

**FUNDING AGREEMENT
BETWEEN
NORTHERN SONOMA COUNTY
AIR POLLUTION CONTROL DISTRICT
AND
[APPLICANT]
For the Replacement of one Agricultural Diesel Tractor
PROJECT NUMBER CMZZ-ZZ**

This Agreement is made and entered into this ____ day of _____, 20 ____, between [Applicant], hereinafter referred to as “Grantee,” and the Northern Sonoma County Air Pollution Control District, hereinafter referred to as the “Grantor” or “Air District,” interchangeably. Attachment A, Project Specific Information, is hereby incorporated into this Agreement by this reference.

SECTION I

GRANTEE AGREES:

- 1) To implement the Project in accordance with the description and implementation schedule contained in Attachment A. Failure to implement the Project in accordance with the description and implementation schedule contained in Attachment A may result in the termination of this Agreement. Both the Project description and implementation schedule may be modified consistent with Section III.16) of this Agreement. The Project, as used in this Agreement, is described on Attachment A.
- 2) To submit documentation to the Air District of the equipment purchased as part of the Project. The documentation shall be in the form of a purchase order or sales contract.
- 3) To submit invoice(s) to the Air District for payment of expenses incurred to complete the Project consistent with the Project description and schedule contained on Attachment A. Invoices may be submitted as soon as costs are incurred, but by no later than specified in the schedule in Attachment A.
- 4) To keep records of Project activities, expenses and charges to document and support the invoices submitted to the Air District.
- 5) To keep records for the period of the Project Implementation documenting the annual number of hours of operation and the annual amount of fuel used by the engine part of the Project.
- 6) To allow and facilitate Air District review of Project performance and engine emissions testing and all expenditures relating to the Project funded through this Agreement.

- 7) To acknowledge the Air District and the Carl Moyer Program as a funding source for the Project in any related media events, articles, news releases or other publicity materials.
- 8) To assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of law and implementation regulations.
- 9) To return Carl Moyer Grant Funds, as pro-rated and requested by the District, if the Project equipment is sold at any time during the Project Implementation Period.
- 10) To comply with those “Special Conditions,” if any, listed on Attachment A.
- 11) To permanently destroy both the engine and the frame of the equipment being replaced as part of the Project and provide certified documentation verification of the engine’s destruction.
- 12) During the performance of this Grant Agreement, Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religious creed, color, national origin, ancestry, physical disability, mental disability, sexual orientation, medical condition (including HIV and AIDS), marital status, age (over 40) or allow 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. The Grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12990 (a)-(f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a)-(f), set forth in Chapter 5 of Division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

SECTION II

AIR DISTRICT/GRANTOR AGREES:

- 1) To reimburse the Grantee or pay as the Grantee directs for legitimate Project expenses up to the total grant amount within 30 calendar days of receipt by Air District of invoices specified in Attachment A. Final payment will be made once Air District has verified that Grantee has completed the Project. Verification by Air District will include physical inspection of the equipment specified on Attachment A, and review and acceptance of evidence that the Old Equipment replaced as part of the Project has been permanently destroyed.
- 2) To provide funds not to exceed the “Total Carl Moyer Funds Awarded” amount for this Project as listed on Attachment A.

SECTION III

IT IS MUTUALLY AGREED:

- 1) Authority: This Agreement is made pursuant to the California Air Resources Board's Carl Moyer Program as established in Health & Safety Code Section 44280. Any questions or disputes the parties may have in the implementation of this grant agreement shall be resolved by reference and adherence to the terms and conditions of the Carl Moyer Program as promulgated by the California Air Resources Board.
- 2) Definition: Project Completion: Project Completion is the time frame starting with the date of execution of this Agreement to the date the Project post-inspection confirms that the Project has become operational. This includes the time period when the equipment is ordered and delivered.
- 3) Project Completion: Project Completion shall occur within the time frame noted in Attachment A. If Project Completion is not achieved within this period, the Agreement shall be terminated. The Project Completion period may be extended if mutually agreed to in writing by both parties.
- 4) Definition: Project Implementation: The Project Implementation time frame is the second part of the contract term, and must equal the Project Life used in the District's Project cost-effectiveness calculation and shown in Attachment A.
- 5) Project Implementation: Project Implementation begins on the date that the Air District makes the final invoice payment on the Project and continues for the number of years specified in Attachment A. Grantee is required to operate and maintain the Project according to the terms of this Agreement for the full Project Implementation period.
- 6) Equipment Dealership: Grantee may only work with the Equipment Dealership designated in Attachment A for the purchase of the equipment described in this agreement. The designated Equipment Dealership must maintain a valid Master Agreement with the Air District to participate in the Off-Road Equipment Replacement Program. If the Equipment Dealership's Master Agreement with the Air District is ended for any reason, the Grantee and Air District may mutually agree in writing to designate another Equipment Dealership to supply the replacement equipment.
- 7) Grant Payment: Upon completion of the Project, the Grant Payment may be made in the form of a two party check issued to both the Grantee and the Equipment Dealership, at the discretion of the District.
- 8) Destruction of the Old Equipment: Both the engine and the frame of the Old Equipment described in Attachment A shall be destroyed. The engine shall be destroyed by cutting a hole in the engine block, irregular in shape, measuring a minimum of three inches in diameter at its narrowest point. The frame of the equipment shall be cut in such a way as to make it inoperable and unrepairable.

- 9) Termination: Either party may terminate this Agreement at any time prior to transfer of funds by giving written notice of termination to the other party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least thirty (30) days before the effective date of such termination. Upon receiving notice of termination, Grantee shall immediately cease further expenditure of Carl Moyer Grant Program funds received under this Agreement. The Air District will reimburse Grantee for qualifying expenditures on the Project made prior to the receipt of the notice of termination.
- 10) Indemnification. Grantee agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to Air District and the County of Sonoma (“County”), and to defend, indemnify, hold harmless, reimburse and release Air District and County, 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 Air District or County 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 Grantee, arising out of or in connection with the performance of Grantee or its agents, employees, contractors, subcontractors or invitees (“agents”) hereunder, whether or not there is concurrent negligence on the part of Air District or County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of the Air District or County. If there is a possible obligation to indemnify, Grantee’s duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. Air District and County shall have the right to select their own legal counsel at the expense of Grantee, subject to Grantee’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 Grantee or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- 11) Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal delivery service or first class mail, to the addressees set forth on Attachment A, or to such addressees which may be specified in writing to the parties hereto.
- 12) Contacts: Grantee and Air District persons to act as contacts and liaison with the Air District and the Grantee with regards to the day-to-day activities of the Project are specified on Attachment A. All reports and correspondence are to be addressed to the “Contacts” listed on Attachment A.
- 13) Project Number: All correspondence shall reference the “Project Number” listed on Attachment A.
- 14) Additional Acts and Documents: Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments,

as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.

