

**CONTRACT # 19-122
AMENDED & RESTATED - 2020**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
PLACER COUNTY AIR POLLUTION CONTROL DISTRICT
AND THE MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT
FARMER PROGRAM
FISCAL YEAR 2018-19 APPROPRIATION**

WHEREAS; California's agricultural industry consists of approximately 77,500 farms and ranches, providing over 400 different commodities, making agriculture one of the State's most diverse industries. Producers, custom operators, first processors, and rental companies own and operate approximately 160,000 pieces of off-road, diesel-fueled, mobile agricultural equipment statewide, in addition to stationary equipment, and on-road vehicles used in agricultural operations. Even with increasingly more stringent emission standards on engine manufacturers, emissions from these vehicles and equipment are a significant source of air pollution. Reducing these emissions is necessary to meet federal ozone and particulate matter air quality standards.

WHEREAS; In recognition of the strong need and this industry's dedication to reducing their emissions, the State Legislature allocated \$135 million to the California Air Resources Board (CARB) from Fiscal Year (FY) 2017-18 through Assembly Bill (AB) 134 (Committee on Budget, Chapter 254, Statutes of 2017) and AB 109 (Ting, Chapter 249, Statutes of 2017). The Legislature directed the use of the monies to "reduce agricultural sector emissions by providing grants, rebates, and other financial incentives for agricultural harvesting equipment, heavy-duty trucks, agricultural pump engines, tractors, and other equipment used in agricultural operations."

WHEREAS; CARB has created a Shared Allocation Pool of funding that is specifically designated for the 18 Air Quality Management and Air Pollution Control Districts (Districts) with less than one percent of the statewide agricultural equipment inventory, to ensure farmers in those Districts have the opportunity to access Funding Agricultural Reduction Measures for Emission Reductions (FARMER) Program funding and to streamline the implementation of the FARMER Program.

WHEREAS; the Pool will be managed by Placer County Air Pollution Control District (Placer APCD) and the California Air Pollution Control Officers Association (CAPCOA) in accordance with the grant provisions outlined in the agreement between the California Air Resources Board (CARB) and Placer APCD and provisions outlined in the subsequent agreement between CAPCOA and Placer APCD.

WHEREAS; the Mendocino County Air Quality Management District (District) would like to participate within the FARMER Program;

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section I - Terms and Conditions

1. **Participation in the Program.** The District agrees to abide by any applicable terms and commitments of the Placer County FARMER Policies and Procedures Manual (PPM), as attached hereto as Exhibit A and as may be amended from time to time, and agrees to all applicable provisions within the FARMER Program Guidelines, including all oversight responsibilities identified in the Farmer Program Guidelines, any future Program Advisories and Mail-Outs, developed by CARB, which can be found at: <https://ww2.arb.ca.gov/our-work/programs/farmer-program>
2. **Project Fund Requirements.** Project funds must be used for new, eligible vehicle, equipment, engine, or retrofit purchases; scrap costs for the equipment being replaced; supporting infrastructure; and any other equipment-related expenses necessary to implement FARMER Program-eligible projects as described in the two documents referenced in Section 1.
3. **Submittal of Applications.** The District will provide Placer APCD with application(s) for consideration for funding. Regardless of source of application (Moyer RAP, District submitted, new submission), equipment quotes may be no more than 6 months old at time of application. Equipment quotes may be updated at the request of the District, the applicant if a substantial change in price has occurred or if the applicant would like to update their application. Project applications must include documentation of existing engine usage, such as miles traveled, hours operated, fuel consumed per year, or maintenance records, for 24 months or as specified in the FARMER guidelines by source category.
4. **Agreement with Project Selection Criteria.** The District understands and agrees to the project selection process described within the PPM as attached.
5. **Project Funding.** Placer APCD will only fund projects after the Districts demonstrate they have properly established the FARMER program and upon execution of this Agreement.
6. **Contracts with Project Awardees.** The District will enter into written contracts with project applicants that require compliance with project fund requirements, as well as all other requirements within this Agreement.
7. **Program Inspection Requirements.** A pre-inspection, post-inspection, and verification of destruction inspection must be completed prior to funding a project, when applicable as described within the PPM. An Inspection Report shall be used to document such inspections. All inspection reports and photos will be maintained in the project file both digitally and in hard copy. Digital photos will be kept in the .jpeg file format and hard copy photos will be in color and be no less than a quarter sheet of paper in size. Photos should be clear and legible to the best extent possible.
8. **Program Reporting Requirements.** Participating Districts are required to provide Placer APCD with quarterly updates on all projects funded through the Fiscal Year 2017-18 FARMER Program and semi-annual updates on all projects funded through the Fiscal Year 2018-19 FARMER Program. Quarterly updates will be facilitated by CAPCOA at least 45 days prior to Placer APCD's quarterly reporting deadline to CARB, and semi-annual reports will be submitted directly to Placer APCD.

