

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (CSU), by and through its member campus San Jose State University (SJSU), which is the State of California acting in its higher education capacity.

## RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 et seq.
2. The MRR requires most reporting entities to submit, by April 10 of each year, an emissions data report containing emissions and product data that is certified to be complete and accurate within stated standards. (17 CCR §95103.) The April 10 deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete, or inaccurate constitutes a separate violation. (17 CCR §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2011 SJSU failed to comply with the MRR by failing to submit an emissions report by the deadline, failing to obtain verification services, and omitting some emissions, all in violation of 17 CCR §95103. In the absence of a verified emissions report, ARB was obligated to conduct its own review and to assign an emissions level for the facility.
6. SJSU acknowledges an unfortunate and inadvertent delay in filing the GHG emissions data and data verification caused by a clerical error, but contends that no prohibited emissions occurred and no harm to public health, safety, and welfare resulted from the inadvertent technical violation. SJSU has also cooperated closely with ARB staff to ensure correct future reporting and verification compliance.
7. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the violator's operations, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
8. In this matter, there were a number of mitigating factors, including that this is the first time ARB has noted SJSU as being in violation, SJSU was unaware of certain

obligations under the regulation, SJSU did not profit from its non-compliance, and SJSU has agreed to submit an updated GHG monitoring plan to ARB to demonstrate that reporting will be accurate in future reporting years.

9. In order to resolve these alleged violations, SJSU has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.

10. In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and SJSU agree as follows.

### TERMS

11. Within 15 business days following execution of this agreement, SJSU shall deliver the sum of \$30,000.00 made payable to the "Air Pollution Control Fund."

The check should note "SJSU 2011 MRR settlement" in the memo section. Please submit the signed settlement agreement and check to:

Mr. Will Brieger  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, CA 95812

12. SJSU shall use its best effort to not violate the MRR, title 17 CCR section 95100 *et seq.*

13. Within 60 days of executing this Agreement, SJSU shall submit to ARB an updated Greenhouse Gas Monitoring Plan that meets the requirements of 17 CCR section 95105(c), and that addresses any omissions and errors in the gathering and reporting of information identified by a verifier or ARB in connection with reporting emissions from the year 2011.

14. This Agreement shall apply to and be binding upon CSU and its Trustees, successors and assignees and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

15. This Agreement constitutes the entire agreement and understanding between ARB and SJSU concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SJSU concerning the subject matter hereof.

16. 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.

17. 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.
18. 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.
19. 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.
20. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. ARB represents that it has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

**The manner in which the penalty was determined.** Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and whether emissions were over reported or under reported. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the violation was a first time violation for SJSU, SJSU did not profit nor intend to profit from its non-compliance, SJSU is a State university and SJSU has agreed to submit an updated GHG monitoring plan to ARB to demonstrate that reporting will be accurate in future reporting years.

**The legal provisions under which the penalty was assessed.** The penalty is based on Health & Safety Code section 42402 and title 17 CCR section 95107, the provisions intended to govern MRR violations.

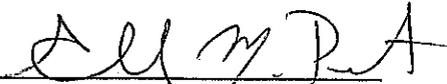
**Whether the governing provisions prohibit emissions at a specified level.** The MRR does not prohibit emissions above a stated level. Instead the MRR requires timely, accurate reporting of emissions.

21. The penalty was based on confidential settlement communications between ARB and SJSU. The penalty is the product of an arms length negotiation between ARB and SJSU and reflects ARB's assessment of the relative strength of its case against SJSU, the desire to avoid the uncertainty, burden and expense of litigation, and obtain swift compliance with the law.

22. In consideration of the penalty payment and undertakings above, ARB hereby releases the Trustees of the California State University, SJSU and their respective Trustees, principals, officers, employees, agents, predecessors and successors from any claims the ARB may have based on the circumstances described in paragraph 5, above.

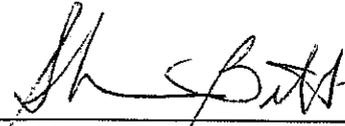
23. The undersigned represent that they have the authority to enter into this Agreement

**California Air Resources Board**

By:   
Ellen M. Peter  
Chief Counsel

Date: 11/26/2013

**San Jose State University**

By:   
Shawn Bibb  
Vice President, Finance and  
Administration

Date: 11-21-13