

## **RESOLUTION NO. 2006-744**

Adopted by the Sacramento City Council

October 17, 2006

### **AUTHORIZING THE ACCEPTANCE AND EXECUTION OF THE 2005 SACRAMENTO EMERGENCY CLEAN AIR AND TRANSPORTATION (SECAT) PROGRAM GRANT AGREEMENT WITH THE SACRAMENTO AREA COUNCIL OF GOVERNMENTS (SACOG) AND THE SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT (SMAQMD) IN THE AMOUNT OF \$113,506 FOR RETROFITTING EXISTING CITY DIESEL POWERED VEHICLES WITH PARTICULATE TRAPS**

#### **BACKGROUND**

- A. The Sacramento region has the sixth worst air quality in the nation, jeopardizing its ability to meet state and federal clean air standards. A significant part of the air quality problem in the Sacramento region is attributable to on-road motor vehicles, especially diesel-powered vehicles.
- B. AB 2511 has created the Sacramento Emergency Clean Air & Transportation (SECAT) Program, an incentive-based approach to reducing diesel emissions and improving the region's air quality.
- C. This grant application is consistent with the City's revised Low Emission Vehicle Acquisition Policy, Resolution 2004-613 and Fleet Fuel Strategies, Resolution 2005-454.
- D. The proposed diesel particulate matter control measure for on-road heavy duty diesel-fueled vehicles owned or operated by public agencies and utilities implementation schedule requires the city to have 60% of its on-road diesel-fuel fleet outfitted with particulate traps by 2008.

#### **BASED ON THE FACT SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager or his designated representative is hereby authorized to accept and execute a 2005 SECAT Program Retrofit grant agreement with SACOG and SMAQMD in the amount of \$113,506 for retrofitting existing City diesel powered vehicles with particulate traps

Section 2. The Finance Director is authorized to establish a 2005 SECAT Grant Project.

Section 3. Revenue and expenditure budgets for the 2005 SECAT grant project in the amounts of \$113,506 are established.

**Table of Contents**

Exhibit A - Grant VET-05-0120

Adopted by the City of Sacramento City Council on October 17, 2006 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Waters, and Mayor Fargo.

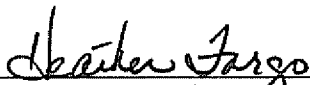
Noes: None.

Abstain: None.

Absent: Councilmember Tretheway.

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

  
\_\_\_\_\_  
Mayor, Heather Fargo

**EXHIBIT A**

**See attached Grant VET-05-0120**



## **YOU HAVE BEEN APPROVED FOR FUNDING UNDER THE SECAT PROGRAM!**

Thank you for applying for funding under the Sacramento Emergency Clean Air Transportation (SECAT) program. We have approved your application for funding and now need your signatures on the SECAT funding agreements enclosed with this letter.

Please read the agreements carefully as they will explain your requirements and obligations as a condition of receiving SECAT funding. Special attention should be noted to the following items:

- Section 2.1.4 requires that a District-approved digital odometer device be installed on the vehicle (different than the standard vehicle odometer)
- Section 2.1.5 requires that the old vehicle be surrendered to a District-approved salvage dealer through the participating vehicle dealership
- Section 2.5 requires the Sacramento Metropolitan Air Quality Management District to be listed as a lien holder on the replacement vehicle through the length of the agreement
- Section 2.8 describes the minimum operational requirements under the program
- Section 2.17.1 prohibits the sale or encumbering of the replacement vehicle during the agreement
- Exhibit C indicates that the incentive amount shown in the agreement includes a \$1,200 allowance towards the purchase and installation of the digital odometer – **THIS WILL BE INVOICED AND PAID SEPARATELY FROM THE TRUCK**

If you agree with these terms, please initial the agreements on pages 2 & 4, and sign the agreements on page 8. All three signed agreements must be sent back to me to process them. One wet copy will be returned to you after the agreements have been signed by the Sacramento Metropolitan Air Quality Management District and the Sacramento Area Council of Governments

Please send the signed agreements to me at:

Kristian Damkier  
Sacramento Metropolitan AQMD  
777 12<sup>th</sup> St, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

It will take approximately 2-3 weeks for us to process the agreements after receiving all three signed copies. Once you have received a wet copy from us, you can invoice us for the project costs. A check is usually delivered within 2-3 weeks of receiving your invoice. Please contact me at (916) 874-4892 or your dealer for more information.