- 15) Entire 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.
- 16) Amendment: This Agreement may not be changed, modified or rescinded except in writing and signed by the parties hereto. Any attempt at oral modification of this Agreement shall be void and of no effect. The Air District contact person and Grantee contact person identified pursuant to Paragraph III.12) above may jointly authorize, in writing, any schedule revisions or changes to the Project scope of work that do not diminish the emission reductions associated with the Project. Any other amendments to this Agreement must be executed in writing by the signatories to this Agreement. Any change in Project scope must be approved by the Air District prior to implementation of the change by the Grantee.
- 17) Independent Contractor: None of the Grantee's agents, subcontractors or employees shall be construed as agents or employees of the Air District.
- 18) Assignment: This Agreement must be a condition of transfer of the New Equipment identified in Attachment A to any successor organization to the Grantee. Additionally, this Agreement may not be assigned, transferred, hypothecated, subcontracted or pledged by Grantee without the express written consent of the Grantor/Air District.
- 19) Severability: Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the invalid portion(s), reasonably be interpreted to give effect to the intentions of the parties.
- 20) Effective Date: The effective date of this Agreement is the date of signature by the Air Pollution Control Officer as listed on the signature page.
- 21) Schedule for Eligible Costs: Only Project costs incurred after the "Air District Approval Date" listed on Attachment A, and before completion of Project or termination, whichever occurs first, are eligible to receive Carl Moyer Program funds.
- 22) Cost Reduction: The Air District may reduce its contribution to the Project in the event that the "Total Project Cost" is less than the amount listed on Attachment A.
- 23) Project Cost: Project cost overruns are the sole responsibility of the Grantee. The Air District's funding obligation is limited to the "Total Carl Moyer Program Funds Awarded" as listed on Attachment A. Acceptance of this funding agreement obligates the Grantee to deliver the Project according to the terms and conditions of this Agreement.

- 24) Force Majeure: Neither the Air District nor Grantee shall be liable or deemed to be in default for any delay or failure in performance under this Funding Agreement or interruption of services, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Air District or Grantee.
- 25) Governing Law: This Funding Agreement shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California.
- 26) Emissions Testing: The Air District may conduct emissions testing, at its expense, on any engine purchased or modified as part of the Project. Testing will be limited to no more than once per year during the duration of this Agreement. Testing will be conducted according to a schedule mutually agreed upon by both parties.
- 27) Construction: Grantee and Air District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Grantee and Air District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 28) No Waiver of Breach: The waiver by the Air District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 29) Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of the Agreement and shall have no effect on its construction or interpretation.
- 30) Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

SIGNATURES:

Northern Sonoma County Air Pollution Control District:

by: _____ Date: _____

Rob Bamford
Air Pollution Control Officer
Northern Sonoma County Air Pollution Control District

Grantee:

by: _____

Owner
Applicant

ATTACHMENT A PROJECT SPECIFIC INFORMATION

[Note: The section numbers shown in parenthesis below refer to Sections in the Funding Agreement.]

- 1) **Grantee:** **Applicant**
- 2) **Project Number (Section III.13):** **CMZZ-ZZ**
- 3) **Equipment Dealership:** **Dealer**
- 4) **Total Carl Moyer Program Funds Awarded (Sections II.2) and III.22):** The maximum award amount for the replacement of the **Equipment Name** Model **###**, equipment serial number **#####** shall not exceed **\$\$\$\$\$** or 80 percent of the eligible Project cost, whichever is the lesser amount.
- 5) **Total Project Cost (Section III.22):** The total eligible Project cost for equipment purchase is estimated to be **\$\$\$\$\$**.
- 6) **Project Implementation (Section III.5):** The Project Implementation term shall be for **10** years, beginning on the date the final invoice payment is made by the Air District.
- 7) **Project Description:**

Old Equipment

- Make: **Make**
- Model: **####**
- Model Year: **2ZZZ**
- Serial Number: **#####**
- Engine Model: **####**
- Engine Serial Number: **#####**
- Engine Tier: **#**
- Engine Hp: **##**

New Equipment

- Make: **Make**
- Model: **####**
- Model Year: **2ZZZ**
- Engine Model: **#####**
- Engine Tier: **#**
- Engine Hp: **##**

The Old Equipment shall be permanently removed from service and replaced with the New Equipment. The engine of the Old Equipment shall be destroyed by cutting a hole in the engine block, irregular in shape, measuring a minimum of three inches in diameter at its narrowest point. The frame/body of the Old Equipment shall be cut or crushed in such a way as to make it inoperable and unrepairable.