Participating Districts are also required to report information on all projects funded through the FARMER Program on an annual basis, if those projects last over one year, consistent with the PPM. Districts are required to report project information in the FARMER Benefits Calculator Tool. More specifically, reported information must be sufficient to populate the required data fields and to calculate covered emission reductions and cost-effectiveness for equipment types where required. Districts will ensure the reported information is complete, correct, and supported by documentation. See the PPM for more reporting requirements.

9. Successful Project Implementation. The participating District must take appropriate action to ensure emission reductions are realized for engines, equipment, vehicles, as well as usage for infrastructure projects. Except for projects in which usage is not required to be specified in the contract, when average usage over a three year period for a contracted engine, equipment, or vehicle is less than 70 percent of the activity required in the contract, the District may choose, but is not limited to, the options listed within the PPM to address any underutilization.
10. Program Outreach and Solicitation. In coordination with Placer APCD and CAPCOA, participating Districts will be responsible for creating outreach materials and conducting public outreach regarding the FARMER Program as described in the PPM. Public outreach may be conducted to vehicle dealers, fleets, and agricultural end users necessary for the project to be successful, including robust outreach in disadvantaged communities, if such communities are located within the District. Outreach could include the development and distribution of outreach materials, hosting public workshops or meetings, and targeted outreach and assistance for small growers. Content of materials could include, but are not limited to, information on program availability, application materials, and pertinent deadlines.
11. District Matching Funds. Funds other than Moyer Program grant funds and AB 923 funds may be used to co-fund FARMER Program eligible projects, when all program criteria associated with each funding source are met. Funding sources, eligibility of funds and co-funding procedures can be found in the CARB Moyer Guidelines.
12. Redirection of Funds. CARB and Placer APCD reserve the right to redirect funds from a participating District and reallocate such funds to other Districts, if a District informs Placer APCD in a written letter that it will not be able to meet expenditure deadlines, or if it is found that the approved project did not meet funding requirements.
 - a. In the event of non-performance or termination, CARB and Placer APCD shall require full recovery of the unspent funds by transfer upon the participating District's accounts. The District must provide fund transfer information within 45 days upon receipt of notice.
 - b. In no event shall the participating District receive reimbursement for costs that exceed the maximum project implementation funding amount. Any project implementation funds not needed for project implementation may be transferred to project funds upon CARB's written approval. Any program funds not fully expended by the end of the grant term must be immediately returned to Placer APCD.

13. Availability of Documentation. All documentation, records, and referenced materials must be made available for review during monitoring visits and audits by CARB, Placer APCD, or their designee. These records must be retained for the life of the projects funded under this grant. Requests for payment must be made consistent with FARMER Guidelines and this PPM and include all documentation required by CAPCOA and Placer APCD. After the initial grant disbursement request, the participating Districts must include an attachment that documents ongoing expenditures of previously disbursed project and project implementation funds with each subsequent grant disbursement request. Backup documentation for administrative funds may include items listed in the PPM.
14. Maintenance of Grant Funds by District. Participating District shall place all received funds in an interest-bearing account and track interest accrued as described in Section XV, Interest Accrual. Participating Districts are highly encouraged to expend all funds within 12 months of receipt. The participating District must maintain accounting records (e.g., general ledger) that track interest earned, expended, or returned on the project funds, as specified in the PPM.
15. Invoicing procedure. After contract execution and once conditions for funding are met, the program participant must submit an original invoice requesting payment, including copies of all associated invoices related to project expenditures. Other specifics about invoicing must be followed as described in the applicable Section of the PPM.
16. Accounting Records Maintenance. The participating District must maintain accounting records (e.g., general ledger) that track interest earned, expended, or returned on the project funds, as described within the applicable Section of the PPM.
17. Disputes. If any dispute arises about the analysis used to select projects, they shall be first attempted to be resolved between the APCO of the District and Placer County APCD. The District shall continue with the responsibilities under this grant agreement during any dispute. District staff or management may work in good faith with CARB staff or management to resolve any disagreements or conflicts arising from implementation of this grant agreement. However, any disagreements that cannot be resolved at the management level within 30 days of when the issue is first raised with CARB staff shall be subject to resolution by the CARB Executive Officer, or his designated representative. Nothing contained in this paragraph is intended to limit any rights or remedies that the parties may have under law.
18. Computer Licenses. The District certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this grant agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

