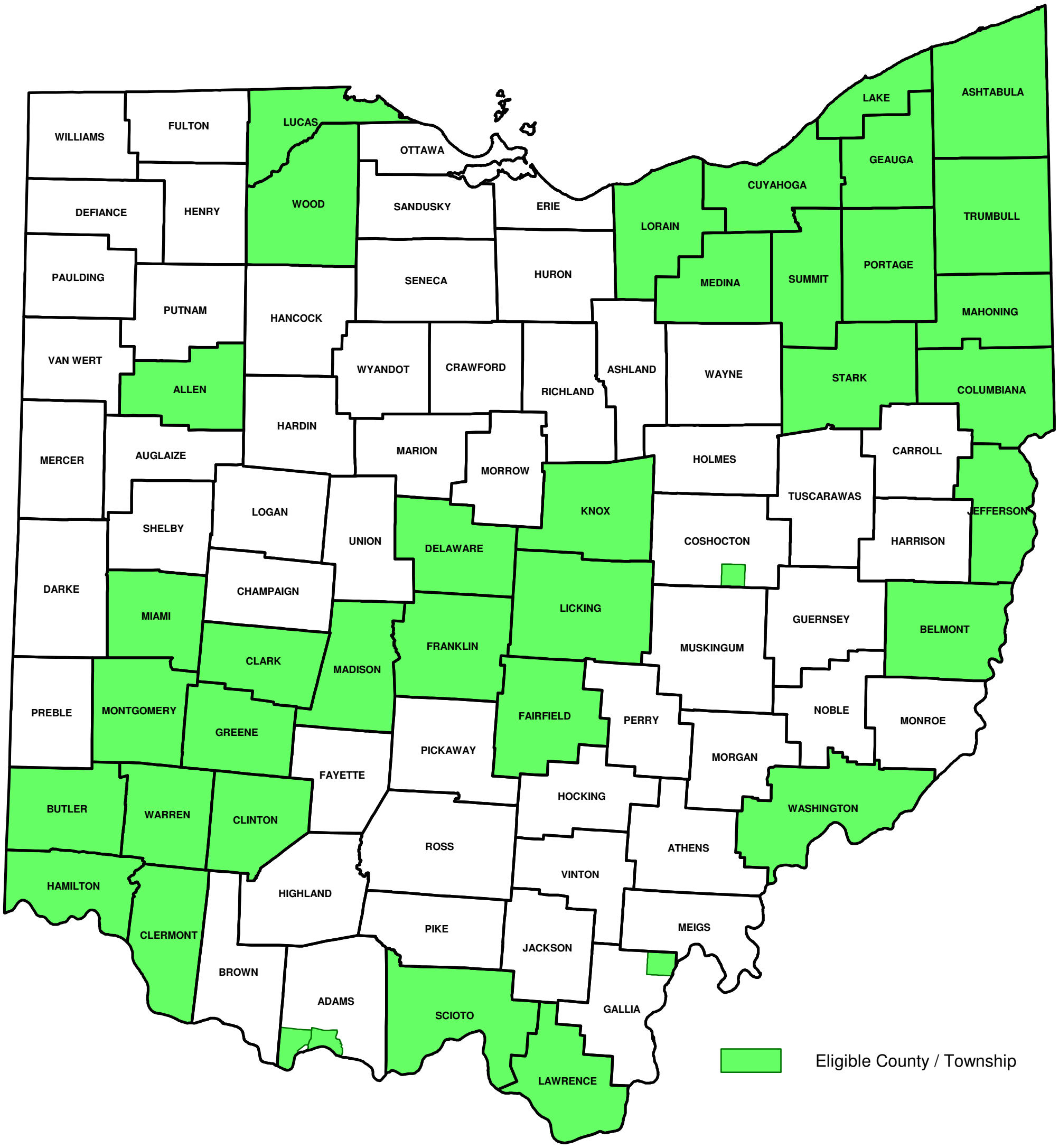
4 Maritime projects must demonstrate the emission reductions will be in proximity to and primarily benefitting, a nonattainment or maintenance area.

Full replacement-FHWA will participate in 80% of the full vehicle replacement costs

Partial replacement-FHWA will participate in 80% of the costs associated with the components of the replacement vehicle that reduce emissions, this typically includes the engine and engine management software.

