

FARMER Agreement Number 2022-04

LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT FARMER PROGRAM REPLACEMENT AGREEMENT

This Agreement (Agreement) between the Lake County Air Quality Management District ("District"), a body corporate and politic and a public agency of the State of California, and John M. Moorhead and/or Rose Davidson ("Participant"), is made and entered into this _____ day of _____, 2023.

1.0 Recitals

- 1.1 The State of California adopted Assembly Bill (AB) 134 (Committee on Budget, Chapter 254, Statutes of 2017) and AB 109 (Ting, Chapter 249, Statutes of 2017).
- 1.2 AB 134 and AB 109 appropriate \$135 million from the State Budget for Fiscal Year 2017/18 to the California Air Resources Board (CARB) for the reduction of criteria, toxic, and greenhouse gas emissions from the agricultural sector.
- 1.3 The CARB adopted the Funding Agricultural Replacement Measures for Emissions Reductions (FARMER) Program (Program) to achieve emission reductions from the agricultural sector as directed in AB 134 and AB 109.
- 1.4 The District Board of Directors approved Resolution No. 2019-62 authorizing the District's participation in the CARB FARMER Program which is hereby incorporated by reference and made part of this Agreement.
- 1.5 The District Board of Directors approved authorizing the Air Pollution Control Officer (APCO) to sign all program documents and implement the Program for the purpose of maintaining consistency with the FARMER Program Guidelines and Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) Guidelines.
- 1.6 To implement mobile source emission reduction projects, the Program provides incentives to fleet operators and individuals for the purchase, repower and/or retrofit of low-emission on-road motor vehicles, off-road mobile equipment, and agricultural water pumps in accordance with the Carl Moyer Program Guidelines, 2017 Revision.
- 1.7 The Participant wishes to participate in the Program by purchasing and operating the equipment described in Exhibit A (equipment) of this Agreement and represents that the purchase is not required by any local, state, and/or federal rule, regulation, memorandum, or other legally binding agreement, with the exception of certain agricultural projects described in Health and Safety Code §44229(b).
- 1.8 The District is in a designated Attainment Area. Pollutants of concern, which the District strives to prevent and decrease to remain in Attainment Status, include ozone and diesel particulate. Ozone is formed by the interaction of Nitrogen Oxides (NOx) and other precursor pollutants. The majority of NOx is generated by vehicles, including heavy-duty vehicles and engines. Diesel particulate is a known carcinogen in the State of California.
- 1.9 The District is the local agency within the boundaries of Lake County with the primary responsibility for the development, implementation, monitoring, and enforcement of air pollution control strategies.
- 1.10 The District is authorized to implement programs to reduce transportation emissions, including programs to encourage the use of alternative fuels and low-emission vehicles.
- 1.11 The District received FARMER funds from Placer County APCD to participate in the small district grant program for funding this project that will reduce emissions from the agricultural sector.
- 1.12 CARB has defined particulate matter (PM) from diesel-fueled vehicles and engines as a toxic air contaminant. CARB and air districts recognize that PM emissions from diesel-fueled engines and vehicles are a serious public health concern.

- 1.13 Participant understands that the purpose of the Program, and this Agreement, is to help the District maintain clean air standards as required by state and federal law.
- 1.14 The parties specifically recognize that CARB, United States Environmental Protection Agency (USEPA), and California Department of Finance (DOF), as applicable, are third-party beneficiaries to this Agreement and have the right to audit compliance with the Agreement, including conducting inspections, and have the right to enforce Participant's compliance with the terms of the Agreement.
- 1.15 This Agreement is a voluntary act intended to accelerate the introduction of low-emission vehicle and engine technology designed to reduce emissions of criteria, toxic, and greenhouse gas emissions within Lake County Air Basin.
- 1.16 The Participant has read and agreed to all requirements of the Program application and the current Carl Moyer Program Guidelines and FARMER Program Guidelines which are hereby incorporated into this Agreement.

