

**CARL MOYER/FARMER PROGRAM
AGREEMENT BETWEEN EQUIPMENT DEALERSHIP AND
THE NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT
for
OFF-ROAD EQUIPMENT**

This agreement (“Agreement”) is made by and between the Northern Sonoma County Air Pollution Management District (“District”) and _____, a “Dealership” having a corporate business address of _____. This Agreement is effective as of the date of the last party signing below.

**SECTION I
RECITALS**

WHEREAS, the California Air Resources Board (“ARB”) has developed several programs under its Carl Moyer Memorial Air Quality Standards Attainment Program to achieve reductions in emissions of key pollutants which are necessary for California and the District to meet its clean air commitments under regulatory requirements; and

WHEREAS, the Carl Moyer Program and the Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program (the “Program/Programs”) were created to accelerate the replacement of old high polluting off-road equipment with newer lower-emission equipment using financial incentives; and

WHEREAS, the District participates in the Carl Moyer and FARMER Programs; and

WHEREAS, under the Program, the District will provide financial incentives to owners of Program eligible equipment who agree to destroy their old equipment and replace it with new, low emission equipment; and

WHEREAS, Dealership is in the business of selling off-road equipment; and is capable of providing lower-emitting equipment that will satisfy Program goals and policies; and

WHEREAS, Dealership understands that the purpose of the Program, and this Agreement, is to help the District achieve clean air standards as required by state and federal law; and

WHEREAS, Dealership wishes to enter into this Agreement so that it will be eligible to market its equipment and services to Program Participants; and

WHEREAS, Dealership understands that for actual emission reductions to result from the Program, it is essential that:

1. The Old Equipment is inspected to verify that it qualifies for the Program; and
2. The Old Equipment is destroyed to permanently eliminate its potential for emissions; and
3. A non-resettable hour meter is installed in the New Equipment to measure future actual hours of operation; and

4. Verified Diesel Emission Control Systems (VDECS) be installed in the New Equipment, as required, if they are available and cost effective; and
5. The original equipment manufacturer engine and emission control systems are properly maintained and operational in the New Equipment; and

SECTION II AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants as set forth below, the District and Dealership agree as follows:

- 1.0 Definitions:** As used in this Agreement, the following terms have the following meanings:
 - 1.1. “Program Participant”** means the individual or business entity that is surrendering its off-road equipment and receiving funds to aid in the purchase of new off-road equipment.
 - 1.2. “Old Equipment”** means the off-road equipment or machine that the Program Participant surrenders for destruction.
 - 1.3. “New Equipment”** means the new equipment or machine purchased from Dealership by the Program Participant. “New Equipment” is equipment that has never been sold and is not rented or leased equipment, and has not been operated in excess of the manufacturer’s limit for new equipment, and is covered by the manufacturer’s new equipment warranty.
- 2.0 Program Guidelines.** The Dealership has reviewed, understands and agrees to abide by California Air Resources Board’s (ARB) Carl Moyer Program Guidelines, and the ARB’s Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program Guidelines and the District Carl Moyer and FARMER implementation Policies and Procedures, copies of which have been provided to the Dealership and are on file with the District, and which are incorporated herein by this reference as if set forth in their entirety. The term (“Program Guidelines”) as used in this Agreement shall refer to the current ARB Carl Moyer Program Guidelines, as well as the ARB’s Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program Guidelines, all future revisions, amendments, advisories, and mail-outs thereto, and the term “District Policies” shall refer to District Carl Moyer and FARMER implementation Policies and Procedures and all future revisions, amendments, advisories, and mail-outs thereto. All terms having initial capitals that are not defined in this Agreement, shall have the meaning as set out in the Program Guidelines or District Policies.
- 3.0 Payment:** Dealership will not be paid or otherwise reimbursed by the DISTRICT for services rendered in complying with this Agreement. Rather, the benefit received by Dealership under this Agreement is the opportunity to participate in the Program, which includes the corresponding opportunity for Dealership to profit from the sale of equipment to Program Participants.
- 4.0 Dealership Warranty:** Dealership warrants that it is familiar with the Program requirements, including, but not limited to, equipment eligibility criteria, equipment operational requirements, warranty requirements, procedural requirements, including DISTRICT reporting requirements, and all other provisions of the Program