Appendix D: Map of CMAQ Eligible Counties and Townships in Ohio

CMAQ Program
Eligible Counties & Townships



Appendix E:

Sample Public-Private Partnership Agreement

This is an *example* of the type of agreement between a private sector DERG applicant and its public sector sponsor, that must be signed and uploaded as an attachment to the online DERG Application Form at https://odot.formstack.com/forms/2016_derg

Applicants and their sponsors may agree to alternate wording.

Appendix E:

Sample Public-Private Partnership Agreement

This is an *example* of the type of agreement between a private sector DERG applicant and its public sector sponsor, that must be signed and uploaded as an attachment to the online DERG Application Form at https://odot.formstack.com/forms/2016_derg

Applicants and their sponsors may agree to alternate wording.

Appendix E:
Public-Private Partnership Agreement
Sample Template

This Public – Private Partnership Agreement (the "Agreement"), made effective as of _____, 2012, by and between the [Name of public entity], ("_____"), and _____ ("Company"), with principal offices at _____.

Background

A. The Ohio Environmental Protection Agency ("Ohio EPA") administers a Diesel Emissions Reduction Grant program ("DERG") pursuant to Section 122.861 of the Ohio Revised Code. The DERG Program provides grant funding to replace or upgrade diesel equipment through a variety of technologies which are installed on equipment to reduce the consumption of diesel fuel and reduce air pollution emissions. The DERG Program requires that any private company applying for DERG funding enter into an appropriate Public – Private Partnership Agreement.

B. Company desires to work with _____ as the public sponsor of a proposed DERG project, and _____ is willing to participate in the DERG Program as the Public Sponsor for Company for the proposed project further described in this Agreement (the "DERG Project").

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and the covenants and agreements set forth below, the parties agree as follows:

1. DERG Program Requirements

1.1 Company shall abide by all applicable rules, regulations, and requirements of the DERG Program. Failure of Company to do so shall result in the termination of this Agreement, at which time Company shall immediately repay to [public sponsor] and/or Ohio EPA all grant funds Company received in connection with the DERG Program, together with any interest or penalties that may be assessed as a result of Company's failure to comply with applicable requirements. Notwithstanding the foregoing, if and to the extent repayment of grant funds is affirmatively waived by Ohio EPA, the Ohio Department of Transportation, and the Federal Highway Administration (FHWA), Company shall not be required to repay amounts covered by such a waiver.

1.2 Without limiting the generality of the foregoing, Company shall abide by all federal requirements pertaining to 23 USC Section 149(e) under the Congestion Mitigation and Air

Quality (CMAQ) Improvement Program and all related CMAQ Program rules and regulations. At the request of [public sponsor] or Ohio EPA, Company shall certify in writing to Ohio EPA that Company has complied in all aspects with the CMAQ Program requirements as they relate to the DERG Project; such certification shall be signed by an officer of Company.

2. DERG Project

Company intends to apply for a grant from the DERG Program to support the following DERG Project: [insert project description].

3. Roles and Responsibilities of Public Sponsor

3.1 [Public sponsor] shall coordinate with Ohio EPA and Company as required to facilitate administration of any grants Ohio EPA may award to Company through the DERG Program. This coordination may include, but not be limited to, any of the following tasks and duties as required:

(a) Acting as project sponsor for Company;
(b) Acting as a pass-through agent (at the discretion of Ohio EPA) to provide DERG funds to Company;
(c) Monitoring compliance with DERG Program and CMAQ Program rules, including, but not limited to, procurement in accordance with federal requirements and performance by the Company of ongoing obligations to maintain equipment purchased or improved with DERG funds in active use in the location specified by the DERG grant agreement; and
(d) Assisting Ohio EPA in various other administrative tasks which may be required by the DERG Program.

4. Roles and Responsibilities of Company

4.1 Company shall coordinate with Public Sponsor as necessary and useful to ensure compliance with requirements of the DERG Program and CMAQ Program. Such coordination may include, but is not limited to, any of the following tasks:

(a) Complying with any and all requirements of the DERG Program and CMAQ Program;
(b) Owning and maintaining any equipment purchased with DERG funding;
(c) Providing Ohio EPA and [public sponsor] with such information and certifications about the operations, performance, and location of equipment purchased or improved with DERG funding as may be requested from time to time; and
(d) Providing the matching share of funding as required by the DERG Program.