2.0 Terms and Conditions

2.1. Definitions: As used in this Agreement, the following terms have the following meanings:

- 2.1.1 **"Applicable emission standards"** are defined as the emission standards for oxides of nitrogen (NOx), particulate matter (PM), hydrocarbons, and carbon monoxide established by the CARB or the USEPA for a model year vehicle or engine. For "phase-in" or "interim" engines, table 5-3 contained in the Off-Road CI chapter of the 2008 Carl Moyer Program Guidelines shall apply.
- 2.1.2 **"Agricultural water pump"** is defined as a stationary or portable device designed to move water used for agricultural purposes.
- 2.1.3 **"Certified"** is defined as a motor vehicle or engine that is certified by CARB or the USEPA to an emission standard or standards.
- 2.1.4 **"Fleet Modernization"** is defined as the transaction in which an older on-road motor vehicle or piece of off-road mobile equipment is destroyed and replaced with a similar motor vehicle or piece of equipment certified to a lower emission standard.
- 2.1.5 **"Motor vehicle"** is defined as a self-propelled device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.
- 2.1.6 **"Off-road equipment"** is defined as a self-propelled device not intended for operation on a highway and is powered by an engine certified to off-road or nonroad emission standards.
- 2.1.7 **"Repower"** is defined as the process in which an old engine is replaced with a new engine.
- 2.1.8 **"Retrofit"** is defined as the installation of a device designed to reduce emissions from an engine.
- 2.1.9 **"Verified"** is defined as a device, fuel, or system that is verified by CARB or the USEPA to reduce emissions from a mobile source by a verified amount.
- 2.1.10 **"Project Completion"** means the implementing agency has confirmed that the new equipment is operational. Project Completion cannot occur before the date of execution of the Participant Agreement.
- 2.1.11 **"Project Implementation"** means the period following Project Completion, during which period the Participant must meet the performance obligation in Exhibit C.

2.2 Participant Obligations – the Participant will:

- 2.2.1 Replace the existing Kubota L245-DT tractor with a newer, low emission tractor as approved by the FARMER Program Guidelines. Participant will purchase a new tractor to replace the 1980 Kubota L245-DT tractor.
- 2.2.2 The project implementation time frame begins on the date of the final invoice payment on equipment funded with FARMER Program funds. The project implementation time frame must equal no less than five (5) years and 2000 hours of operation that Participant must own and operate the engine that is purchased with Program funds.
- 2.2.3 Complete project within 180 days of execution of this Agreement. Project completion is the time frame starting with the date of execution of the Agreement to the date the project post-inspection confirms that the project has become operational. This includes the time period when an engine, equipment, or vehicle is ordered, delivered, and installed. Participant may submit a written request to extend the completion date if the project cannot be successfully completed due to circumstances beyond the Participant's reasonable control.
- 2.2.4 Ensure that a functioning hour meter is installed on the equipment described in Exhibit A for the life of the project. An operational odometer, hour meter, or other District-approved usage measuring device must be installed on all projects and maintained for continuous operation. Should the device fail, Participant agrees to continue to record usage of the equipment and to immediately replace the defective device.
- 2.2.5 Operate the equipment described in Exhibit A in Lake County during the term of this Agreement in accordance with the requirements in Exhibit B. Minimum project timeframe will be 5 years and 2000 hours. In addition to meeting the operating requirements established in Exhibit B, the equipment is required to operate 100% within Lake County. Cooperate with District and CARB in implementation, monitoring, and enforcement to assure the emissions benefits are real, quantifiable, surplus, and enforceable.
- 2.2.6 Submit an annual report commencing project completion and annually thereafter until end of project implementation period. The Participant shall submit a completed report to the District by July 15 of each year. Failure to comply with reporting requirements shall result in on-site monitoring, inspections, and/or notice of violation. The District may request additional performance documentation at its discretion.

2.3 Payment

- 2.3.1 The District will either reimburse the Participant up to **\$25,360.00** towards the cost of the vehicle(s) or equipment identified in Exhibit A. The maximum contract amount shall not exceed the maximum funding level corresponding to the program cost-effectiveness limit, nor may the maximum contract amount exceed the project incremental cost. The maximum contract amount must also comply with any funding caps and other criteria for the specific project category as identified in the current Carl Moyer Program Guidelines, the FARMER Program Guidelines, and the District's Policy and Procedures Manual.
- 2.3.2 All payments made under this Agreement are subject to the provisions and limitations of the California Health and Safety Code. The District shall have no liability for payment of any compensation and expenses that are found to be in contravention of the California Health and Safety Code or any other local, state, or federal law. The Participant shall reimburse the District for any payments that are later found to be in contravention of the Health and Safety Code or any other local, state, or federal law.
- 2.3.3 No payments shall be issued under this Agreement prior to pre-inspection, final inspection by District personnel to verify that the new equipment is operational, and verification of destruction. Inspection by the District may be required to verify that the old equipment is rendered completely non-operational. The Project must meet program requirements such as delivery and installation, post-inspection, and acceptance prior to payment issuance.

