

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS

County of Placer

TO: BOARD OF SUPERVISORS

DATE: June 8, 2010

FROM: KEN GREHM / KEVIN TABER

SUBJECT: 2010 CLEAN AIR GRANT

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution authorizing the Director of Public Works to execute a Clean Air Grant Agreement with the Placer County Air Pollution Control District to receive \$94,968 in Clean Air Grant funding for five (5) Diesel particulate Filters/NOX reduction devices to be installed on five Road Division diesel trucks.

BACKGROUND / SUMMARY

DPW received approval of a Clean Air Grant from the Placer County Air Pollution District for the purchase and installation of five (5) Diesel particulate Filters/ NOX reduction devices. These devices will be installed on five existing Road Division diesel trucks. Total cost of the project will be \$163,735 with co-funding from Road Division budget.

The diesel particulate traps are necessary for the Road Divisions fleet to remain in compliance with California Air Resources Board rules for the On-Road Diesel Truck Program.

ENVIRONMENTAL

The project is statutorily exempt from CEQA as it is an approval of a grant award.

FISCAL IMPACT

The diesel particulate traps will be included in the FY 2010/11 final budget.

Attachment: Resolution
Copy of Agreement

**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: AUTHORIZE THE DIRECTOR
OF PUBLIC WORKS TO EXECUTE A 2010
CLEAN AIR GRANT AGREEMENT WITH THE
PLACER COUNTY AIR POLLUTION CONTROL
DISTRICT IN THE AMOUNT OF \$94,968 .

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held _____

by the following vote:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chair, Board of Supervisors

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer,
State of California, that this Board authorizes the Director of Public Works to
execute a 2010 Clean Air Grant with the Placer County Air Pollution Control
District in the amount of \$94,968 for Retrofit of Road Division diesel trucks with
diesel emissions control devices.

Agreement Number CN025340

DESCRIPTION: RETROFIT FIVE PIECES OF OFF-ROAD EQUIPMENT

This AGREEMENT is between the Placer County Air Pollution Control District (hereinafter "PCAPCD") and Placer County Department of Public Works (hereinafter "CONTRACTOR").

RECITALS

WHEREAS, under AB 2766 and AB 923 (Health and Safety Code Section 44220 and 44225 *et. seq.*), the PCAPCD has levied a \$6.00 fee on motor vehicles registered within the PCAPCD; and

WHEREAS, the PCAPCD has received Air Quality Mitigation Funds to off-set the impact of new development in Placer County by reducing emissions, primarily ozone precursor emissions, from sources that are not required by law to reduce emissions; and

WHEREAS, pursuant to AB 2766, AB 923 and the APCD's Offsite Mitigation Program, the monies collected under these levies must be used to reduce air pollution from motor vehicles and other sources, and for related air quality planning, education, air monitoring, and technical studies necessary for the implementation of the California Clean Air Act; and

WHEREAS, CONTRACTOR has requested that the PCAPCD provide Clean Air Grant monies for the PROJECT(s) described in Exhibit A, subject to the terms and conditions set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has represented to the PCAPCD that CONTRACTOR has the necessary expertise, experience and ability to competently complete the described PROJECT(s); and

WHEREAS, PCAPCD Staff has carefully reviewed the described PROJECT(s) and have found them to be within the requirements of AB 2766, AB 923 and the Offsite Mitigation Program in that the PROJECT(s) are reasonably expected to reduce air pollution and help in the further implementation of the California Clean Air Act and,

WHEREAS, the PCAPCD Board of Directors has approved Resolution #10-02, authorizing the Air Pollution Control Officer to sign and amend, as needed, grant agreements and contracts for approved projects listed in the table "PCAPCD Clean Air Projects 2010".

NOW THEREFORE, In consideration of the promises and covenants set forth herein, the parties agree as follows:

1. Contract Period

- a) The term of this contract shall begin on the date signed by both parties and conclude on or before March 31, 2015 unless terminated or amended.
- b) This contract may be canceled by either party upon serving thirty (30) days notice in writing to the other party.

2. Services

- a) CONTRACTOR agrees, during the term of this AGREEMENT, to perform the contracting services set forth below and in Exhibit "A" – Scope of Work (hereinafter "PROJECT").
- b) CONTRACTOR shall be obligated to devote as much time, attention, skill, and effort as may be reasonably required to perform the PROJECT services, in a professional and timely manner, consistent with the elements of the project.