Thank you for helping to clean the air in the Sacramento region!

*SECAT is a joint effort of the Sacramento Metropolitan Air Quality Management District and the Sacramento Area Council of Governments whose goal is to improve air quality in the Sacramento region.*

**SACRAMENTO AREA COUNCIL OF GOVERNMENTS  
and  
SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT  
SACRAMENTO EMERGENCY AIR QUALITY AND TRANSPORTATION PROGRAM  
(SECAT)**

This Agreement (Agreement) is between the Sacramento Area Council of Governments (SACOG), the Sacramento Metropolitan Air Quality Management District (District), and City of Sacramento (Participant).

**1.0 Recitals**

- 1.1. The District is part of the six-county federal Sacramento Ozone Nonattainment Area (Nonattainment Area). (A map of the Nonattainment Area is included in Exhibit A.) Ozone is formed by the interaction of precursor pollutants, including Nitrogen Oxide (NOx). The majority of NOx in the Sacramento Nonattainment Area is generated by vehicles, including heavy-duty vehicles and engines.
- 1.2. The state legislature established the Sacramento Emergency Air Quality and Transportation Program (SECAT Program) to help the air districts within the Nonattainment Area comply with the federal standards. The SECAT Program is administered by SACOG, but recognizes the importance of coordinating among the air districts to implement the Program. (Health Saf. Code § 44299.50, 44299.75.)
- 1.3. One of the air-quality-improvement methods identified in the SECAT Program is the development of an incentive program to promote the advance purchase and use of low-NOx on-road-heavy-duty vehicle and engine technology. The idea behind the method is to encourage vehicle and engine owners to purchase low-NOx technology even before use of the technology is required by law or regulation.
- 1.4. The District previously developed and implemented a vehicle and engine incentive program, and SACOG and the District have coordinated efforts to develop a similar approach to implement the SECAT Program.
- 1.5. SACOG finally approved this approach to implementing the SECAT Program on October 19, 2000. SACOG also simultaneously approved the use of this Agreement form and authorized its Executive Director to execute agreements implementing the approach.
- 1.6. The District approved the use of this Agreement form on October 26, 2000 in Resolution No. 200-053, and authorized its Air Pollution Control Officer (APCO) to execute agreements implementing the plan.
- 1.7. The Participant wishes to participate in this process by using SECAT Program funds to aid in the purchase of the low-NOx equipment identified in Exhibit B.

## 2.0 Terms and Conditions

The parties agree to the terms and conditions listed below.

### 2.1. Purchase and Payment:

2.1.1. Participant will purchase and operate the equipment described in Exhibit B and identified below (check all that apply):

- A new low-emission vehicle
- A low emission engine repower vehicle replacing the vehicle or engine specified in Exhibit B
- A low emission engine retrofit

2.1.2 SACOG will pay the Participant up to \$113,506 to assist the Participant in the purchase of the equipment described in Exhibit B.

2.1.3 \_\_\_\_\_ (Initial only to authorize two-party payments) By initialing this paragraph, the Participant:

(i) Notifies SACOG and the District that it has entered into a purchase agreement with Cummins West, the manufacturer or distributor of the equipment identified in Exhibit B.

(ii) Authorizes SACOG to issue checks payable to both the Participant and Cummins West.

(iii) Acknowledges that this section merely streamlines the payment process for the benefit of the Participant, and does not create a third-party contractual benefit for the manufacturer/distributor

(iv) Acknowledges that, notwithstanding any two-party payment authorized under this section, the Participant alone, and not the manufacturer/distributor, is responsible for performance under this Agreement.