- 2.3.4 Payments made under this Agreement are subject to taxation and an IRS Form 1099 will be issued to the Participant. Participant shall be required to provide an IRS form W-9 prior to the issuance of any payment under this Agreement. Funds may be withheld by the County of Lake as required by law for payment of tax liabilities and/or other court-ordered payments.
- 2.3.5 Itemized invoices from supplier or paid invoices must be received by District prior to payment issuance. Payments will be made directly to the Participant as reimbursement.
- 2.3.6 If the final invoice amount is lower than the estimate, the District shall reduce the reimbursement amount in accordance with the FARMER Program Guidelines and Carl Moyer Program Guidelines.
- 2.3.7 The District shall confirm that the existing equipment, as identified in Exhibit A, has been destroyed prior to issuing payment.
- 2.3.8 Proof of destruction shall be provided to the District within 10 days of equipment destruction. The dismantler must possess any relevant licenses to dismantle the equipment and must be in compliance with all local, State, and Federal laws and regulations. The dismantler must destroy the equipment properly to permanently and completely eliminate its potential for emissions. The following pictures must be provided:
- (i) Left and right side of destroyed engine block. (A hole must be put in the engine block with a diameter of at least three inches at the narrowest point. The hole must be irregularly shaped (i.e. no symmetrical squares or circles). A section of the oil pan flange must be removed as part of the hole or have a line cut through it that connects to the hole.);
 - (ii) Completely severed frame rails;
 - (iii) Equipment serial number or vehicle VIN tag;
 - (iv) Front, right, and left side of equipment with hood down including license plate if available. Front right, and left side of equipment;
 - (v) Engine serial number;
 - (vi) Odometer reading on vehicle or hour meter on equipment; and
 - (vii) Other photographs as requested by District.

2.4 General Program Requirements

- 2.4.1 The Participant warrants that, throughout the term of this Agreement, the equipment covered under this Agreement shall meet all eligibility requirements described in the Program application, the Program Guidelines, and the current Carl Moyer Program Guidelines.
- 2.4.2 The Participant cannot apply for or receive additional incentive funds, including but not limited to the Carl Moyer Program inter-district fund or any other air district fund, including those funds used as matching funds, for any equipment listed in Exhibit A of this Agreement, except Federal programs to reduce greenhouse gas emissions or funding provided by the Alternative and Renewable Fuel and Vehicle Technology Program to reduce greenhouse gases. These funds must be disclosed to the District. If the District discovers that the Participant has applied for or received funds from these sources, the District will terminate this Agreement and require that any funds paid under this Agreement be returned to the District.

Participant certifies that they have disclosed all funding sources applied for or received for the equipment listed in Exhibit A of this Agreement. Participant shall notify the District within 10 days of additional sources of funding received for the equipment listed in Exhibit A of this Agreement, including any sources that become available after contract execution.

- 2.4.3 The Participant agrees to operate the equipment described in Exhibit A in a manner that is consistent with the eligibility requirements in the guidelines and the goals and objectives of the Program and within the manufacturer's specifications including all maintenance and fueling requirements. Under no circumstances may the Participant make any modifications to or tamper with the equipment, emission control system(s), or any recording devices on the equipment. The Participant also agrees to operate the equipment in compliance with all local, state, and federal rules, laws, and regulations.
- 2.4.4 The Participant must submit copies of invoices from service providers that confirm:
- (i) Purchase Order Documentation: A copy of the final purchase order. The purchase order must include the assumed delivery date of the new equipment.
 - (ii) Final Invoice Documentation: A copy of (i) the new equipment invoice, and (ii) copies of all invoice documents associated with the purchase and installation of new equipment described in Exhibit B, detailing costs associated with parts, labor, and miscellaneous charges, invoices for work performed to meet Moyer eligibility requirements, and the finance agreement for any portion of the new equipment purchase price to be privately financed.
 - (iii) The District will not release any funds until Participant or Dealership on Participant's behalf submits a final invoice that includes the following information:
 - (i) Name, address and phone number of Participant;
 - (ii) Name, address and phone number of Dealership;
 - (iii) Purchase order date;
 - (iv) Vehicle Identification Number, model year, manufacturer, engine model year, horsepower rating, serial number, and fuel type of each replacement engine funded;
 - (v) Cost of each equipment including essential or standard equipment and tax;
 - (vi) Date Participant accepted delivery of equipment; and
 - (vii) Odometer reading on the date the replacement equipment is delivered and accepted by Participant.
- 2.4.5 The Participant certifies that their fleet, engines, and equipment is in compliance with all applicable federal, state, and local air quality rules and regulations at time of execution. The Participant agrees to maintain compliance with all applicable rules and regulations for full project implementation period.