Section II - CARB Flow Down Provisions

1. CARB Termination. CARB reserves the right to terminate the FARMER Program upon thirty days written notice to Placer APCD. If this occurs, Placer APCD will immediately notify the District, who must return remaining funds, including any earned interest, immediately.
2. CARB Grant Suspension Order. CARB reserves the right to issue a grant suspension order in the event that a dispute should arise. If Placer receives such an order, it will notify the District and the grant suspension order will be in effect until the dispute has been resolved or the grant has been terminated. If the District chooses to continue work on the project after receiving a grant suspension order, the District will not be reimbursed for any expenditure incurred during the suspension in the event CARB terminates the grant. If CARB rescinds the suspension order and does not terminate the grant, CARB at its sole discretion will reimburse Placer APCD for any expenses incurred by the participating districts during the suspension that CARB deems reimbursable in accordance with the terms of the grant.
3. Right to Audit. CARB or its designee, including but not limited to Placer APCD, reserve the right to audit at any time during the duration of this grant the Districts' costs of performing the grant and to refuse payment of any reimbursable costs or expenses that in the opinion of CARB or its designee are unsubstantiated or unverified. The Districts shall cooperate with CARB or its designee including, but not limited to, promptly providing all information and documents requested, such as all financial records, documents, and other information pertaining to reimbursable costs, and any matching costs and expenses.
4. Fraud. CARB or its designee may recoup funds which were received based upon misinformation or fraud, or for which a District, manufacturer or project participant is in significant or continual non-compliance with the terms of this grant or State law. CARB also reserves the right to prohibit any entity from participating in the FARMER Program, due to non-compliance with project requirements.
5. Availability of Funds. CARB and Placer APCD'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 District or to furnish any other considerations under this grant agreement.
6. State Audits. The District agrees that CARB, the Department of General Services, Department of Finance, State Controller's Office, 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 performance of this grant and all State funds received. The District agrees to maintain such records for possible audit for the life of the projects funded under this grant, unless a longer period of records retention is stipulated. The District 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 District agrees to include similar right of the State to audit records and interview staff in any subgrant or subcontract related to performance of this agreement.

Section III - General Provisions

1. Amendment: No amendment or variation of the terms of this grant 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 grant agreement is binding on any of the parties.
2. Assignment: This grant is not assignable by the District, either in whole or in part, without the consent of CARB in the form of a formal written amendment.
3. Compliance with law, regulations, etc.: The District agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements.
4. Confidentiality: Except as otherwise required by law, no record which has been designated as confidential by CARB, CAPCOA or Placer APCD shall be disclosed by the District.
5. Conflict of interest: The District certifies that it is in compliance with applicable State and/or federal conflict of interest laws. The District may have no interest, and must not acquire any interest, direct or indirect, which will conflict with its ability to impartially complete the tasks described herein. The District must disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest with its duties throughout the grant term. CARB may consider the nature and extent of any actual, apparent, or potential conflict of interest in the District's ability to perform the grant. The District must immediately advise CARB and Placer APCD in writing for any potential new conflicts of interest throughout the grant term.
6. Environmental justice: In the performance of this grant agreement, the District shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.
7. Fiscal management systems and accounting standards: The District 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 grant agreement. Unless otherwise prohibited by State or local law, the District further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
8. Force majeure: Neither Placer APCD nor the District shall be liable for or deemed to be in default for any delay or failure in performance under this grant agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, etc.