2.1.4 This Agreement and any payments to Participant are subject to the provisions and limitations imposed by Health and Safety Code sections 44299.5 and 44299.75. Neither the District nor SACOG are permitted to make payments that contravene these sections of the Health & Safety Code or any other law or regulation. If a payment under this Agreement violates any applicable law or regulation, the Participant shall reimburse the entire payment.

2.1.5 Ensure that a District-approved digital odometer device is installed on the vehicle.

### 2.2 Vehicle or Engine Equipment

2.2.1 The Participant must submit information showing that the equipment described in Exhibit B is approved for sale by the California Air Resources Board (CARB).

2.2.2 The Participant must demonstrate that the equipment described in Exhibit B is certified using one or more of the three following methods (check all that apply):

- CARB certification testing
- CARB approval through the "Procedure for Technical Review and for Verification of Emission Reduction Claims for PM and NOx Retrofit Devices of Existing On-Road and Off-Road Heavy-Duty Diesel Vehicle and Equipment"
- U.S. Environmental Protection Agency certification testing

2.2.3 The Participant warrants that the equipment described in Exhibit B meets all the eligibility requirements described in the *Requests for Applications for Funding from: Sacramento Emergency Clean Air and Transportation Program* adopted by SACOG on September 21, 2000.

2.2.4 Because the goal of the SECAT Program is to encourage the use of low-NOx technology that is not already required by law, the Participant warrants that its purchase is not required by any law or regulation. (If the Participant is a public agency, Participant further warrants that its board policies do not require the purchase).

**2.3 Engine Replacement or Repower:** If the Participant is replacing or repowering an engine:

2.3.1 The Participant must either:

- (i) Transfer ownership of the replaced or repowered engine to a factory-authorized remanufacturing program approved by both SACOG and the District, and provide SACOG and the District copies of receipts or other documents confirming the transfer, or
- (ii) Destroy the replaced or repowered engine in a manner acceptable to both SACOG and the District. If the engine is destroyed, the Participant must permit both SACOG and the District to inspect the destroyed engine.

2.3.2 Under special circumstances, SACOG and the District may authorize an alternative to section 2.3.1, as long as there is no detrimental impact to air quality.

2.4 \_\_\_\_\_ **(Participant to Initial) Operational Requirements:** Each vehicle or engine described in Exhibit B must operate within the Sacramento Nonattainment Area for at least the minimum miles specified in Exhibit C.

2.4.1 At anytime during this Agreement, SACOG and the District may demand full repayment if the Participant fails to fulfill the minimum performance requirements established in Exhibit C.

(i) SACOG and the District may jointly consent to waive all or a portion of this repayment obligation after considering the circumstances leading to the failure. Neither SACOG nor the District may unreasonably withhold their consent to a waiver.

(ii) Either SACOG or the District may file, or require that Participant file, a UCC-1 Form securing all or a part of the funds paid to Participant under this Agreement. Participant must file the UCC-1 Form within 1 month of receiving a request from SACOG or the District.

2.4.2 Participant's operation of the equipment described in Exhibit B must conform to the eligibility requirements stated in the September 21 SECAT Program Request for Applications and the goals and objectives of the SECAT Program.

2.4.3 Participant shall display a decal approved by SACOG and the District on each vehicle or engine described in Exhibit B. The location of the decal must be approved by SACOG and District.

2.4.4 **Certificate of Digital Odometer Installation:** Submit a District-approved Certificate of Digital Odometer Installation form from a District-approved installer, verifying that an odometer has been installed, or obtain the District's written consent to defer compliance with this requirement until a device becomes available. Once a digital odometer becomes available, the Participant will need to have it installed at no cost to the SECAT Program.

## 2.5 Recordkeeping

2.5.1 The Participant shall provide written biannual reports for five years commencing with the first date the Participant operates the vehicle or engine. Reports must be filed with SACOG and the District by January 31 and July 31 of each year. Participant must maintain records adequate to document the required information.