2.5 Participant Obligations: Participant must:

- 2.5.1 **Equipment Warranties:** Secure New Equipment Warranties and operate the new equipment within the manufacturer's specifications.
- 2.5.2 **Maintenance:** Maintain new equipment according to manufacturer's specifications and fueling requirements. Ensure that the new equipment is only operated when it is calibrated to the lowest emission standard certified by CARB or USEPA, whichever is lower.
- 2.5.3 **Repercussions for Nonperformance:** The Participant understands and agrees to operate the equipment in Exhibit A according to the terms of this Agreement and to cooperate with the District and CARB in the implementation, monitoring, enforcement, and other efforts to assure the emission benefits are real, quantifiable, surplus, and enforceable. Repercussions to the Participant for noncompliance with the contract requirements include termination of the Agreement. Upon termination of this Agreement, and if the equipment fails to fulfill the minimum required operation, the Participant shall return to the District an amount based on the difference

between the required operation amount and the actual amount operated according to the following formula:

$$A = I * [(O * L) - C] / (O * L)$$

A = Amount Owed to the District

I = Total Incentive Award

O = Annual Operational Requirement (miles, hours or years)

L = Length of the Agreement in Years

C = Actual Operation (miles, hours, or years)

The APCO may, at his or her sole discretion, relieve this obligation to return the funds after considering the circumstances leading to the failure to fulfill the minimum performance requirements. Additionally, the APCO may, at his or her sole discretion, require full reimbursement of all funds paid to the Participant as outlined in Section 2.7.9. Additionally, the APCO may grant a waiver to the Participant for a defined time period if the Participant demonstrates to the APCO's satisfaction that the equipment was significantly underutilized due to unforeseen conditions beyond the Participant's control. Waivers must be granted in accordance with section FF(4)(D) of the 2017 Carl Moyer Guidelines.

2.6 Enforcement:

- 2.6.1 **Inspections and Audits:** The new equipment funded under this Agreement is subject to inspection by District, CARB, DOF, or Funding Partner(s), as applicable, or their designees at any time. Any inspection may be conducted at a reasonable time and with reasonable notice to Participant. Inspections may include the pre-, post-, salvage, and audit inspections.
- 2.6.2 **Salvage Inspection:** The District may conduct a pre-salvage inspection to ensure that, at the time of salvage, the Existing Vehicle, Engine or Equipment, if any to be destroyed, is in the same condition it was in at the pre-inspection. If the condition of the Existing Vehicle, Engine or Equipment has changed, the District may deny or decrease the payment authorized. The District may conduct a salvage inspection to verify destruction or disposal of the Existing Vehicle, Engine or Equipment, if applicable.
- 2.6.3 **Audit Inspection:** The District, CARB, or Funding Partner(s), as applicable or their designees will conduct audit inspections as necessary to verify the new equipment is operating pursuant to program guidelines and meeting contractual requirements. The District, CARB, or Funding Partner(s), as applicable, or their designees may perform an audit of the project at any time during the Project Implementation period and as long as the equipment is still in use after the Agreement term.

2.7 General Requirements

- 2.7.1 This Agreement shall begin upon execution by all parties and terminate after 5 years and 2000 hours of operation. No work may begin on this project until this Agreement is executed by all parties. The Participant is required to operate and maintain the equipment described in Exhibit A according to the terms of this Agreement for the full project implementation period.
- 2.7.2 The District, CARB, or their designee may conduct an audit of the Participant's operations to verify that the Participant is complying with the Agreement terms.
- (i) As a condition of accepting funds, the Participant agrees to designate CARB as a third-party beneficiary with full auditing, inspection, and enforcement rights throughout the entire term of the Agreement. The District, CARB (as an intended third party beneficiary), or their designee(s) reserves the authority and right to monitor and enforce the terms of this contract any time throughout project execution through the implementation period to ensure emission reductions are obtained for a minimum of 75% operation within California.

