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 **SAN JOAQUIN REGIONAL TRANSIT DISTRICT** (hereinafter RTD) which is located at 1533 Lindsay Street Stockton, CA 95205.

I. RECITALS

(1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, Title 13, California Code of Regulations (CCR).

(2) HSC section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.

(3) CCR, Title 13, sections 2190 *et seq*. was adopted under the authority of HSC section 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.

(4) CCR, Title 13, 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 ratings greater than 6,000 pounds that 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) CCR, Title 13, 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) HSC 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 or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

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

(8) ARB contends RTD failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2009, 2010, and 2011 in violation of CCR, Title 13, sections 2190 *et seq*.

(9) The Fleet Rule for Transit Agencies – Transit Feet Vehicle Requirements, section 2020 and 2023.2(b)(2) of Title 13 of the CCR, state that, no later than January 1, 2010, the PM emission total for a transit agency on a diesel path shall be no more than 20 percent of its diesel PM emission total as of January 1, 2005 or equal to 0.01 g/bhp-hr times the total number of current diesel-fueled active transit fleet vehicles (TFV), whichever is greater.

(10) ARB contends that RTD failed to report to the ARB that the RTD diesel PM emission total as of January 1, 2011 was more than 20 percent of its diesel PM emission total on January 1, 2005, which is a violation of section 2023.2(b)(2).

(11) HSC sections 39674(a) and (b) authorize civil penalties for the violation of the programs for the 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 for one year.

(12) RTD provides urban and transit services to San Joaquin County residents who would otherwise drive in single-occupant vehicles. The public transit vehicles are generally less polluting than multiple single-occupant vehicles and reduce traffic congestion and the consumption and combustion of fuels.

(13) RTD 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 & RELEASE

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

(1) Upon execution of this Agreement, RTD shall pay a civil penalty of **thirty-five thousand two hundred and fifty dollars ($35,250.00).** Payment shall be made in check form as described below and the payments will be made no later than **October 25, 2012**.

SETTLEMENT AGREEMENT AND RELEASE ARB AND RTD:

- **$ 26,437.50** made out to **California Air Pollution Control Fund**
- **$ 8,812.50** made out to **Peralta Community College District**

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

Ms. Allison Spreadborough, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) RTD shall not violate HSC sections 43701 *et seq.* and 44011.6 *et seq.,* and CCR, Title 13, sections 2180 *et seq.*, 2190 *et seq.,* and 2485 *et seq.*

3) RTD shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, emission control labels and the HDVIP.

(a) RTD shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If RTD uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, RTD shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(4) RTD shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of Exhaust After Treatment Systems (EATS).

(a) RTD shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case RTD uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RTD shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by RTD to the ARB within six months of the date of this settlement and be maintained with the EATS installation and maintenance records.

(5) RTD shall submit copies of all PSIP compliance records for years 2012 and 2013 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Allison Spreadborough at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any RTD fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

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

(7) Each 1974 or newer diesel powered heavy-duty vehicle in the RTD fleet shall comply with the emission control label requirements set forth in the CCR, Title 13, section 2183(c) within 45 days of this agreement.

(8) RTD shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, section 2485, within 45 days of this Agreement.

(9) RTD failed to meet the emission reduction requirements for particulate matter using Best Available Control Technology (BACT) as specified in 13 CCR 2020(a), 2023.1 (e) and 2023.1(e)(3)(A) with violations beginning December 31, 2010.

(10) This Agreement shall apply to and be binding upon RTD, 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.

(11) This Agreement constitutes the entire agreement and understanding between ARB and RTD, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RTD, concerning the subject matter hereof.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) **Senate Bill 1402**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see HSC section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC sections 42403 and 43024.

- PSIP Violations

  The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per year of violation. The penalty obtained for the PSIP violations involved in this case is $35,250; 65 vehicles for 2009, 3 vehicles for 2010, and 66 vehicles for 2011 were in violation. The penalty was discounted based on the fact that this was a first time violation; the violator made unusually diligent efforts to comply and to cooperate with the investigation; and has faced recent significant financial hardships.

- Fleet Rule for Transit Agencies
  The per vehicle penalty for the TFV violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for the TFV violations involved in this case is $3,500.00 for 7 vehicles, or $ 500.00 per vehicle per violation. The penalty was discounted based on the fact this was a first time violation and the violator made diligent efforts to comply and cooperate with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

- PSIP Violations

  The penalty provision being applied to the PSIP violations is HSC section 43016 because RTD failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2009, 2010, and 2011 in violation of the PSIP regulation in CCR, Title 13, sections 2190 *et seq.* Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC section 43016 is the applicable penalty provision.

- Fleet Rule for Transit Agencies Violations
  The penalty provision being applied for the Fleet Rule for Transit Agencies violations is HSC section 39674, because the rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39660, et seq. and because RTD failed to use BACT on 7 TFV as required by the Rule for Transit Fleet Agencies, Title 13, CCR, section 2023.2(b)(2) et seq., over an unspecified number of days during 2010 resulting in TFV violations.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant units involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions. The Fleet Rule for Transit Agencies and BACT result in unquantifiable illegal emissions as well.

(17) RTD acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the

penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(18) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted based on the fact that this was a first time violation; the violator made unusually diligent efforts to comply and to cooperate with the investigation; and has faced recent significant financial hardships. Penalties in future cases might be smaller or larger on a per unit/vehicle basis.

(19) The penalty was based on confidential settlement communications between ARB and RTD that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and RTD and reflects ARB's assessment of the relative strength of its case against RTD, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that RTD may have secured from its actions.

(20) Now, therefore, in consideration of the payment by RTD, in the amount of thirty-five thousand two hundred and fifty dollars ($35,250.00), ARB hereby releases RTD 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) through (14) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board	**San Joaquin Regional Transit District**
By: Ellen Peter	By:
Name: Ellen Peter	Name: Chris Durant
Title: Chief Counsel	Title: Materials and Fleet Manager
Date: 10/31/2012	Date: 10/22/12