5. Termination

The terms and conditions of this Agreement shall remain in force and effect until the terms and conditions of any DERG Program grant funding received by Company, including, but not limited to, ongoing compliance obligations under the CMAQ Program rules, expire.

6. Miscellaneous

6.1 Assignment. Neither this Agreement, nor any rights, duties nor obligations described in this Agreement, shall be assigned or subcontracted by Company without the prior written consent of [public sponsor], Ohio EPA, and FHWA, which shall not be unreasonably withheld. In the event that [public sponsor], Ohio EPA, and FHWA approve an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of Company.

6.2 Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

6.3 Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

6.4 Entire Agreement. This Agreement and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

6.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives effective as of the date first above written.

COMPANY:	**[Public Sponsor]:**
BY: _____	BY: _____
PRINT NAME: _____	PRINT NAME: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

Appendix F: Financial Requirements for Private Sector DERG Applicants

This is an *example* of the type of financial documentation that a private sector applicant must provide to Ohio EPA or other government agencies when asking the agency to serve as the Public Sponsor of a project being proposed for DERG funding.

Appendix F
Financial Requirements for Private Sector DERG Applicants

Private sector applicants must be able to demonstrate the ability to provide non-federal funding to cover expenses as they are incurred during projects under the DERG program. Because information submitted to Ohio EPA as part of a DERG application becomes a public record, some companies have expressed concern about confidentiality of these records.

Ohio EPA, the Ohio Air Quality Development Authority, and the Ohio Rail Development Commission will consider serving as the Public Sponsor for Public Private Partnerships with companies that can provide current documentation of any one of the following credit ratings:

Credit Agency	Rating
Standard & Poor's	AAA, AA, A or BBB
Dun & Bradstreet Viability	1, 2, 3, 4, or 5
Moody's	Aaa, Aa, A, or Baa
Fitch	AAA, AA, A, or BBB

If this demonstration cannot be made, a private sector applicant may submit the most recent three years of audited annual financial reports, including balance sheets, income statements, statements of retained earnings, statements of cash flow and all notes related to the financial reports so that the proposed Public Sponsor agency can make a determination of financial viability.

The state agencies above reserve the right to decline to serve as Public Sponsor for companies that cannot provide satisfactory evidence of financial viability.

Private sector applicants may form Public Private Partnerships with local governments and other public agencies. These applications must also demonstrate the financial viability of the private sector partner.

Appendix G1:

Sample Grant Agreement (LPA Agreement) for public sector projects

CFDA 20.205

LPA DIESEL EMISSION REDUCTION GRANT PROGRAM AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the LPA NAME, hereinafter referred to as the "LPA", LPA STREET ADDRESS LPA CITY, STATE ZIP CODE.

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D.) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The INSERT PROJECT DESCRIPTION HERE (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal Congestion Mitigation and Air Quality Program funding.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the LPA administration of the PROJECT.

2. LEGAL REFERENCES

2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:

a. Section 5501.03(D.) of the Ohio Revised Code;
b. ODOT Locally Administered Transportation Projects, Manual of Procedures
c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be $INSERT TOTAL PROJECT COST. ODOT shall provide to the LPA eighty (80) percent of the project costs, up to a maximum

of $INSERT DERG FUNDING AMOUNT in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual cost of the transportation project improvement.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITES

5.1 The proposed project is a stand-alone transportation action that based on ODOT's past experience with similar actions, will not result in significant impacts to the human and/or natural environment and does not require further NEPA approvals.

5.2 In accordance with existing regulations and the 2015 Programmatic Categorical Exclusion (CE) Agreement, a C1 level CE can be prepared for the proposed project via the Online CE System and submitted to ODOT's Office of Environmental Services (OES) for review and approval purposes.

5.3 If the proposed project will have impacts on environmental resources, the level of CE will be elevated to the next appropriate higher level (including completion of necessary environmental studies). If impacts are anticipated or it is unclear whether or not impacts will occur, consultation with the District Environmental Coordinator (DEC) will take place to assure assessment of impacts is conducted in accordance with NEPA and existing regulations. The appropriate level CE and applicable environmental studies will be prepared using the Online CE System and submitted to ODOT-OES for review and approval purposes.