- (ii) Any audits will be conducted at a reasonable time and with reasonable notice to the Participant. The Participant agrees to provide the District and CARB with on-site access to the equipment described in Exhibit A.

2.7.3 The Participant shall defend, indemnify, and hold harmless District, CARB, its officers, agents, employees and volunteers from any and all losses, costs, damages, fines or expenses (including attorney fees, court costs and expert fees) or liability of any kind or character to any person or property arising from, or alleged to arise from, any breach of the responsibilities required of the Participant by this Agreement or which are related in any way to the equipment, including any and all liability for general, special, consequential, or other damages resulting from the use of the equipment by the Participant, for which financial assistance or other incentives are received from the District by the Participant.

2.7.4 **This section 2.7.4 shall survive the termination of this Agreement for three years following the end date.** The Participant shall keep the following records from the beginning of operation of the equipment described in Exhibit A through the end of the term and for three years following the implementation end date. It is the responsibility of the Participant to maintain records adequate to document the subsequent information. The District may request these records at any time during the term of this Agreement, including:

For On-Road Projects	For Off-Road/Stationary Projects
1. Copies of all driver log book entries for the preceding year	1. Hours operated or fuel consumed
2. Miles traveled	2. Fuel cost (if reported fuel consumed)
3. Fuel consumed	3. Engine downtime
4. Fuel cost	4. Type and cost of maintenance performed
5. Vehicle downtime	
6. Type and cost of maintenance performed	

2.7.5 **Record Requirements:** Participant must maintain adequate records to document compliance with this Agreement. Records include the documents specified above. Participant must maintain the records for the term of the Agreement and the three years following the implementation end date specified in paragraph 2.7.1. The District may inspect or request copies of these records at any time during the term of this Agreement. The Participant must operate and maintain the new equipment according to the manufacturer's specifications. This section (2.7.5) will survive the termination of this Agreement.

2.7.6 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

2.7.7 The Participant shall observe and comply with all applicable Federal, State, and District statutes, ordinances, regulations, rules, directives, and laws. Projects funded by the Program must be included when defining the size of the fleet for determining regulatory compliance. Throughout the Project Implementation period, projects must not be used to generate credits or compliance extensions, and must be included when determining the size of the fleet for determining regulatory requirements. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. If a provision of this Agreement violates any applicable law or regulation, that provision will be stricken from the Agreement, and all other provisions will remain in full force. Any action or proceeding arising out of this Agreement shall be filed in a state court located in Lake County or Federal court located in Sacramento, California.

2.7.8 No performance rendered or payment due under this Agreement may be delegated or assigned without the written consent of all the parties hereto. If the Participant assigns any of its rights or obligations under this contract, all of the terms and conditions of this contract shall apply to the Participant's assignee. This Agreement will bind the successors of the District and Participant in the same manner as if they were expressly named.

- 2.7.9 This Agreement may be terminated by the District upon thirty (30) days written notice if the Participant fails to meet any of the obligations established in this Agreement or outlined in the FARMER Program Guidelines, the Carl Moyer Program guidelines, or the Health and Safety Code. The District may also terminate this Agreement upon ten (10) days written notice if: (i) the District does not receive all of the revenues required for the program; or (ii) funds are not specifically appropriated for this Agreement in the District's final budget prior to the expiration of the Agreement and any extensions thereto. If the Agreement is terminated for noncompliance, the Participant will refund the entire incentive paid by the District. The APCO may, at his or her discretion, waive the refund or allow the Participant an opportunity to cure its failure to meet the Agreement obligations. Additionally, the District and/or CARB may seek all available remedies under the law for breaches of any Agreement provisions, FARMER Program requirements, Carl Moyer Program requirements, or the California Health and Safety Code.
- 2.7.10 The Participant may not sell or encumber the equipment described in Exhibit A without the written consent of the District.
- 2.7.11 The District has made no representations or guarantees to the Participant regarding the quality, condition, or proposed use of the low emission vehicle and engine technology funded under this Agreement or the effects of such technology on the normal operations of the Participant.
- 2.7.12 If either of the events listed in this paragraph occur, the Participant must notify the District within 30 days of the date Participant knows, or reasonably suspects, that the event has occurred or is likely to occur:
- (i) The Participant suffers a catastrophic loss;
 - (ii) The Participant files for bankruptcy; or
 - (iii) Any other event has occurred or is likely to occur that could impair the Participant's ability to perform the conditions of this Agreement.
- 2.7.13 Correspondence between the District and Participant should be addressed to the following:

To District	To Participant
Douglas Gearhart, APCO Lake County Air Quality Management District 2617 S. Main Street Lakeport, CA 95453 Phone: (707) 263-7000 Email: DougG@lcaqmd.net	John Moorhead and/or Rose Davidson Davebilt Company/Partnership 410 Soda Bay Rd Lakeport, CA 95453 Phone: (707) 263-5270 Email: Davebilt43@gmail.com

The address and/or contacts may be changed only by written notice to the other party. Such written notice may be given by mail or personal service.

2.8 Termination:

- 2.8.1 The District may immediately suspend or terminate this Agreement, in whole or In part, if it determines that there is an illegal or improper use of funds.
- 2.8.2 This Agreement may be terminated by the District (5-day Notice Termination) after 30 days' written notice to the Participant to meet the obligations established in this Agreement or the Health and Safety Code. If the Agreement is terminated, the Participant will be subject to (Early-Termination Reimbursements). The APCO may, at his or her discretion, waive the refund or allow the Participant further opportunity to cure its failure to meet the Agreement obligations.
- 2.8.3 **Limitation:** Notwithstanding the provisions of this Paragraph, the Participant is subject to the reimbursement requirements of, which are in addition to, and do not offset or displace, any other recovery rights that the District may have in the event the Agreement is breached.

3.0 General Terms and Conditions

- 3.1 **Prohibition on Emission Reduction Credits:** The receipt of funds under this Agreement prohibits application for any form of emission reduction credit – for any pollutant – for the new equipment. This prohibition includes, but is not limited to: (i) all attainment, nonattainment, criteria and noncriteria pollutants, and (ii) application for Emission Reduction Credits (ERC), Mobile Emission Reduction Credits (MERC) or Certificates of Advanced Placement (CAP). This prohibition extends to credits from all Air Quality Management or Air Pollution Control Districts.
- 3.2 **Voluntary Act:** The Participant's purchase of the new equipment is a completely voluntary act and the District has not made representations or guarantees to the Participant regarding the new equipment.
- 3.3 **Amendment:** No amendment, alteration or variation of the terms of this Agreement is valid unless made in writing and signed by all parties.
- 3.4 **Termination Notice Requirements:**
- 3.4.1 **30-day Notice Termination:** Either the District or Participant may terminate this Agreement for any reason by giving the other party 30-days written notice.
- 3.4.2 **5-day Notice Termination:** The District, through its APCO, may terminate this Agreement with 5 days written notice if Participant fails to perform any of the terms and conditions of this Agreement in the time and manner specified.
- 3.4.3 **Immediate Termination:** The District, through its APCO, may terminate this Agreement immediately if informed that moneys to fund the contract are not available. If the District terminates this Agreement under this paragraph, it will serve notice of the action on the Participant within 10 working days.
- 3.5 **Waiver of Claims:** Participant waives any claims against the District, CARB, Funding Partner(s), its officers, agents, employees, delegates or volunteers from damage or loss caused by:
- (i) Any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part of this Agreement; and/or
- (ii) Any judgment or award declaring this Agreement either void or voidable, or delaying the performance of any part of this Agreement.
- 3.6 **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.
- 3.7 **Time:** Time is of the essence with respect to the timely performance of each provision of this Agreement.
- 3.8 **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.
- 3.9 **Venue and Choice of Law:** This Agreement is executed in County of Lake, California and will be governed by the laws of the State of California. Any action arising out of this Agreement must be filed in a state court or federal court located or with jurisdiction in or for County of Lake, California.
- 3.10 **Compliance with Laws and Regulations:** Participant must observe and comply with all applicable laws and regulations. In addition to all other applicable laws, this Agreement is subject to the provisions and limitations of the Health & Safety Code. Notwithstanding the terms of this Agreement, the Participant, the District nor CARB are permitted to undertake any actions that contravene the Health & Safety Code or any other law or regulation.

