SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** (hereinafter "Agreement") is entered into between the **STATE OF CALIFORNIA AIR RESOURCES BOARD** (hereinafter "**ARB**") 1001 "I" Street, Sacramento, California 95814, and **CITY OF COMPTON** (hereinafter "**COC**") 205 South Willow brook Avenue, Compton, California 90220

I. RECITALS

(1) California Health and Safety Code (H&SC) Section 44011.6 established the Heavy-Duty Vehicle Inspection Program (HDVIP). It authorizes the **ARB** to Inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering, and issue citations accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed **ARB** smoke opacity standards, perform post-repair opacity tests, and submit proof of repairs and pay any assessed penalties under the regulations of the HDVIP, Chapter 3.5, Sections 2180-et seq., Title 13, of the California Code of Regulations (CCR).

(2) H&SC section 43701 provides that **ARB** shall adopt regulations that require owners of heavy-duty diesel motor vehicles, perform regular inspections for excess smoke emissions.

(3) Title 13, CCR sections 2190 et seq. were adopted under the authority of H&SC section 43701 and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight rations greater than 6,000 pounds which operate on the streets and highways within the state of California.

(4) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy-duty diesel motor vehicles with gross vehicle weight rating greater than 6,000 pounds which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(5) Title 13, CCR section 2192 (a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193 (a), (b), and (c), "[m]easure the smoke emissions for each test…", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194…" and "[k]eep the records specified in section 2194 for two years after the date of inspection.

(6) H& SC section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil

penalty of fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) ARB contends, **COC** failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for 2008 and 2009 in violation of Title 13, CCR sections 2190 et seq.

(9) Under authority of Health and Safety Code, section 39600 and 39601 the CCR, Title 13, section 2020 et seq. requires the Solid Waste Collection Vehicle (SWCV) fleet owners to use Best Available Control Technology (BACT) for each collection vehicle in the active fleet. Records of the installed diesel emission control strategy and corresponding compliance plan must be accessible at the terminal. Each SWCV must have affixed to the driver's side doorjamb, or another readily accessible location known to the driver, a legible and durable label with complete and accurate information filled in.

(10) H&SC section 39674 (a) and (b) authorize civil penalties for the violations of the programs for regulation of toxic air contaminants not to exceed one thousand dollars ($1,000.00) or not to exceed ten thousand dollars ($10,000.00) respectively, for each day in which the violation occurs.

(11) The ARB Enforcement Division staff has documented violations of the SWCV rule at **COC** fleet facility in California.

(12) Title 13, CCR sections 2022 and 2022.1 authorizes the Public Agencies and Utilities (PAU) Regulation, which applies to any municipality or utility that owns, leases, or operates on-road diesel-fueled heavy-duty vehicle with a 1960 to 2006 model-year medium heavy-duty or heavy heavy-duty engine and has a manufacturer's gross vehicle weight rating greater than 14,000 pounds. Compliance requires BACT installation on each applicable vehicle in its fleet as required by the implementation schedule.

(13) Under authority of Health and Safety Code, section 39600 and 39601 the CCR, Title 13, section 2022 et seq. requires the PAU fleet owner to use BACT for each applicable vehicle in the active fleet. Records of the compliance plan must be accessible at the terminal. Each applicable diesel PAU fleet vehicle must have affixed to the driver's side doorjamb, or another readily accessible location known to the driver, a legible and durable label with complete and accurate information filled in.

(14) The ARB Enforcement Division staff has documented violations of the PAU regulation at **COC** fleet facility in California.

(15) Title 13, CCR sections 2449 authorizes the In-Use Off-Road Diesel-Fueled Fleets Regulation, which applies to any person, business, or government agency who owns or operates within California any diesel-fueled or alternative diesel fueled off-road compression ignition vehicle engine with a maximum power of 25 horsepower or greater. All vehicles with engines subject to the regulation must be labeled with an **ARB**-issued Equipment Identification Numbers (EIN). Initial reporting is required and failure to report by scheduled deadline is a violation of H&SC section 2449.

(16) Failure to comply with the performance part of this regulation, submit any information, report, or statement required by this regulation, or knowingly submits any false statement or representation in any application, report, statement or other document filed, maintained or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2 42400.3.5, 42402, 42402.1, 42402.2, 42402.4, 42403, and 43016 of the H&SC.

(17) **ARB** has documented **COC** failed to register or initially report their In-Use Off-Road applicable vehicles by the implementation deadline, and also failed to label equipment with EIN as required by scheduled deadline.

(18) **COC** is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with **ARB**. **ARB** accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore, agree as follows:

II. TERMS AND RELEASE

In consideration of the **ARB** not filing a legal action against **COC** for the violations alleged in the above recitals, the **ARB** and **COC** agree as follows:

(1) Upon execution of this Agreement, **COC** shall pay a civil penalty of **$48,800.00**. All payment shall be made in check form. The payment terms are due and payable upon execution of this agreement. The payment checks must be received by ARB on or before January 20, 2011 , the amounts shall be submitted as per agreed.