6. RIGHT OF WAY RESPONSIBILITES

The LPA agrees that no work for this project will be performed within roadway right of way. The LPA further agrees that any necessary rights for work outside of roadway right of way have been previously secured by the LPA.

7. ADVERTISING, SALE AND AWARD

7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Federal Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.

7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT Program Manager. All sole source or proprietary bid items should be brought to the attention of the ODOT Program Manager as soon as possible so as not to cause a delay in the plan package submission process.

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period. ODOT shall approve such addendum for project eligibility. The addendum shall be distributed to all potential bidders prior to opening bids and selling the contracts.

8. CERTIFICATION AND RECAPTURE OF FUNDS

8.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

8.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT.

9. NONDISCRIMINATION

9.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or

applicant for employment because of race, religion, color, sex, national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.

9.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

GOOD FAITH EFFORTS (GFEs)

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to

the following to the LPA:

(1) All written quotes received from certified DBE firms;
(2) All written (including email) communications between the Contractor and DBE firms;
(3) All written solicitations to DBE firms, even if unsuccessful;
(4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
(5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop 3270
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contactor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, Mail Stop 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

(a) Letter of reprimand;

(b) Contract termination; and/or

(c) Other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

(a) The magnitude and the type of offense;

(b) The degree of the Consultant's culpability;

(c) Any steps taken to rectify the situation;

(d) The Contractor's record of performance on other projects including, but not limited to:

(1) Annual DBE participation over DBE goals;

(2) Annual DBE participation on projects without goals;

(3) Number of complaints ODOT has received from DBEs regarding the Contractor; and,

(4) The number of times the Contractor has been previously sanctioned by ODOT; and,

(e) Whether the Contractor falsified, misrepresented, or withheld information.

9.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest") agrees as follows:

(1) Compliance with Regulations: The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(2) Nondiscrimination: The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section

21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4) Information and Reports: The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the LPA under the contract until the LPA complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

10. <u>DATA, PATENTS AND COPYRIGHTS - PUBLIC USE</u>

10.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its vendors or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.

10.2 The LPA shall not allow its vendors or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A vendor or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11. TERMINATION; DEFAULT AND BREACH OF CONTRACT

11.1 This Agreement may be terminated at any time unilaterally by ODOT for any violation of this Agreement. If the Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

11.2 ODOT and the LPA each recognize that the other is self-insured by the Ohio Department of Administrative Services. Nothing in this agreement shall be construed as an indemnification by one party of the other for liabilities of the other party or third parties for property loss, damage, personal injury, or any other actionable negligence arising out of and/or during the use described in this agreement. Any liability for claims involving property loss, damage, personal injury, or any other actionable negligence by a party, its employees, agents, invitees, contractors, or by third persons, arising out of and during the activities associated with this agreement shall be determined in accordance with Chapter 2743 of the Ohio Revised Code.

11.3 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal

funds disbursed to it under this Agreement.

11.4 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any vendors or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

11.5 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

12. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

12.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

12.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

13. NOTICE

13.1 Notice under this Agreement shall be directed as follows:

If to the LPA:	If to ODOT:
LPA Contact, Title	ODOT Contact, Title
LPA NAME	Ohio Department of Transportation
LPA STREET ADDRESS	1980 W. Broad St.
LPA CITY, STATE ZIP CODE	Columbus, OH 43223

14. GENERAL PROVISIONS

14.1 *Contract Administration:* The LPA shall certify both the quantity and quality of material used and the quality of the work performed, when applicable, incurred by the LPA for the eligible work on the PROJECT. The LPA shall certify that the PROJECT is in accordance with the scope and material specifications or approved amendments thereto.

14.1. A. The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

14.1. B. ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's Vendor ("Vendor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Vendor paid directly, Attachment 1 to this Agreement shall be completed and submitted with the project bid tabulations / RFPs and the Vendor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Vendor or reimburse the LPA within thirty (30) days of receipt of the approved Vendor's invoice from the LPA.

14.2 *Project Maintenance:* After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under LPA ownership and operational authority for the standard industry useful life of the improvement, or X years/Y miles/Z hours of service, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies to be corrected by the LPA within a reasonable amount of time and at their cost.

14.3 *Original Equipment Disposition:* The original diesel powered vehicles or equipment associated with the PROJECT must be permanently destroyed or remanufactured to newer (higher tier) pollutant emission standards. This must be verified prior to payment or reimbursement.