5.0 Dealership Qualifications: Dealership warrants that it meets the following minimum qualifications for participation in the Program, and will continue to meet these qualifications throughout its participation in the Program:

5.1. Authorized Dealership: Dealership is a factory-authorized dealer or distributor, providing sales and service including warranty service, for the following brand(s) which they intend to make available through the Program:

5.2. Business License: Dealership has a valid license to conduct business in California and has had the license for the two years immediately preceding the signing of this Agreement.

5.3. Resale Permit: Dealership has a valid State of California seller's permit issued by the Board of Equalization.

6.0 Equipment Inspection: Dealership agrees to allow the DISTRICT to inspect equipment covered under this Agreement during normal business hours.

7.0 Dealership Requirements: Unless otherwise indicated, Dealership must meet each requirement contained in this section before the DISTRICT will be obligated to release the incentive funds to Dealership or the Program Participant. Dealership agrees to do the following:

7.1. Promote Program: Dealership will promote the Program and provide basic information to potential Program Participants about the Program.

7.2. Application Assistance: Dealership will assist Program Participants to correctly complete all sections of the application and prepare any necessary supplemental documentation for submission to the DISTRICT. Dealership must inform the Program Participant that if he or she is awarded grant funding, the DISTRICT and the Program Participant must sign a Grant Agreement prior to the equipment being ordered.

Although Dealership representatives provide assistance with the application process, they are not authorized to interpret or provide guidance to Program Participants on the Grant Agreement terms, conditions, and requirements. Any questions and clarifications that the Program Participant has regarding the Grant Agreement should be directed to DISTRICT staff. It is the Program Participant's responsibility to fully understand the Grant Agreement. If, after contacting the DISTRICT staff, the Program Participant still has unanswered questions or concerns, he or she should seek guidance from a qualified contract law attorney.

7.3. Provide Quotes and Equipment Specifications: As part of the application, the Dealership will provide an accurate quote for the New Equipment which:

7.3.1 Itemizes the pricing of all standard equipment and options for the New Equipment;

7.3.2 Indicates availability of the specified equipment and the anticipated delivery schedule;

- 7.3.3 Provides specifications for the New Equipment and engine, including a horizontal dimensioned drawing or other graphic description of the equipment that shows it to be consistent with the Old Equipment's general design; and
- 7.3.4 Provides the ARB Executive Order for the quoted engine, indicating the model of the engine.
- 7.4. **Engine and Equipment Warranty:** As part of the application, Dealership shall provide documentation that demonstrates that the New Equipment and engine shall have a warranty that covers, at a minimum, parts and labor on the engine and drive train for a minimum of one year or 1,600 hours. If there is an additional cost for the warranty, the Dealership shall identify that cost as a separate line item on the quote. Warranty costs are not eligible for grant funding.
- 7.5. **VDECS:** The DISTRICT will notify Dealership if a VDECS retrofit is required for each project. If one is required, Dealership shall provide a quote addendum with the following VDECS documentation:
- 7.5.1 Specifications for the VDECS including make and model;
- 7.5.2 A price quote that will be valid at the time of installation and identification of the installer;
- 7.5.3 VDECS warranty information; and
- 7.5.4 If a VDECS is not feasible, Dealership shall assist the Program Participant in obtaining letters from each VDECS manufacturer stating that their VDECS is not feasible for the particular equipment, or documentation in accordance with section 2449(e)(8) of the Off-Road Regulation demonstrating that a VDECS cannot be safely installed.
- 7.6. **Pre-Inspection:** The Dealership will work with the DISTRICT and the Program Participant to schedule a time and place for the DISTRICT to perform a pre-inspection of the Old Equipment.
- 7.7. **Purchase Order:** Dealership will not sell, take a deposit on or place an order for the New Equipment until the Grant Agreement is signed by all parties and is effective. When the Grant Agreement is effective, the DISTRICT will contact Dealership, who may then accept an order for the New Equipment from the Program Participant and, if necessary, arrange for installation of the VDECS. Dealership will provide a copy of the equipment purchase order to the DISTRICT within five business days after it is signed by both the Program Participant and Dealership. This purchase order, along with the invoice from the Program Participant, will be used by the DISTRICT to prepare a 2-party check payable to Dealership and the Program Participant.
- 7.8. **Notice of Delivery:** Dealership must give the DISTRICT two weeks advance notice as to when the New Equipment will be available so the DISTRICT can arrange for a New Equipment inspection.
- 7.9. **Destruction of Old Equipment:** The Dealership will be responsible for the destruction and legal disposal of the Old Equipment. The Old Equipment shall be rendered unusable by:

- 7.9.1 Cutting a minimum of a eight inch hole in the engine block;
- 7.9.2 Cutting the frame of the equipment in such a way as to make it unrepairable; and
- 7.9.3 Any additional measures deemed necessary by the DISTRICT to ensure the Old Equipment cannot be used again.
- 7.9.4 At sole discretion of DISTRICT, if Dealership is unable to perform the destruction and disposal obligations, the program participant may perform this function upon their consent and pre-approval by the DISTRICT.

8.0 Equipment Replacement Transaction: Dealership will work with the DISTRICT and the Program Participant to schedule the equipment replacement transaction, where the Old Equipment will be surrendered to Dealership and the New Equipment will be furnished to the Program Participant by Dealership. At the time of the transaction the DISTRICT shall:

- 8.1. Verify the identity, operation, and condition of the Old Equipment (pre-salvage verification);
- 8.2. Verify the identity, operation, and condition of the New Equipment and new VDECS, if installed (post-inspection); and

At the time of the equipment replacement transaction, Dealership will:

- 8.3. Not deliver the New Equipment to the Program Participant until the DISTRICT inspects it and verifies that it is eligible for funding.
- 8.4. Provide the following to the DISTRICT representative :
 - 8.4.1 A copy of the purchase receipt for the New Equipment, which shall identify the equipment and engine by make and serial number;
 - 8.4.2 Financing documentation identifying the buyer, the lender, and the amount financed, if the New Equipment is to be; and
 - 8.4.3 Provide documentation as to how the Old Equipment shall be destroyed and how the destroyed equipment shall be legally disposed of.
 - 8.4.4 Provide any additional documents, including photos and or video required by the individual Grant Agreements.

9.0 Replacement Parts: Dealership shall use only original equipment manufacturer (OEM) certified parts for any engine or emission system related repairs to any equipment participating in the Program.

10.0 Dealership Inspections: The DISTRICT may, at its option, authorize Dealership to conduct pre-inspections of the Old Equipment. If so authorized, the DISTRICT will provide training to Dealership, and Dealership shall conduct the inspection per the inspection sections of the DISTRICT's Off-Road Equipment Replacement Plan and the DISTRICT's Carl Moyer Policies and Procedures. Dealership shall submit clear and legible copies of the required photographs electronically and provide the original inspection form to the DISTRICT within five business days of inspection.

11.0 DISTRICT to Provide Training: The DISTRICT will provide training to familiarize Dealership staff with the requirements of this Agreement and with DISTRICT’s policies and procedures regarding the Program.

12.0 Term: This Agreement shall begin upon execution by both parties and terminate on _____.

13.0 Agreement: This Agreement represents the entire Agreement of the parties with respect to the subject matter described in this Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein.

