

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources *[Signature]*

BOARD AGENDA # *B-2

Urgent Routine

AGENDA DATE November 8, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Director of the Department of Environmental Resources to Enter Into a Grant Agreement with the California Environmental Protection Agency for Implementation of the California Electronic Reporting System for the Local Hazardous Materials Program

STAFF RECOMMENDATIONS:

1. Authorize the Director of the Department of Environmental Resources, or her designee, to enter into and sign a grant agreement with the California Environmental Protection Agency for implementation of the California Electronic Reporting System for the local Hazardous Materials Program.
2. Authorize the Director of the Department of Environmental Resources, or her designee, to approve and sign any amendments to the grant agreement with the California Environmental Protection Agency for implementation of the California Electronic Reporting System for the local Hazardous Materials Program.
3. Direct the Auditor-Controller to increase appropriations and estimated revenue as detailed in the Budget Journal form.

FISCAL IMPACT:

Approval of this item will provide up to \$148,116 in grant funds from January 1, 2010, through March 31, 2013, to reimburse the Department of Environmental Resources for expenses incurred to transition the local Hazardous Materials Program to electronic reporting as required by Assembly Bill 2286. Award of the California Electronic Reporting System grant allocation occurred well into the fiscal year due to a delay in the allocation of these State funds but covers departmental expenses over the term of the agreement.

BOARD ACTION AS FOLLOWS:

No. 2011-686

On motion of Supervisor De Martini, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, De Martini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of the Department of Environmental Resources to Enter Into a Grant Agreement with the California Environmental Protection Agency for Implementation of the California Electronic Reporting System for the Local Hazardous Materials Program

DISCUSSION:

In September 2008, Assembly Bill (AB) 2286 was signed into law. This State legislation amended Section 25404 of the California Health and Safety Code (H&S Code) to require that businesses and agencies report Unified Program data, from the Unified Hazardous Waste and Materials Management Regulatory Programs (Unified Programs), electronically into a Statewide information system known as the California Electronic Reporting System (CERS).

Facility data which must be filed electronically includes: hazardous material owner/operator information, chemical inventories, facility maps, information pertaining to underground and aboveground storage tanks, and hazardous waste generation information. It also includes Certified Unified Program Agency (CUPA) data such as inspections and enforcement actions. All regulated businesses and Unified Program Agencies in the State of California must move toward the use of CERS to report information electronically by January 1, 2013.

On December 8, 2009, the Board of Supervisors approved collecting a \$25 surcharge, on behalf of the State for CUPA regulated businesses to fund the implementation of AB 2286. Seventy five percent of the CERS surcharge is allocated to CUPAs in the form of a grant allocation and twenty five percent remains with the State to cover administrative costs. The grant amount awarded to the Stanislaus County CUPA to implement AB 2286 is \$148,116 (Attachment A). This amount has been pre-determined by the California Environmental Protection Agency (Cal/EPA) based on the total number of regulated facilities within Stanislaus County. The intent of the legislation was to fund the start-up and implementation of the program and have the fee sunset after 2013.

On August 31, 2010, the Board of Supervisors authorized the Director of the Department of Environmental Resources (Department) to apply for Cal/EPA trust funds, to implement the CERS program. These funds are designated for program development, business outreach, training for staff and businesses, technical support, and equipment needed to implement the program and will be used to reimburse the Department for CERS-related expenses. In anticipation of the AB 2286 mandate, the Department has begun the transition to electronic reporting by altering the internal CUPA database so as to mimic the State's data dictionary to ensure that the information recorded is meeting the requirements set forth in terms of data collected. Due to delays in the allocation of these State grant funds, the agreement was not provided to the Department until September 15, 2011 but is for the term of January 1, 2010 to March 31, 2013.