- 3.11 **Payments that Contravene the Law:** The District and CARB have no liability for payments that are found to contravene the law. Participant will reimburse the District for any payments made by the District to Participant and later determined to contravene Federal, State or local laws and regulations.
- 3.12 **Status of Participant:** This Agreement is only for the payment of incentive funds to offset the cost of the equipment described in the Agreement. Accordingly, Participant, its employees, consultants and subcontractors do not have any of the entitlements of a CARB, District, or Funding Partner employee. Participant is an independent contractor.
- 3.12.1 **Direction of Third Parties:** If the Participant employs any third persons, these persons will be under the exclusive control of Participant. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring, and discharging will be determined by Participant.
- 3.12.2 **Right to Bind:** Neither the Participant nor its employees, subcontractors or consultants have the right to act on behalf of CARB or the District in any capacity, or to bind CARB or the District to any obligation.
- 3.12.3 **Taxes:** Neither CARB nor the District will make any deductions or withholdings from the compensation paid to Participant. Participant must issue all forms required by Federal and State laws for income and employment tax purposes for all of Participant's assigned personnel.
- 3.13 **Conflict of Interest:** No officer or employee of CARB or the District has any pecuniary interest, direct or indirect, in this Agreement or the proceeds of the Agreement. No officer or employee of Participant may serve on CARB or the District's governing body or hold any CARB or District position which by rule, practice, or action nominates, recommends, supervises or authorizes the development or execution of this Agreement, or any payment to Participant.
- 3.14 **Indemnity:** Participant agrees to indemnify, defend (upon District's written request), protect, and hold harmless District and District's officers, employees, and agents against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise in any way from acts or omissions by Participant or Participant's officers, employees, or agents while performing under this Agreement. Participant's obligation under this section covers but is not limited to liabilities, claims, demands, damages, and costs arising from injury to, or death of, any person and from damage to, or destruction of, any property. Participant's obligation under this section will survive this Agreement.
- 3.15 **Force Majeure:** If performance by CARB, the District, or the Participant of any of its obligations or undertakings under this Agreement is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this Agreement, whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake, or other natural forces, or by the acts of anyone not a party to this Agreement, then CARB, the District or the Participant may be either excused from any further performance or excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence at the election of CARB and the District.
- 3.16 **Two Originals:** This Agreement and any modification to this Agreement will be executed in two originals, one to be kept by the District and one to be kept by the Participant. Either of the originals is enforceable without the presentation of the other original.
- 3.17 **Entire Agreement:** This Agreement constitutes the entire Agreement between the District and Participant. All parties revoke all prior or contemporaneous oral or written Agreements between them that are inconsistent with this Agreement. In the event of a dispute between the parties regarding the Agreement, this Agreement will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement. This Agreement consists of the following parts:

- (i) This Agreement;

- (ii) Exhibit A – Vehicle/Equipment Information Form;
- (iii) Exhibit B – Performance Requirements;
- (iv) Exhibit C – Debarment Certification; and
- (v) Exhibit D – Levine Act Disclosure Statement.

3.18 **Notices:** Correspondence between the District and Participant should be addressed to the following:

To District	To Participant
Douglas Gearhart, APCO Lake County Air Quality Management District 2617 S. Main Street Lakeport, CA 95453 Phone: (707) 263-7000 Email: DougG@lcaqmd.net	John Moorhead and/or Rose Davidson Davebilt Company/Partnership 410 Soda Bay Rd Lakeport, CA 95453 Phone: (707) 263-5270 Email: Davebilt43@gmail.com

The address and/or contacts may be changed by written notice to the other party. Such written notice may be given by mail or personal service.

3.19 **Authority to Bind and Acknowledgement of Terms:** The undersigned representative of Participant has read and agrees to comply with all terms and conditions in this Agreement and also affirmatively states that he or she has legal authority to bind Participant to the terms and conditions of this Agreement; including the following Disclosure Agreement:

DISCLOSURE AGREEMENT

The undersigned representative of Participant affirmatively states that neither they nor any other representative of Participant will submit another application or sign another contract for the same Equipment described in Exhibit B with any other source of funds, including but not limited to other air districts or multidistrict funding under the Moyer Program.