14.0 Correspondence: Correspondence between the DISTRICT and Dealership shall be addressed to the following:

To District:

Northern Sonoma County DISTRICT
Carl Moyer Representative
150 Matheson Street
Healdsburg, CA 95448
Phone: (707) 433-5911
FAX: (707) 433-4823
Email: airquality@sonoma-county.org

To Dealership:

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.

SECTION III

GENERAL TERMS AND CONDITIONS

1.0 Inspections: DISTRICT may conduct an audit of Dealership’s operations to verify that Dealership is complying with the Agreement terms. Any audits will be conducted at a reasonable time and with reasonable notice to Dealership.

2.0 Prohibition on Emission Reduction Credits: Dealership is not entitled to apply for or receive Emission Reduction Credits, in any form, by virtue of the destruction of equipment or engines under the Program. This limitation includes, but is not limited to:

2.1. Emission Reduction Credits (ERC) for all attainment, nonattainment, criteria and non-criteria pollutants, and

2.2. Application for ERCs, Mobile Emission Reduction Credits (MERC) or Certificates of Advanced Placement (CAP).

This prohibition extends to credits from all Air Quality Management or Air Pollution Control Districts.

- 3.0 Voluntary Act:** Dealership's participation in the Program is a completely voluntary act and DISTRICT makes no representations or guarantees to Dealership regarding its participation in the Program.
- 4.0 Insurance Requirements:** Dealer shall maintain and require all of its subcontractors and other agents to maintain the workers compensation and employment liability insurance as required by state law. The Dealer shall also maintain Commercial General Liability Insurance with a minimum limit of 1,000,000 aggregate under such policy. Dealer shall also maintain automobile liability insurance with a minimum Limits: \$1,000,000 combined single limit per accident, which shall apply to its owned or non-owned vehicles. The District shall be added as an additional Insured on said policies.
- 4.1 Standards for Insurance Companies Insurers:** Other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.
- 4.2 Policy Obligations** Dealer's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 4.3 List District as additional Insured.** Dealer shall supply the District with a copy of Insurance certificate that shows that the District has been added as an additional insured.
- 4.4 Material Breach** If Dealer fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from Dealer resulting from said breach. This remedy shall be in addition to any other remedies available to DISTRICT.
- 5.0 Bankruptcy:** Dealership must notify DISTRICT in the event Dealership files for bankruptcy. Dealership must mail the notice within 30 days of filing for bankruptcy.
- 6.0 Ability to Perform:** If either of the events listed in this paragraph occur, Dealership must notify DISTRICT within 30 days of the date Dealership knows, or should have known, that the event has occurred or is likely to occur:
- 6.1.** Dealership suffers a catastrophic loss; or
- 6.2.** Any other event has occurred or is likely to occur that could impair Dealership's ability to perform the conditions of this Agreement.
- 7.0 Amendments:** No amendment, alteration or variation of the terms of this Agreement is valid unless made in writing and signed by all parties.
- 8.0 Assignments:** No performance required or payment due under this Agreement may be subcontracted, delegated or assigned without the express written consent of DISTRICT.
- 9.0 Successors:** This Agreement will bind the successors of DISTRICT and Dealership in the same manner as if they were expressly named. The DISTRICT shall provide Dealership training to the successors if previously trained staff is no longer working for Dealership.
- 10.0 Recordkeeping:**
- 10.1.** Records: Dealership will maintain all necessary records, books and accounts to verify that Dealership complies with all the Terms and Conditions stated in this Agreement.

10.2. Audits: DISTRICT may audit all projects completed by Dealership under this Agreement. Dealership must ensure that DISTRICT staff has access, at all reasonable times, to the documents kept by Dealership in connection with all projects completed under this Agreement.

10.3. Duration: Dealership must maintain these documents, and make them available for examination and audit by DISTRICT, for 5 years after the sale.