14.4 *Payment to LPA:* Payment or reimbursement to the LPA shall be submitted to:

LPA NAME

LPA STREET ADDRESS
LPA CITY, STATE ZIP CODE

14.5 *Audit Requirements*: The LPA shall comply with the audit requirements of 2 CFR 200 Subpart F - Audit Requirements.

14.6 *Record Retention*: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

> As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

14.7 *Ohio Ethics Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

14.8 *State Property Drug-Free Workplace Compliance*: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on state property.

14.9 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

14.10 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

14.11 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. This Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

14.12 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

14.13 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA:
LPA NAME

By: _____
NAME, TITLE

Date:_____

STATE OF OHIO, DEPARTMENT OF TRANSPORTATION

By:_____
Jerry Wray, Director

Date:_____

Attachment 1

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the Vendor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the vendor. In addition, the invoice must state the Vendor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We the LPA NAME request that all payments for the Federal/State share of the equipment costs of this agreement performed by COMPANY NAME be paid directly to COMPANY NAME.

VENDOR Name: VENDOR NAME
Oaks Vendor ID: 0000000000
Mailing Address: MAILING ADDRESS

LPA signature: _____

LPA Name: LPA NAME
Oaks Vendor ID: 0000000000
Mailing Address: LPA STREET ADDRESS
LPA CITY, STATE ZIP CODE

_____
Approved, ODOT signature

Appendix G2:

Sample Grant Agreement (LPA Agreement) for public-private partnership (private sector) projects

CFDA 20.205

LPA DIESEL EMISSION REDUCTION GRANT PROGRAM AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the LPA Name, hereinafter referred to as the "LPA", LPA Address LPA CITY, STATE ZIP. The LPA is serving as the public sponsor through a Public Private Partnership, for Company Name, Street Address COMPANY CITY, STATE ZIP, as the private partner, hereinafter referred to as the "Company". A separate Public-Private-Partnership Agreement (Attachment 2 to this agreement) between the LPA and Company Name documents the project management and cost reimbursement the parties will follow in completing this federal aid project.

Company, pursuant to the Public-Private Partnership agreement and as signatory to this agreement, will jointly work with the LPA to implement the project consistent with the agreement provisions. Company affirms that all agreement LPA provisions are also assigned to Company.

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D.) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The PROJECT DESCRIPTION (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal Congestion Mitigation and Air Quality Program funding.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the LPA administration of the PROJECT.

2. LEGAL REFERENCES

2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:

a. Section 5501.03(D.) of the Ohio Revised Code;
b. ODOT Locally Administered Transportation Projects, Manual of Procedures
c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive

orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be $TOTAL PROJECT COST. ODOT shall provide to the LPA eighty (80) percent of the project costs, up to a maximum of $DERG funded amount in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual cost of the transportation project improvement.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITES

5.1 The proposed project is a stand-alone transportation action that based on ODOT's past experience with similar actions, will not result in significant impacts to the human and/or natural environment and does not require further NEPA approvals.

5.2 In accordance with existing regulations and the 2015 Programmatic Categorical Exclusion (CE) Agreement, a C1 level CE can be prepared for the proposed project via the Online CE System and submitted to ODOT's Office of Environmental Services (OES) for review and approval purposes.

5.3 If the proposed project will have impacts on environmental resources, the level of CE will be elevated to the next appropriate higher level (including completion of necessary environmental studies). If impacts are anticipated or it is unclear whether or not impacts will occur, consultation with the District Environmental Coordinator (DEC) will take place

to assure assessment of impacts is conducted in accordance with NEPA and existing regulations. The appropriate level CE and applicable environmental studies will be prepared using the Online CE System and submitted to ODOT-OES for review and approval purposes.

6. RIGHT OF WAY RESPONSIBILITES

The LPA agrees that no work for this project will be performed within roadway right of way. The LPA further agrees that any necessary rights for work outside of roadway right of way have been previously secured by the LPA.

7. ADVERTISING, SALE AND AWARD

7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Federal Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.

7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT Program Manager. All sole source or proprietary bid items should be brought to the attention of the ODOT Program Manager as soon as possible so as not to cause a delay in the plan package submission process.

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period. ODOT shall approve such addendum for project eligibility. The addendum shall be distributed to all potential bidders prior to opening bids and selling the contracts.

