

**FEDERALLY FUNDED AGREEMENT FORM:
STATE AGENCY TO MUNICIPAL GRANTEE**

Cleaner Air Faster Initiative

Nonroad Clean Diesel Demonstration Project

THIS Agreement is entered into by and between the State of Wisconsin Department of Natural Resources (Department) and Port of Milwaukee (Grantee) for the purpose of purchasing diesel oxidation catalyst mufflers to retrofit off-road vehicles. The funding for this project is provided by a US Environmental Protection Agency non-road clean diesel demonstration cooperative agreement. The total amount reimbursed to the Grantee shall be \$12,925.

FOR AND IN CONSIDERATION of the terms and conditions contained in this grant agreement, the above-named parties agree:

1. PERIOD OF AGREEMENT: This grant agreement shall commence upon its signing by both parties and continue until November 30, 2007, during which period all performance as described in this grant agreement shall be fully completed to the satisfaction of the Department.
2. CANCELLATION: The Department reserves the right to cancel this agreement in whole or in part, without penalty, due to non-appropriation of funds or for failure of the Grantee to comply with terms, conditions, and specifications of this grant agreement as specified in subsection 7 ("Termination").
3. ENTIRE GRANT AGREEMENT; AMENDMENTS: This grant agreement, together with the specifications in the bid request (if any) and referenced parts and amendments, shall constitute the entire agreement and previous communications or agreements pertaining to this grant agreement are hereby superseded. Any agreement

revisions, including cost adjustments and time extensions, may be made only by a written amendment to this grant agreement, signed by both parties prior to the ending date of this grant agreement.

4. ASSIGNMENT SUBCONTRACTS: Neither this grant agreement nor any right or duty in whole or in part by the Grantee under this grant agreement may be assigned, delegated or subcontracted without the written consent of the Department. If upon the written consent of the Department this grant agreement or any right or duty in whole or in part is assigned, the Assignee(s) shall expressly agree to assume and perform all relevant obligations expressed under the terms of this grant agreement and be bound by the terms and conditions of this agreement. Assignment in whole or in part of this grant agreement does not absolve the Grantee of any liability or obligation expressed and agreed to hereunder.

5. DESCRIPTION OF WORK: The Grantee agrees to perform the following services to the satisfaction of the Department:

A. The following deliverables as agreed to and described in this agreement will be provided by the Grantee:

1. Grantee shall obtain bids for the installation of diesel oxidation catalyst retrofit equipment for certain graders, track loaders, rollers or other equipment as identified by Grantee.
2. Grantee shall install or cause to be installed diesel oxidation catalyst retrofit equipment on certain graders, track loaders, rollers or other equipment as identified by Grantee. The total expended for such equipment shall not exceed \$12,925.
3. Quarterly reports are due starting June 15, 2006 and terminating on November 15, 2007. The quarterly reports will describe relevant activities and experiences with the grant process and retrofit devices. Quarterly reports should describe progress on grant responsibilities such as coordination with the Department, bidding and installation of retrofit devices, and reports on equipment performance, fuel consumption and grantee satisfaction with the devices following installation.
4. All diesel oxidation catalyst retrofit equipment purchases must meet verified performance standards as established by the EPA/California Air Resources Board. These retrofit devices will be placed on equipment intended to remain in active use for the next five years.

5. Contribute to the information dissemination campaign by participating in the initial public announcement of the retrofit equipment, allow use of photographs and reportage to the press, and present Grantee experience to peer municipal and business organizations, such as at statewide or regional annual business meetings and conferences as requested.
6. Provide information on the installation costs of the retrofit equipment.
7. On-road diesel fuel will be used in retrofitted equipment over the life of this agreement.
8. Drafts of competitive bids will be made available to the Department for review and consultation prior to release.

6. AGENCY CONTACTS: All communications regarding this grant agreement will be made through the designated agency contacts. The designated contacts are:

Grantee - Eric Reinelt, Port of Milwaukee

Department - Ed Jepsen Air Management

7. TERMINATION:

- A. This grant agreement may be terminated in whole, or in part, in writing by the Department in the event of substantial failure of the Grantee to fulfill its obligation under this grant agreement, provided, that the Department shall give the Grantee not less than thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity to cure any defects prior to termination.
- B. If termination is effected by the Department, an equitable adjustment in the price provided for in this grant agreement shall be made. Any payment due to the Grantee at the time of termination may be adjusted to the extent of any additional costs occasioned to the Department by reason of the Grantee's default. The Grantee shall be notified in writing of any additional costs before they are incurred. The Grantee shall not be responsible for any costs which exceed the amount of any payment that is due the Grantee. The equitable adjustment for any termination shall provide for payment to the Grantee for

services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Grantee relating to commitments which had become firm prior to the termination.

- C. Upon receipt of a termination action pursuant to paragraph A above and a failure of the Grantee to cure any defects, the Grantee shall (1) promptly discontinue all services affected (unless the notice directs otherwise); (2) terminate all subcontracts to the extent that they relate to the performance of work terminated by the Department, and (3) deliver or otherwise make available to the Department, all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Grantee in performing this grant agreement, whether completed or in process.
- D. The rights and remedies of the Department and the Grantee provided in this clause are in addition to any other rights and remedies provided by law or under this grant agreement.

8. PAYMENT: The Department agrees to reimburse the Grantee up to a total of \$12,925 for the following budgeted expenditure categories.