Any owner or owner's designee who is found to have submitted multiple applications or signed multiple contracts for the same Equipment will, at a minimum, be disqualified from funding for that Equipment from all sources, may be required to reimburse the public agencies for any monies received, and may also be banned from submitting future applications to any and all Incentive programs. In addition, if noncompliance or nonperformance under this Agreement also constitutes a violation of the Health and Safety Code, including but not limited to the FARMER program, Moyer Program and their implementing Guidelines, CARB and the District may levy fines and refer the violations for criminal enforcement.

The undersigned representative of Participant has read and agrees to comply with all terms and conditions in this Agreement and also affirmatively states that he or she has legal authority to bind Participant to the terms and conditions of this Agreement.

Executed at Lakeport, California, the month, day, and year first written above.

LAKE COUNTY AIR QUALITY
MANAGEMENT DISTRICT

DAVEBILT COMPANY

Douglas Gearhart, APCO
Lake County Air Quality Management District

John Moorhead and/or Rose Davidson,
Davebilt Company

APPROVED AS TO FORM:
Anita Grant, County Counsel

BY: _____

A handwritten signature in blue ink, appearing to be "J. Moorhead", is written over a horizontal line.

EXHIBIT A**FARMER Program
VEHICLE / EQUIPMENT INFORMATION FORM****Vocation(s)** (Please list all vehicle/equipment uses): Agricultural Operations**Equipment Project Type:** Tractor Replacement

Counties Vehicle Currently Operates Within:	Lake County
Main Location of Operation (include cross streets)	410 Soda Bay Rd., Lakeport, CA

Existing Equipment Information

Make: Kubota	Model: L245-DT	Model Year: 1980	GVWR: TBD
Vehicle Identification Number: N/A	Fleet Identification Number: N/A	License Plate: TBD	Odometer Reading: TBD

Existing Engine Information

Make: Kubota	Model: DH-1101A	Model Year: 1980	Serial Number:	HP: 25	Displacement: N/A
Fuel Type: Diesel		Engine Family Number: TBD			

New or Replacement Vehicle Information

Make: Kubota	Model: L3902HST	Model Year: 2022	GVWR: TBD
Vehicle Identification Number:*	Fleet Identification Number:*	License Plate:*	Odometer Reading:*
TBD	TBD	TBD	TBD

New Engine Information

Make: Kubota	Model: D1803CRE4LB	Model Year: 2022	Serial Number:*	HP: 37.5	Displacement:
Fuel Type: ULS Diesel		Engine Family Number: *		NOx Cert:	

* District will fill in information upon verification of project completion.

EXHIBIT B

PERFORMANCE REQUIREMENTS

The equipment listed below must meet the minimum performance requirements below to avoid return of funds to the District.

Vehicle and Engine Year, Make & Model	Vehicle and Engine Serial Numbers*	Project Completion	Project Implementation	Records Retention	Maximum Incentive Amount
2022 Kubota model L3902HST with 37.5 HP Engine	TBD	Participant must begin operation of the New Equipment within one year of the execution of this Agreement by all parties	Participant must own and operate equipment for a period of no less than 5 years and 2000 hours of operation.	Participant must maintain the records for the term of the contract and the three years following the contract end date.	\$25,360.00

EXHIBIT C

DEBARMENT CERTIFICATION FORM

The Contractor certifies that, neither the Contractor firm nor any owner, partner, director, officer, or principal of the Contractor, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

(a) Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;

(b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Contractor further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this _____ day of _____, 20 _____

By _____
Authorized Signature for Contractor

Printed Name and Title

Contractor Firm Name and Type of Entity (*Corp., Partnership, Sole Proprietor*)

Address

City/State/Zip Code

Area Code/Telephone Number and E-Mail Address

EXHIBIT D

LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if they received political contributions totaling more than \$250 in the 12 months preceding the contract award, and for three months following the final decision, from the contract recipient. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

Current members of the Board of Directors are:

Moke Simon
Bruno Sabatier
Eddie "EJ" Crandell
Michael Green
Jessica Pyska

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any District Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

☐ YES ☐ NO

If yes, please identify the Director(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any District Director(s) in the three months following the award of the contract?

☐ YES ☐ NO

If yes, please identify the Director(s): _____

Answering yes to either of the two questions above does not preclude the District from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)