8. CERTIFICATION AND RECAPTURE OF FUNDS

8.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

8.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT

an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT.

9. NONDISCRIMINATION

9.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.

9.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

GOOD FAITH EFFORTS (GFEs)

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:

(1) All written quotes received from certified DBE firms;
2) All written (including email) communications between the Contractor and DBE firms;
(3) All written solicitations to DBE firms, even if unsuccessful;
(4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
(5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop 3270
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contactor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, Mail Stop 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

(a) Letter of reprimand;

(b) Contract termination; and/or

(c) Other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

(a) The magnitude and the type of offense;

(b) The degree of the Consultant's culpability;

(c) Any steps taken to rectify the situation;

(d) The Contractor's record of performance on other projects including, but not limited to:

(1) Annual DBE participation over DBE goals;

(2) Annual DBE participation on projects without goals;

(3) Number of complaints ODOT has received from DBEs regarding the Contractor; and,

(4) The number of times the Contractor has been previously sanctioned by ODOT; and,

(e) Whether the Contractor falsified, misrepresented, or withheld information.

9.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest") agrees as follows:

(1) Compliance with Regulations: The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State,

and/or local laws, rules and/or regulations (hereinafter referred to as “ADA/504”).

(2) Nondiscrimination: The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) Information and Reports: The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the LPA’s noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the LPA under the contract until the LPA complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

10. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

10.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its vendors or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.

10.2 The LPA shall not allow its vendors or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A vendor or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11. TERMINATION; DEFAULT AND BREACH OF CONTRACT

11.1 This Agreement may be terminated at any time unilaterally by ODOT for any violation of this Agreement. If the Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

11.2 ODOT and the LPA each recognize that the other is self-insured by the Ohio Department of Administrative Services. Nothing in this agreement shall be construed as an indemnification by one party of the other for liabilities of the other party or third parties for property loss, damage, personal injury, or any other actionable negligence arising out of and/or during the use described in this agreement. Any liability for claims involving property loss, damage, personal injury, or any other actionable negligence by a party, its employees, agents, invitees, contractors, or by third persons, arising out of and during the activities associated with this agreement shall be determined in accordance with Chapter 2743 of the Ohio Revised Code.

11.3 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any

further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

11.4 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any vendors or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

11.5 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

12. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

12.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

12.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

13. NOTICE

13.1 Notice under this Agreement shall be directed as follows:

If to the LPA:	If to ODOT:
LPA Contact, Title	ODOT Contact, Title
LPA Name	Ohio Department of Transportation
LPA Address	1980 W. Broad St.

LPA CITY, STATE ZIP Columbus, OH 43223

14. GENERAL PROVISIONS

14.1 *Contract Administration:* The LPA shall certify both the quantity and quality of material used and the quality of the work performed, when applicable, incurred by the LPA for the eligible work on the PROJECT. The LPA shall certify that the PROJECT is in accordance with the scope and material specifications or approved amendments thereto.

14.1. A. The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

14.1. B. ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's Vendor ("Vendor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Vendor paid directly, Attachment 1 to this Agreement shall be completed and submitted with the project bid tabulations / RFPs and the Vendor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Vendor or reimburse the LPA within thirty (30) days of receipt of the approved Vendor's invoice from the LPA.

14.2 *Project Maintenance:* After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under LPA ownership and operational authority for the standard industry useful life of the improvement, or X years/Y miles/Z hours of service, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies to be corrected by the LPA within a reasonable amount of time and at their cost.

14.3 *Original Equipment Disposition:* The original diesel powered vehicles or equipment associated with the PROJECT must be permanently destroyed or remanufactured to newer (higher tier) pollutant emission standards. This must be verified prior to payment or reimbursement.

14.4 *Payment to LPA:* Payment or reimbursement to the LPA shall be submitted to:

LPA Name
LPA Address
LPA CITY, STATE ZIP

14.5 *Audit Requirements*: The LPA shall comply with the audit requirements of 2 CFR 200 Subpart F - Audit Requirements.

14.6 *Record Retention*: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

> As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

14.7 *Ohio Ethics Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

14.8 *State Property Drug-Free Workplace Compliance*: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on state property.