11.0 Termination:

11.1. 30-day Notice Termination: Either DISTRICT or Dealership may terminate this Agreement for any reason by giving the other party 30-days written notice. If this Agreement is terminated under this paragraph, DISTRICT may proceed with the work in any manner deemed proper by DISTRICT without recourse by Dealership, its officers, agents, employees or volunteers.

11.2. 5-day Notice Termination: DISTRICT, through its Air Pollution Control Officer (APCO), may terminate this Agreement with 5 days written notice if Dealership fails to perform any of the terms and conditions of this Agreement in the time and manner specified. If the Agreement is terminated under this paragraph, DISTRICT may proceed with the work in any manner deemed proper by DISTRICT without recourse by Dealership, its officers, agents, employees or volunteers.

12.0 Waiver of Claims: Dealership waives any claims against DISTRICT, its officers, agents, employees or volunteers from damage or loss caused by:

12.1. Any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part of this Agreement.

12.2. Any judgment or award declaring this Agreement either void or voidable, or delaying the performance of any part of this Agreement.

13.0 Waiver of Agreement Provisions: Waiver by either party of any default, breach or condition precedent will not be construed as waiver of any other default, breach or condition precedent or any other right under this Agreement.

14.0 Time: Time is of the essence with respect to the timely performance of each provision of this Agreement.

15.0 Severability: If any provision of this Agreement is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed and enforced as if such provision had not been included.

16.0 Compliance with Laws and Regulations: Dealership must comply with all applicable federal, state and local laws, regulations, and ordinances.

17.0 Status of Dealership: Dealership is an independent contractor, and no relationship of employer-employee exists between DISTRICT and Dealership, or Dealership's employees, subcontractors, or consultants. Accordingly, Dealership, its employees, subcontractors and consultants do not have any of the entitlements of an DISTRICT employee.

17.1. Direction and Control: Dealership is subject to the control and direction of the APCO regarding the designation of tasks to be performed and the results to be accomplished

under this Agreement, but not the means, methods, or sequence used by Dealership for accomplishing the tasks and results.

17.2. Direction of Third Parties: If Dealership employs any third persons, these persons will be under the exclusive control of Dealership. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring, and discharging will be determined by Dealership.

18.0 Right to Bind: Neither Dealership nor its employees, subcontractors or consultants have the right to act on behalf of DISTRICT in any capacity, or to bind DISTRICT to any obligation.

19.0 Taxes: DISTRICT will not make any deductions or withholdings from the compensation paid to Dealership. Dealership must issue all forms required by federal and state laws for income and employment tax purposes for all of Dealership's assigned personnel.

20.0 Conflict of Interest: No officer or employee of DISTRICT has any pecuniary interest, direct or indirect, in this Agreement or the proceeds of the Agreement. No officer or employee of Dealership may serve on DISTRICT's governing body or hold any DISTRICT position which by rule, practice, or action nominates, recommends, supervises or authorizes the development or execution of this Agreement, or any payment to Dealership.

21.0 Indemnity: The Dealership agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to the DISTRICT and to defend, indemnify, hold harmless, reimburse and release the District, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by the DISTRICT to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including the Dealership, arising out of or in connection with the performance of the Dealership hereunder, whether or not there is concurrent negligence on the part of the DISTRICT, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of the DISTRICT. If there is a possible obligation to indemnify, the Dealership's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. The DISTRICT shall have the right to select its own legal counsel at the expense of the Dealership, subject to the Dealership's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Dealership or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

22.0 Signing Authority: The undersigned representative of Dealership affirmatively states that he or she has legal authority to bind Dealership to the terms of this Agreement.

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

DEALERSHIP

DISTRICT

Company
Dealership Name

Northern Sonoma County
Air Pollution Control District

Name
Name of Authorized Representative
Officer

Robert Bamford, Air Pollution Control

Title
Title of Authorized Representative

Approved as to legal form:

Signature of Authorized Representative

Christiana Darlington, DISTRICT Counsel