The records must include:

*	Copies of all driver log book entries for the preceding 6 months
*	Miles traveled within the Nonattainment Area
*	Vehicle downtime
*	Fuel consumed
*	Fuel cost
*	Type and cost of maintenance performed

2.5.2 Either SACOG or the District (or both) may conduct an audit of Participant's operations to verify that Participant is complying with the Agreement terms. Any audits will be conducted at a reasonable time and with reasonable notice to Participant.

2.6 **Indemnity:** The Participant shall indemnify and defend SACOG and the District, their officers, agents, employees and volunteers, from any and all liabilities of any kind that:



- 2.6.1 Arise from, or are alleged to arise from, any breach of the responsibilities required of the Participant by this Agreement, or
- 2.6.2 Are related in any way to the vehicles or engines described in Exhibit B.
- 2.7 **Prohibition on Emission Reduction Credits:** The receipt of funds under this Agreement prohibits application for any form of emission reduction credit – for any pollutant – for the purchase of the equipment described in Exhibit B. This prohibition includes, but is not limited to: (i) all attainment, nonattainment, criteria and noncriteria pollutants, and (ii) application for Emission Reduction Credits (ERC), Mobile Emission Reduction Credits (MERC) and/or Certificates of Advanced Placement (CAP). This prohibition extends to credits from all Air Quality Management or Air Pollution Control Districts.
- 2.8 **Voluntary Act:** The Participant's purchase of the equipment described in Exhibit B is a completely voluntary act and neither SACOG nor the District have made representations or guarantees to the Participant regarding the equipment.
- 2.9 **Insurance:** The Participant shall maintain the insurance coverage described in Exhibit D, and either SACOG or the District may require the Participant to name SACOG and the District as additional insureds. In the event the Participant does not maintain the required insurance, SACOG or the District may terminate this Agreement.
- 2.10 **Additional Terms and Conditions:**
- 2.10.1 The Participant shall not sell or encumber the equipment described in Exhibit B without the written consent of both SACOG and the District.
- 2.10.2 The Participant must notify SACOG and the District in the event Participant files for bankruptcy. The Participant must mail the notice within 30 days of filing for bankruptcy.
- 2.10.3 The Participant must notify SACOG and the District if:
- (i) the Participant suffers a catastrophic loss, or
  - (ii) any other event has occurred or is likely to occur that could impair the Participant's ability to perform the conditions of this Agreement.
- Such notice shall be provided to the District within 30 days of the date Participant knows, or should have known, that the event has occurred or is likely to occur.
- 2.10.4 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all parties.
- 2.10.5 No performance rendered or payment due under this Agreement may be delegated or assigned without the written consent of all the parties hereto. If Participant

assigns any of its rights or obligations under this contract, all of the terms and conditions of this contract shall apply to the Participant's assignee.

2.10.6 This Agreement shall begin upon execution by both parties and terminate on .

2.10.7 The Participant must observe and comply with all laws and regulations. This Agreement is executed in Sacramento County, California and shall be governed by the laws of the State of California. Any action arising out of this Agreement must be filed in a state court or federal court located in Sacramento, California.

2.10.8 This Agreement consists of:

This Agreement  
Exhibit A, Sacramento Ozone Nonattainment Area Map  
Exhibit B, Engine and Vehicle Information  
Exhibit C, Performance Requirements  
Exhibit D, Insurance Requirements

*The Requests for Applications for Funding from Sacramento Emergency Clean Air and Transportation Program approved by SACOG on September 21, 2000.*

2.10.9 Correspondence between the District, SACOG and Participant should be addressed to the following:

To District	To SACOG	To Participant
Kristian Dankier Sacramento Metropolitan AQMD 777 12 <sup>th</sup> Street, Third Floor Sacramento, CA 95814-1908 Phone: (916) 874-4892 FAX: (916) 874-4899	Mr. David Young SACOG 1415 L Street, Suite 300 Sacramento, CA 95814 Phone: (916) 321-9000 FAX: (916) 321-9551	Bob Summersett City of Sacramento 5730 24th Street Sacramento, CA 95822- Phone: (916) 808-6309 FAX: (916) 399-9263

The address and/or contacts may be changed by written notice to the other party. Such written notice may be given by mail, using the U.S. Postal Service, or personal service.