POLICY ISSUE:

Approval of this agenda item to accept the Cal/EPA Grant Funds is consistent with the Board's priorities of A Safe Community, A Healthy Community, A Strong Local Economy, Effective Partnerships, A Well Planned Infrastructure System, and the Efficient Delivery of Public Services. It provides critical funding to reimburse the Department for expenses incurred while transitioning to the electronic reporting of required Hazardous Materials data and supports the Department's mission to promote a safe and healthy environment and improve the quality of

CERTIFIED UNIFIED PROGRAM AGENCY ELECTRONIC REPORTING
GRANT AGREEMENT
BETWEEN THE
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
AND
STANISLAUS COUNTY ENVIRONMENTAL RESOURCES
CERTIFIED UNIFIED PROGRAM AGENCY
AGREEMENT NO. G10-UPA-102

State and Grantee hereby agree as follows:

1. PROVISIONS. The following statute authorizes the State to enter into this Grant Agreement:
 - a. California Health and Safety Code, division 20, chapter 6.11, section 25404
2. PURPOSE. The State shall provide a grant to and for the benefit of the Grantee for the purpose of allocating monies from the regulated businesses oversight surcharge to the Certified Unified Program Agencies (CUPAs). Assembly Bill 2286 authorizes the Secretary to use funds from the oversight surcharge to provide certified unified program agencies and participating agencies assistance in implementing electronic reporting requirements through grant funds for the purposes of the system. Up to 25% of the grant is authorized to be paid in advance on approval of the grant application.
3. GRANT AMOUNT \$ 148,116.00
 - a. Advanced Payment Amount **\$ 37,029.00**
4. TERM OF AGREEMENT. The term of the Agreement shall begin on January 1, 2010, and end on March 31, 2013. **ABSOLUTELY NO GRANT DISBURSEMENT REQUESTS WILL BE ACCEPTED AFTER June 1, 2013.**
5. REPRESENTATIVES. Either party may change its Representative(s) upon written notice to the other party. The Representatives during the term of this Agreement will be:

California Environmental Protection Agency GRANT MANAGER
James Bohon
1001 "I" Street, 2nd Floor
Sacramento, California 95814
Phone (916) 327-5097
Fax (916) 322-5615
Email: jbohon@calepa.ca.gov
Stanislaus County Department of Environmental Resources GRANTEE
Name of Project Director, Title: Robert Riess, Sr. Hazardous Materials Specialist I
Street Address: 3800 Cornucopia Way, Suite C
City, Zip: Modesto, CA 95358
Phone: 209-525-6749
Fax: 209-525-6774
e-mail: rriess@envres.org

6. STANDARD AND SPECIAL PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- | | |
|-----------|---|
| Exhibit A | REPORTING AND GRANT DISBURSEMENT PROVISIONS |
| Exhibit B | SPECIAL AND GENERAL PROVISIONS |
| Exhibit C | GRANT APPLICATION |
| Exhibit D | TRANSITION PLAN |

7. GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding.
8. DEFINITIONS. The following defined terms apply throughout this Agreement:
"Cal/EPA" means the California Environmental Protection Agency;
"CUPA" means the Certified Unified Program Agency;
"Grantee" means the Stanislaus County Environmental Resources;
"PA" means the Participating Agency;
"Electronic Reporting" means the Electronic Reporting requirements of Assembly Bill 2286
"Secretary" means the Secretary of the California Environmental Protection Agency; and
"State" means the State of California, including Cal/EPA.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By:

By:

Grantee Signature

Donald A. Johnson, Assistant Secretary
California Environmental Protection Agency

Sonya K. Harrigfeld, Director
Grantee Name, Title (Typed/Printed)

Date

Date

EXHIBIT A
REPORTING AND GRANT DISBURSEMENT PROVISIONS

A. REPORTING PROVISIONS

1. The Grantee shall prepare and submit a Transition Plan Status Reports, including Grant Disbursement Request form for documentation of expenditures, to the Cal/EPA Grant Manager at the following address:

California Environmental Protection Agency
Unified Program Section
Attn: Catherine Gause
1001 "I" Street, 2nd Floor
Sacramento, California 95814

2. The Transition Plan Status Report and Grant Disbursement Request Form will be provided by Cal/EPA upon the approval of the Grant Application.
3. Each report shall have a cover letter certified by the Project Director or the Grant Contact.
4. For purposes of the Electronic Reporting Implementation Status Reports, the reporting period is as follows:

<u>Report</u>	<u>Reporting Period</u>	<u>Report Due Date</u>
Report 1	June 1, 2010, to September 30, 2010	November 1, 2010
Report 2	October 1, 2010, to December 31, 2010	February 1, 2011
Report 3	January 1, 2011, to March 31, 2011	May 1, 2011
Report 4	April 1, 2011, to June 30, 2011	August 1, 2011
Report 5	July 1, 2011, to September 30, 2011	November 1, 2011
Report 6	October 1, 2011, to December 31, 2011	February 1, 2012
Report 7	January 1, 2012, to March 31, 2012	May 1, 2012
Report 8	April 1, 2012, to June 30, 2012	August 1, 2012
Report 9	July 1, 2012, to September 30, 2012	November 1, 2012
Report 10	October 1, 2012, to December 31, 2012	February 1, 2013
Report 11	January 1, 2013, to March 31, 2013	May 1, 2013

B. GRANT DISBURSEMENT PROVISIONS

1. Grant Disbursement Request Forms shall be used to depict the expenditures incurred by the Grantee in implementation of Electronic Reporting throughout the period of performance.
2. The Grant Disbursement Request Form shall be submitted as an attachment to the Transition Status Report, in accordance with the submission schedule provided above.
3. The Grantee shall use the Grant Disbursement Request Form provided by Cal/EPA.

**EXHIBIT B
SPECIAL AND GENERAL PROVISIONS**

A. SPECIAL PROVISIONS

1. **AMENDMENTS:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **WAIVERS:** Any term, provision, condition, or commitment of this Agreement may be waived at the discretion of Cal/EPA. All waivers shall be documented in writing.
3. **DISPUTES:** The Grantee shall continue with the responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Cal/EPA Assistant Secretary for Local Programs or an authorized representative. The decision shall be in writing and a copy thereof furnished to the Representatives of this Agreement. The decision of the Assistant Secretary shall be final and conclusive unless, within thirty (30) calendar days after mailing of the decision to the Grantee, the Grantee furnishes a written appeal of the decision to the Secretary for Environmental Protection, with carbon copies furnished to the Cal/EPA Assistant Secretary for Local Programs and the Cal/EPA Grant Manager. The decision of the Secretary shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the Cal/EPA Assistant Secretary for Local Programs or the Secretary, on any question of law.
4. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain financial accounts in accordance with generally accepted accounting principles. Without limitation of the requirement to maintain financial management systems and accounting standards in accordance with generally accepted fiscal and accounting principles, the Grantee agrees to:
 - a. Establish a financial account(s) and accounting system(s) that will adequately and accurately depict all Electronic Reporting Grant amounts received and expended during the term of this Agreement, including but not limited to:
 - i. All Electronic Reporting implementation expenditures; and
 - ii. Running balance of grant allocations and expenditures.
5. **RECORDS MANAGEMENT:** Maintain all documentation and financial records, as may be necessary, for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations. Establish an official file for the allocation that shall adequately document all significant activities and actions relative to the Implementation of the Electronic Reporting Implementation, including but not limited to:
 - a. Fiscal accounting;
 - b. Electronic Reporting Implementation Status Reports; and,
 - c. Grant Disbursement Requests and supporting documentation.
6. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with Electronic Reporting implementation in an expeditious manner. The Grantee shall prepare and submit all required reports and Grant Disbursement Request Forms as stipulated in this Agreement.

7. **WITHHOLDING OF GRANT DISBURSEMENTS:** Cal/EPA may withhold all or any portion of the allocations provided for by this Agreement in the event the Grantee:
 - a. Materially violates, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - b. Fails to maintain reasonable progress toward Electronic Reporting implementation.
8. **FUNDS CONTINGENCY:** Cal/EPA's obligations under this Grant Agreement are contingent upon the availability of funds. In the event funds are not available, the State shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Grant Agreement.
9. **BUDGET REVISIONS:** Budget revisions of 15% or less of the total agreement allocation may be made in writing and approved by Cal/EPA without an amendment to the agreement.

B. GENERAL PROVISIONS

1. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of the State.
2. **AUDIT:** Grantee agrees that the Cal/EPA, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the expenditure of allocated moneys and performance of this Agreement. The Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after term of the Agreement, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
3. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
4. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
5. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
6. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State.
7. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.
8. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
9. **TERMINATION:** The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Grantee agrees, upon demand, to immediately return the remaining unused portion, if any, of the Grantee's allocation.

10. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.