8) **Project Requirements:**

- A. New Equipment must come with or have purchased a minimum of a one-year or 1600 hours power and drive train warranty. Warranty documentation must be provided to the Air District. Warranty costs are not eligible for funding.
- B. If the applicant obtains financing to assist in the purchase of replacement equipment, full documentation of financing must be provided to the Air District.
- C. New Equipment must have a fully functional, non-resettable, hour meter installed at the time of delivery. The hour meter must be maintained in operating order for the period of this agreement.

9) **Project Schedule (Section I.1):**

- A. Prior to ordering the New Equipment, the Old Equipment must be inspected by Air District personnel and observed in operation. The operation of the Old Equipment shall be documented by an inspection report which will be included in the Grantee's file.
- B. Prior to delivery of the New Equipment the Grantee or Equipment Dealership shall notify the Air District that the New Equipment is available at the Dealership for inspection. The Air District will document the New Equipment in operation and include a report in the Grantee's file documenting the inspection. The Air District will then give permission for the New Equipment to be delivered to the Grantee.
- C. The Equipment Dealership shall destroy the Old Equipment or arrange with a third party to have the Old Equipment destroyed. The Equipment Dealership will notify the Air District where the destroyed Old Equipment is. Where possible, Air District personnel shall inspect and document the destruction of the Old Equipment. When it is not possible for the Air District to inspect the Old Equipment, the Equipment Dealership shall provide photographs documenting the destruction of the engine and a signed statement saying that the Old Equipment has been destroyed as required.
- D. The Project shall be completed and all invoices submitted to the Air District for reimbursement by **DATE**. If the Project is not completed and

invoiced by **DATE** the Project will not be reimbursed under this agreement unless an extension in writing is given by the Grantor.

- 10) **Reporting:** Grantee shall provide a written report to the Air District by January 30 of each year of this agreement (**DATE, DATE, DATE, DATE** and **DATE**). The report shall contain the following for each of the engines covered under this agreement:
- A. Equipment Status (operating normal, inoperative, junked, or sold).
 - B. Annual hours of operation for previous calendar year (**DATE** report provides hours of operation for **Last Year** etc.).
 - C. Annual fuel usage for previous calendar year (**DATE** report provides fuel usage for **Last Year** etc.).
 - D. If the Equipment has operated outside the Air District, which air district did it operate in and for how many hours did it operate there.
 - E. Any additional information that may be requested in the report that may be needed to determine the emission reduction obtained by the Project.

- 11) **Notices (Section III.11):** Any written notice required is to be addressed to:

Grantee:

Name
Applicant
Address
City State Zip

Air District:

Rob Bamford
Air Pollution Control Officer
Northern Sonoma County APCD
150 Matheson Street
Healdsburg, CA 95448

- 12) **Contacts (Section III.12):** Contact persons for day-to-day activities of the Project are:

Project Contact:

Name
Applicant
Address
City State Zip

###-###-####

Air District:

Jessica DePrimo
Air Quality Specialist III
Northern Sonoma County APCD
150 Matheson Street Healdsburg,
CA 95448
(707) 433-5911

- 13) **Equipment Dealership Contact:**

Name
Dealer
Address
City State Zip
###-###-####

- 14) **Air District Effective Date (Sections III.20):** _____, 2
- 15) **Special Conditions (Section I.10):** Prior to any replacement work being done, the Old Equipment to be replaced must be inspected and observed in operation by Air District personnel.
- A. To obtain reimbursement the Grantee must:
- a. Have the New Equipment inspected in operating order by Air District personnel.
 - b. Provide all documentation of the New Equipment purchased required by this agreement.
 - c. Provide a certified statement from the Equipment Dealership that the Old Equipment (as described in part 7 of this attachment) has been rendered permanently unusable.
 - d. Submit to the Air District a letter requesting payment under the terms of this agreement along with an invoice for the New Equipment.
- B. Payment under this agreement may be in the form of a Two Party Check made out to the Grantee and the Equipment Dealership, at the discretion of the Air District.
- C. Project shall be completed and all invoices submitted to the Air District for reimbursement by **DATE**.