3. Payment

- a) PCAPCD agrees to pay for the services covered by this AGREEMENT pursuant to the payment schedule set forth below and in Exhibit "B"- Payment Schedule.
- b) The amount paid to the CONTRACTOR shall constitute full payment for all services set forth herein. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond the maximum sum payable without prior written agreement by the PCAPCD.
- c) CONTRACTOR shall bill PCAPCD upon completion of the project and after all of the conditions for funding outlined in this AGREEMENT are met. If the project funded under this contract is performed in phases or over a period of time, then requests can be made by the CONTRACTOR for partial payment. Partial requests for payments must receive prior authorization by the PCAPCD. CONTRACTOR agrees to provide a detailed invoice to PCAPCD referencing the contract number with copies of purchase orders, signed contracts, or receipts. PCAPCD retains the right to require proof of services performed or costs incurred prior to any payment under this AGREEMENT. **Ten (10) percent of the contract amount will be withheld pending the presentation to PCAPCD of the final report as outlined in Exhibit C – Monitoring Report Format.**
- d) Notwithstanding any other terms of this AGREEMENT, no payments shall be made to CONTRACTOR until PCAPCD is satisfied that work of such value has been rendered pursuant to this AGREEMENT. However, PCAPCD shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

4. Notices

- a) Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, sent certified or registered and addressed to the parties as follows:

PCAPCD:
Placer County Air Pollution Control District
Attn: Air Pollution Control Officer
3091 County Center Drive, Suite 240
Auburn, CA 95603

CONTRACTOR:
Ken Grehm
Placer County Department of Public Works
11448 F. Avenue
Auburn, CA 95603

- b) Any notice so delivered personally shall be deemed to be received on the date of delivery and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

5. Obligations of PCAPCD

- a) PCAPCD agrees to pay CONTRACTOR an amount not to exceed the requirements set forth in Exhibit B –Payment Schedule, in accordance with the requirements listed in Exhibit A, Work Statement
- b) PCAPCD shall not reimburse CONTRACTOR for any expenses incurred by CONTRACTOR in the performance of PROJECT described in Exhibit A unless such reimbursement is specifically authorized in the Payment Schedule. CONTRACTOR shall not be reimbursed for any additional expenses incurred beyond this maximum amount without prior written agreement by the PCAPCD
- c) Except for the payment obligations set forth above, PCAPCD shall have no other obligations or responsibilities to CONTRACTOR under this AGREEMENT

6. Obligations of CONTRACTOR

- a) CONTRACTOR has or will obtain all additional funding set forth in Exhibit B of this AGREEMENT
- b) CONTRACTOR has or will obtain all required licenses, permits, fees, and other legal authorizations from all applicable Federal, State, and local jurisdictions necessary to commence and properly complete, in a professional manner, the PROJECT described in Exhibit A

- c) Labor, equipment, material, supply costs and other charges will be in conformance with the requirements of Exhibit B
- d) No component of the monies to be paid by PCAPCD to CONTRACTOR will be used for grant administration or any interest costs
- e) CONTRACTOR shall provide proof of PROJECT completion and verification of costs as set forth in Exhibit A and paragraph 3.

7. **Hold Harmless/Indemnity**

The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PCAPCD free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PCAPCD arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of PCAPCD) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or PCAPCD or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PCAPCD from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.

As used above, the term PCAPCD means PCAPCD or its officers, agents, employees, and volunteers.

8. **Insurance Requirements**

It is recognized that CONTRACTOR is a self insured public agency, and as such provides coverage for General Liability, Errors & Omissions and Worker's Compensation. CONTRACTOR shall maintain said insurance in full force and effect during the term of this contract.

9. **Facilities, Equipment and Other Materials**

Except as set forth herein CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this AGREEMENT. PCAPCD shall furnish CONTRACTOR only those facilities, equipment, and other materials, and shall perform only those obligations as listed herein.

10. Non-Discrimination

CONTRACTOR shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, sexual preference, or in contravention of any other protected classification or practice identified in the California Fair Employment and Housing Act; Government Code section 12900 et seq.