<u>Category</u>	<u>Purchase of diesel retrofit devices for nonroad equipment</u>
	<u>TOTAL</u> \$12,925

Billings by the Grantee shall be made on a quarterly itemized basis for the purchase of retrofit diesel oxidation catalyst mufflers for the specified vehicles. Invoices should be sent to:

Sheri Stach
Department of Natural Resources
Bureau of Air Management AM/7
P.O. Box 7921
Madison, WI 53707

Final invoices must be submitted within 60 days after the end of the grant agreement.

9. RECORDS; ACCESS: The Grantee shall, for a period of three (3) years after completion and acceptance by the Department, maintain books, records, documents, and other evidence directly pertinent to performance on work under this grant agreement in accordance with generally accepted accounting principles and practices. The Grantee shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this grant agreement and a copy of the cost summary submitted to the Department. The Department of Natural Resources, their agents and their duly-authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee shall provide proper facilities for such access and inspection. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such dispute, performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim or exception.
10. INDEPENDENT CONTRACTOR: The Grantee is an Independent Contractor for all purposes and is not an employee or agent of the Department.
11. INDEMNIFICATION: Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.
12. INSURANCE: The Grantee performing services for the State of Wisconsin shall:
- a) Maintain worker's compensation insurance for all employees engaged in the work.
 - b) Maintain commercial liability and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000)

liability for bodily injury and property damage including products liability and completed operations.

Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

- c) Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance certificate is required to be presented prior to the issuance of the purchase order or before commencement of the agreement/contract as requested.
- d. The state reserves the right to require higher or lower limits where warranted.

13. NONDISCRIMINATION: In connection with the performance of work under this grant agreement, the Grantee agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Grantee further agrees to take affirmative action to ensure equal employment opportunities. The Grantee agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Grantee being declared an "ineligible" Grantee, termination of the grant agreement or withholding of payment.

14. AFFIRMATIVE ACTION: If this grant agreement is for an amount of twenty-five thousand dollars (\$25,000) or more the Grantee agrees to submit a written affirmative action plan to the Department within 15 business days after the grant agreement's commences if an acceptable plan is not already on file with the State of Wisconsin. (Grantees with an annual work force of fewer than twenty-five employees are exempted from this requirement.)

Failure to comply with the conditions of this clause may result in the Grantee being declared an "ineligible" Grantee, termination of the grant agreement or withholding of payment.

15. FUNDING SOURCE: This grant agreement is funded wholly by a grant from the US Environmental Protection Agency, CFDA #66.034 National Clean Diesel Campaign Demonstration. This procurement will be subject to regulations contained in 40 CFR Parts 31 and 40 and OMB Circular 133. Neither the United States nor the US Environmental Protection Agency is a party to this agreement.

16. APPLICABLE LAW: This grant agreement shall be governed by the laws of the State of Wisconsin. The Grantee shall at all times comply with all federal, state and local laws, ordinances, and regulations in effect during the period of this grant agreement.

17. ANTITRUST ASSIGNMENT: The Grantee and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Grantee hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this grant agreement.

18. TAX DELINQUENCY: Grantees who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

The undersigned, as representatives of their respective agencies, hereto agree to this grant agreement.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

Date _____

By _____

Scott Hassett, Secretary

Port of Milwaukee

Date _____

By _____

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Rev. 3/00

National Clean Diesel Campaign Report Formats

Quarterly reports are considered Progress Status reports and will provide the progress of the introduction of the technology including a listing of the vehicles or engines which have been retrofitted (make, model, year, EPA engine family, type of equipment or service), the number of miles or hours those units have been in service since the retrofits occurred, number of miles or hours those units have been in service during the quarter, date that retrofit technology was introduced for each specific unit, fuel consumption, maintenance problems, maintenance performed, reception by driver(s), and any other problems or concerns.

National Clean Diesel Campaign Quarterly Report Format

From [Recipient]

Date

Contact: [Name]

Email

Phone

1. SUMMARY

Project Description

A brief description of the project.

Background

Any additional information.

Progress from [Month X to Month Y, Year]

What's happened with the project during the quarter?

2. TECHNOLOGY/FUELS

Status of Acquiring/Installing Technology

Numerical Report: Installations/gallons purchased/vehicles replaced -- please give a numerical update (for example, "37 particulate filters installed of 50 planned installations").

3. CHALLENGES/SUCCESSSES

4. BUDGET

Discussion of billing/invoicing/draw-downs from the grant total amount.

5. ANY OTHER INFORMATION

Use this section to discuss any other aspects of the grant not covered above.

Final Report:

Since these funds are being used for demonstration projects, in addition to the quarterly status reports that track the progress of the retrofit project, EPA is requiring a final project case study report for each project that will summarize the successes and lessons learned for the entire project. This information will then be made available (possibly through our web site) to communicate the successes and failures of this project to others who may be considering similar projects. Below is an outline of what is required in such a report. This is a list of the minimum information for the Project Case Study Report and should be supplemented with additional information which is relevant to the project that would be useful for others.

National Clean Diesel Campaign Final Report Format

From [Recipient]

Date

Contact: [Name]

Email

Phone

1. Description of Project
2. Project Partners & Goals
3. Launch Events/Press/Publicity
4. Technologies
 - General and specific including parts and suppliers
5. Vehicles/Engines Involved
 - Specific descriptions of all vehicles and engines
6. Miles Driven/Engine Usage/Fuel Consumption
7. Emissions Reductions, Cost Analyses, and Fuel Costs
8. Lessons Learned
9. Contacts For Further Information