14.9 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

14.10 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

14.11 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. This Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

14.12 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

14.13 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA:
LPA Name

By: _____
NAME, TITLE

Date: _____

STATE OF OHIO,
DEPARTMENT OF
TRANSPORTATION

By: _____
Jerry Wray, Director

Date: _____

COMPANY:
Company Name

By: _____
NAME, TITLE

Date: _____

Attachment 1

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the Vendor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the vendor. In addition, the invoice must state the Vendor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We the LPA Name request that all payments for the Federal/State share of the equipment costs of this agreement performed by Company Name be paid directly to Company Name.

VENDOR Name: Company Name
Oaks Vendor ID: 0000000000
Mailing Address: Street Address
COMPANY CITY, STATE ZIP

LPA signature: _____

LPA Name: LPA Name
Oaks Vendor ID: 0000000000
Mailing Address: LPA Address
LPA CITY, STATE ZIP

_____
Approved, ODOT signature

Appendix H:

Diesel Vehicle/Equipment Useful Life Guidelines

Appendix H: Diesel Vehicle/Equipment Useful Life Guidelines

Vehicle/Equipment Type	Attributes		Minimum Useful Life (Whichever comes first)		
	Length	GVW	Years	Miles	Hours
Transit[1]					
Heavy Duty Large Bus	35' – 40'	33,000 - 40,000	12	500,000	
Heavy Duty Small Bus	30'	26,000 - 33,000	10	350,000	
Medium Duty Bus	25' – 35'	16,000 - 26,000	7	200,000	
Light Duty Transit Vehicle	16' – 28'	6,000 – 14,000	4	100,000	
Service Vehicles[2]					
Light Heavy Duty Diesel		8,500 -19,500	8	110,000	
Medium Heavy Duty Diesel		19,500 – 33,000	8	185,000	
Heavy Heavy Duty Diesel		>33,000	10	435,000	23,000
Locomotives[3]					
Line Haul			10	750,000	HP * 7.5
Switcher			10	750,000	HP * 7.5

Sources:

1. US Department of Transportation, Federal Transit Administration, Useful Life of Transit Buses and Vans, Report No. FTA VA-26-7229-07.1, April 2007 http://www.fta.dot.gov/documents/Useful_Life_of_Buses_Final_Report_4-26-07_rv1.pdf

2. The National Academies Press, Review of 21st Century Truck Partnership (2008) http://www.nap.edu/openbook.php?record_id=12258&page=110

3. DieselNet: Emission Standards >> United States Locomotives http://www.dieselnet.com/standards/us/loco.php

Appendix I:

Buy America Guidance and Certification Form

The Certification Form is to be completed, signed, and uploaded as an attachment to the online DERG Application Form at https://odot.formstack.com/forms/2016_derg

OEPA-DERG Program
Buy America Certification Guidance

FHWA's Buy America regulations, embodied in 23 CFR 635.410, "require a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available."

To determine the necessary certification under Buy America, please follow the below steps:

1. Does the product contain any steel or iron product manufactured outside the United States? To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. If the product does not contain any foreign steel or iron then you may fill out the attached Buy America Certification form and submit it to ODOT. The Buy America process does not apply to your project. If there is ANY foreign steel or iron in your product then you must move to step 2.

2. The Buy America regulation does "not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project." If the minimal use clause applies to your project then please fill out the Buy America Certification form and submit it to ODOT. The Buy America process does not apply to your project. If the minimal use clause does not apply to your project then you must move to step 3.

3. Products that have foreign steel and are not manufactured products must go through the Buy America Waiver Process. ODOT will initiate the process of obtaining a waiver from FHWA. ODOT will request information from the project sponsor to use as part of the submission to FHWA. The waiver process can take time and the project may not move forward until a waiver is completed.

Buy America Certification

PID: _____ Project Name: _____
Project Description: _____

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Buy America requirements in 23 CFR 635.410, using one of the following provisions:

_____ **The product contains no steel or iron products manufactured outside the United States.** To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. The Buy America process does not apply to this project. If there is ANY foreign steel or iron in your product you may not check this box.

_____ **The product has minimal use of steel or iron products manufactured outside the United States.** The Buy America regulation does "not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project. If this minimal use clause applies to your project, then please provide documentation indicating that this requirement is being met. The Buy America process does not apply to your project.

_____ **The product has foreign steel or iron; a Buy America waiver is required.** ODOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: _____
Signature of Authorized Official: _____
Name of Authorized Official: _____
Title: _____
Date: _____