11. Records and Documents

- a. CONTRACTOR shall maintain at all times complete, detailed records with regard to work performed under this AGREEMENT, in a form acceptable to PCAPCD, and PCAPCD shall have the right to inspect such records at any reasonable time.
- b. CONTRACTOR agrees to return to PCAPCD, upon termination of this AGREEMENT, all documents, drawings, photographs, and other written or graphic material, however produced, received from PCAPCD and used by CONTRACTOR in the performance of its services. All work papers, drawings, internal memoranda, graphics, photographs, and any written or graphic material, however produced, prepared by CONTRACTOR in connection with its performance of services hereunder shall be, and shall remain after termination of this AGREEMENT, the property of PCAPCD and may be used by the PCAPCD for any purpose whatsoever. PCAPCD agrees that any future use of documents produced by the CONTRACTOR under the terms of this contract shall be at the sole discretion of the PCAPCD and CONTRACTOR shall bear no liability for the decisions on whether and how to use such documents.

12. Independent Status

- a. CONTRACTOR shall perform this contract as an independent CONTRACTOR and not as an employee of PCAPCD. CONTRACTOR acknowledges that CONTRACTOR is not entitled to any of the PCAPCD's fringe benefits, including without limitation; paid holidays, life insurance, sick leave, or travel or any other expenses in connection with services performed hereunder. No part of the compensation payable to CONTRACTOR hereunder shall be deducted or withheld for payment of Federal or State income or other employment related taxes. It shall be the responsibility of CONTRACTOR to provide all coverage necessary for CONTRACTOR'S own benefit and not as an employee of PCAPCD.
- b. Except as PCAPCD may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of PCAPCD in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this AGREEMENT to bind PCAPCD to any obligation

13. **Warranties**

CONTRACTOR warrants that its services are performed, with the usual thoroughness and competence; in accordance with the standard for professional services at the time those services are rendered.

14. **Licenses, Permits, Etc**

CONTRACTOR represents and warrants to PCAPCD that it has or will obtain before initiation of the PROJECT, all licenses, permits, qualifications, and approvals of what ever nature, which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to PCAPCD that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this AGREEMENT, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

15. **Assignment or Transfer**

CONTRACTOR may assign any of its rights, burdens, duties, or obligations under this AGREEMENT only upon the prior written consent of PCAPCD. Approval will be at the sole discretion of PCAPCD.

16. **Modification of Agreement**

This AGREEMENT cannot be changed or supplemented orally, and may be modified or superseded only by written instrument executed by all parties.

17. **Waiver**

One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this AGREEMENT shall not operate as a waiver of any subsequent breach or default.

18. **Entirety of AGREEMENT**

This AGREEMENT constitutes the entire AGREEMENT and understanding between the parties. There are no oral understandings, terms, or conditions, and no party has relied upon any representation, express or implied, not contained in this AGREEMENT. Any prior understandings, terms, or conditions are deemed merged into this AGREEMENT. This AGREEMENT is intended as the complete and exclusive statement of the parties' Agreement pursuant to Code of Civil Procedure section 1856.

19. **Jurisdiction**

This AGREEMENT, and the right and obligations of the parties, shall be governed by and construed in accordance with the laws of the State of California.

If any action is instituted to enforce or interpret this AGREEMENT, venue shall only be in the appropriate state or federal court having venue over matters arising in Placer County, California, provided that nothing in this AGREEMENT shall constitute a waiver of immunity to suit by the PCAPCD.

20. Exhibits

All exhibits referred to herein and attached hereto are fully incorporated by this reference.

The parties so agree.

PCAPCD:

Thomas J. Christofk
Air Pollution Control Officer

Date

CONTRACTOR:

Ken Grehm, Director
Placer County Department of Public Works

Date

EXHIBIT - A - WORK STATEMENT

Contract Number: CN025340

CONTRACTOR: Placer County Department of Public Works

PROJECT TITLE: Retrofit Five Pieces of Off-Road Equipment

Prior to funding CONTRACTOR shall:

1. purchase and install five new Cleaire Lonestar retrofit devices for the following five engines with serial numbers:
 - a. 3PD04899, equipment # 806
 - b. 3PD14414, equipment # 807
 - c. 3PD16441, equipment # 812
 - d. 3PD16504, equipment # 813
 - e. 3PD20054, equipment # 818
2. confirm and verify that the retrofit device meets all of the conditions of the California Air Resources Board's verification as outlined in the Cleaire Allmetal's Executive Order and associated attachments for the above referenced engines.
3. notify the PCAPCD when the engine retrofits are complete. The retrofit devices shall not be removed from the equipment for a minimum of four years other than for general maintenance purposes or if a piece of equipment is removed from service. If the engine or associated equipment is removed from service the retrofit device shall be placed on another engine within 30 days of its removal from the original equipment within the CONTRACTOR's fleet.
4. install retrofit devices in a way that meets all OSHA standards for safety and visibility.
5. not bill the PCAPCD more than the following for each retrofit device installed:
 - a. \$22,923 each for engine retrofits installed on equipment #'s 806 and 807.
 - b. \$16,374 each for engine retrofits installed on equipment #'s 812, 813, and 818.
6. install operating hour meters on the engines being retrofitted under this AGREEMENT only if the engines do not already have operating hour meters.
7. provide copies of invoices relative to the purchase of five retrofits funded through this AGREEMENT.
8. adhere to time constraints in paragraph 3, of the AGREEMENT for encumbrance and disbursement of funds. The District may require a pre- and post-inspection in order to verify contractual requirements have been met.

9. notify PCAPCD in writing if installation and/or implementation of this project will deviate from the scope of work outlined in the CONTRACTOR'S 2010 Clean Air Grant Application. This notification will be submitted at least 30 days in advance of any request for payment and must be approved by the APCO prior to the disbursement of any funds.
10. display on the equipment that partial funding was made available from PCAPCD. Any graphics used for this purpose will be approved in advance by District Staff.

CONTRACTOR shall maintain and operate the retrofit devices per the manufacturer's specifications for a minimum of four years.

CONTRACTOR shall operate each piece of equipment a minimum of:

1. 400 hours annually for equipment #'s 806, 807, 812, and 813.
2. 500 hours annually for equipment # 818

CONTRACTOR shall provide the PCAPCD two annual Monitoring Reports as described in Exhibit C. The Monitoring Report shall be submitted within 90 days after the first and fourth years of operation. **Ten (10) percent of the contract amount will be withheld until the PCAPCD receives and approves the submittal of the first monitoring report as outlined in Exhibit C – Final Report Format.**

If for any reason, after project funding, the equipment/project funded under this contract does not perform according to what was submitted in the 2010 CAG application or if the conditions of this contract are not met, the PCPACD may seek reimbursement of grant funds.

EXHIBIT B- PAYMENT SCHEDULE

To Contract Number CN025340

2010

CONTRACTOR: Placer County Department of Public Works

Budget:

Amount Awarded by PCAPCD:	\$ 94,968
Estimated Co-Funding:	\$ 68,767
Estimated Total PROJECT Amount:	\$ 163,735

Ten (10) percent of the contract amount will be withheld until the PCAPCD receives and approves the submittal of the first monitoring report as outlined in Exhibit C – Final Report Format.

PROJECT Title:

Retrofit Five Pieces of Off-Road Equipment

PROJECT Time Line:

Proposed Start Date:	June 1, 2010
Final Date to Receive Co-Funding:	n/a
Proposed End Date:	March 31, 2011

Contract Term:

The contract term of this AGREEMENT shall begin on the date signed by both parties and conclude on or before **March 31, 2015** unless terminated or amended.

Project Description:

CONTRACTOR shall purchase and install Cleaire Lonestar retrofit devices for five pieces of off-road equipment as listed in Exhibit A - Work Statement.

Payment:

The PCAPCD will provide up to Ninety-Four Thousand Nine Hundred Sixty-Eight dollars (\$94,968) in funding for the five Cleaire Lonestar retrofits in accordance with the requirements listed in Exhibit A, Work Statement and Exhibit B- Payment Schedule.

EXHIBIT C- MONITORING REPORT FORMAT

Contract Number CN025340

Each Report shall be submitted within 90 days after the first and fourth year of operation and include the following information:

1. Identify the project being reported including contract number
2. Describe any problems encountered during implementation or operation of the retrofits.
3. Provide annual hours of operation for each retrofitted engine for the previous year(s) operation.
4. Describe the performance of the new retrofits.

Note: After the final report is submitted to the District, Staff may conduct a performance evaluation on the project.