- **$36,600.00** to the **California Air Pollution Control Fund**.
- **$12,200.00** to the **Peralta Community College District**

All payments and documents shall be sent to the attention of:

Mr. Charles Ross, Investigator/APS
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite# 4
El Monte, CA 91731

(2) If the Attorney General files a civil action to enforce this settlement agreement, **COC** shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3 It is further agreed that penalties described in Terms and Release are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish **COC** for violations of state environmental statues, and these penalties are payable to and for the benefit of ARB, a government unit. Therefore, it is agreed that these penalties imposed on **COC** by the ARB arising from the facts described in recital paragraph 1 thru 10 are non-dischargeable under 11 U.S.C. § 523 (a) (7), which provides an exception from the discharge of any debt to the extent such debt is for a fine, penalty of forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss of other than certain types of tax penalties.

(4) **COC** shall comply with one or both of the following options below, attend the California Council on Diesel Education and Technology (CCDET) class, as described on the ARB's webpage at: http://www.arb.ca.gov/enf/hdvip/hdvip.htm This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP and the HDVIP.

(a) **COC** shall have at least one staff member responsible for the compliance with the PSIP and the HDVIP attend the CCDET class. Proof of CCDET completion shall be provided to ARB within one year of the date of this Agreement and shall be maintained in each applicable employee's file for the term of his or her employment, or as provided by CCPWD rules, regulations, codes, or ordnances, whichever is longer.

(b) If **COC** uses a contractor to perform the annual smoke opacity testing required under the PSIP. **COC** shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provide to ARB with PSIP records as required by this Settlement Agreement and shall be maintained with the annual PSIP records.

(5) **COC** shall provide copies of all PSIP compliance records for the years 2010, and 2011, to the **ARB** by January 31 of the following year. Copies shall be addressed to the attention of Mr. Charles Ross, ARB Enforcement Division, 9480 Telstar Avenue, Suite # 4, El Monte, CA 91731. The ARB reserves the right to visit any **COC** fleet location at any time to conduct compliance audits for HDVIP, and PSIP, or any other applicable ARB program.

(6) **COC** shall complete Low NOx Software Upgrades (reflash) on applicable heavy-duty diesel engines operating in California, and report back to the ARB within 45 days of this agreement.

(7) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the **COC** fleet shall comply with the Emission Control Label (ECL) requirements set forth in

the CCR Title 13, Section 2183 (c), within 45 days of this Agreement.

(8) **COC** shall retrofit the appropriate number of SWCV's with best available control technology as specified in CCR Title 13, Section 2021.2. **COC** shall keep the records of the installed diesel control strategy and update their compliance plan accordingly. **COC** shall affix to each SWCV a legible and durable label with complete and accurate information documented. This label shall be affixed to the driver's side door- jamb, or any other readily accessible location known to the driver. Within 180 days of the execution of this agreement, **COC** shall submit proof of the compliance with the SWCV regulation.

(9) **COC** shall comply with all the requirements of the SWCV regulation set forth in CCR, Title 13, Section 2021 et seq.

(10) **COC** shall retrofit the appropriate number of PAU vehicles with best available control technology as specified in CCR, Title 13, and Section 2022.1. **COC** shall keep the records of the installed diesel control strategy and update the compliance plan accordingly. **COC** shall affix to each PAU vehicle a legible and durable label with complete and accurate information documented. This label shall be affixed to the driver's side door-jamb, or any other readily accessible location known to the driver. Within 180 days of the execution of this agreement, **COC** shall submit proof of compliance with the PAU vehicle regulation.

(11) **COC** shall comply with all the requirements of the PAU vehicle rule set forth in CCR, Title 13, and Section 2022.1 et seq.

(12) **COC** shall report or register all applicable in-use off-road vehicles in ARB's Diesel Off-Road On-Line Reporting System (DOORS) database. Upon receipt of the ARB-issued EIN, **COC** shall permanently affix or paint the EIN on the vehicle in white with a red background as specified in 2449 (f) (2). Annual reporting is required by CCR Title 13, Section 2449 (g) (2) for the fleet to remain in compliance with the regulation.

(13) **COC** shall comply with the general requirements for In-Use Off-Road Diesel-Fueled fleets regulation set forth in CCR, Title 13, Section 2449.

(14) **COC** shall instruct all employees who operate On-road and Off-road diesel fueled commercial vehicles, comply with the idling regulations set forth in CCR, Title 13, Sections 2449(d)(3), and 2485, within 45 days of this Agreement.

(15) This Agreement shall apply to and be binding upon **COC,** and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon **ARB** and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(16) This Agreement constitutes the entire agreement and understanding between **ARB** and **COC,** concerning the subject matter hereof, and supersedes and

replaces all prior negotiations and agreements between **ARB** and **COC** concerning the subject matter hereof.

(17) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(18) Severability, each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(19) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(20) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(21) Now, therefore, in consideration of a payment by **COC**, in the amount of forty eight-thousand eight-hundred dollars **($48,800.00).** **ARB** hereby releases **COC** and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that **ARB** may have based on the facts and allegations described in recital paragraphs (1) – (13) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 2/7/2011

City of Compton

By: Willie Norfleet

Name: Willie Norfleet

Title: City Manager

Date: 12-14-10

DATE: 1/4/11
APPROVED AS TO FORM
Craig Cornwell
CITY ATTORNEY

City of Compton

By:

Name: Alita Godwin

Title: City Clerk

Date: 12-28-10

CITY OF COMPTON INCORPORATED MAY 4, 1888 CALIFORNIA