9. Governing law and venue: This grant is governed by and shall be interpreted in accordance with the laws of the State of California, Placer APCD and the District hereby agree that any action arising out of this grant agreement shall be filed and maintained in the Superior Court in and for the County of Placer, California, or in the United States District Court in and for the Eastern District of California. The District hereby waives any existing sovereign immunity for the purposes of this grant agreement.
10. District's responsibility for work: The District shall be responsible for work and for persons or entities engaged in work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The District shall be responsible for any and all disputes arising out of its contract for work on the Project, including but not limited to payment disputes with contractors, subcontractors, and providers of services. The State will not mediate District disputes concerning responsibility for performance of work.
11. Indemnification: The District agrees to indemnify, defend and hold harmless Placer APCD and its Board, officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, and expense, including reasonable attorneys' fees, from any and all claims for injury or damages arising out of the performance by the District, and out of the operation of equipment that is purchased with funds from this grant award.
12. Independent Contractor: The District, and its agents and employees, if any, in their performance of this grant agreement, shall act in an independent capacity and not as officers, employees or agents of CARB.
13. Nondiscrimination: During the performance of this grant agreement, the District and its third party entities shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), sexual orientation, marital status, or allow denial of family care leave, medical-care leave, or pregnancy-disability leave. The District and its third party entities shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The District and its third party entities shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §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 District and its third party entities shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The District shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this grant agreement.
14. 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.

15. Personally Identifiable Information: Information or data, including, but not limited to, records that personally identify an individual or individuals are confidential in accordance with California Civil Code sections 1798, et seq. and other relevant State or Federal statutes and regulations. The District must safeguard all such information or data which comes into their possession under this agreement in perpetuity, and must not release or publish any such information, data, or financing assistance records.
16. Prevailing wages and labor compliance: If applicable, the District agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. If applicable, the District shall monitor all agreements subject to reimbursement from this grant agreement to ensure that the prevailing wage provisions of State Labor Code Section 1771 are being met.
17. Professionals: For projects involving installation or construction services, the District agrees that only licensed professionals will be used to perform services under this grant agreement where such services are called for and licensed professionals are required for those services under State law.
18. Severability: If a court of competent jurisdiction holds any provision of this grant agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected.
19. Termination: Placer APCD may terminate this grant agreement by written notice at any time prior to completion of projects funded by this grant agreement, upon violation by the District of any material provision after such violation has been called to the attention of the District and after failure of the District to bring itself into compliance with the provisions of this grant agreement.
20. Timeliness: Time is of the essence in this grant agreement. The District shall proceed with and complete the Project in an expeditious manner.
21. Waiver of Rights: Any waiver of rights with respect to a default or other matter arising under the grant agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this grant agreement are in addition to any other rights and remedies provided by law.

**Funding Agricultural Reduction Measures for Emission Reductions (FARMER) Program
Grant Agreement**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of February 25, 2020.

MENDOCINO COUNTY AIR QUALITY
MANAGEMENT DISTRICT

PLACER AIR POLLUTION CONTROL
DISTRICT

Barbara A. Moed, APCO 2/25/20
Mendocino County AQMD Date

By: _____
Erik White, APCO Date

Budgeted: ☐ Yes ☒ No

Placer County Air Pollution Control District

Budget Unit: 0327 _____

110 Maple Street

Line Item: _____

Auburn, California 95603

Grant: ☒ Yes ☐ No

Grant No.: _____

COUNTY OF MENDOCINO

By: _____
JOHN HASCHEK, Chair
AIR QUALITY MANAGEMENT DISTRICT BOARD

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

ATTEST:
CARMEL J. ANGELO, Clerk of said Board

DISTRICT COUNSEL REVIEW:
APPROVED AS TO FORM:
CHRISTIANA DARLINGTON,
District Counsel

By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

COUNTY COUNSEL REVIEW:
APPROVED AS TO FORM:
CHRISTIAN M. CURTIS,
Acting County Counsel

By: _____
Deputy

By: _____
Deputy

INSURANCE REVIEW:

By: _____
Risk Management

EXECUTIVE OFFICE/FISCAL REVIEW:
APPROVAL RECOMMENDED

By: _____
Deputy CEO

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; **\$50,001+ Board of Supervisors**

Exception to Bid Process Required/Completed ☐ _____

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____