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 CALIFORNIA AMERICAN WATER (hereinafter "CAW"), 1033 B Avenue, Suite 200, Coronado, California 92118.

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 excessive smoke emissions.

(3) Title 13 CCR, section 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) Title 13 CCR, section 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) 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) 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) 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 CAW failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for the years 2010 and 2011 in violation of title 13 CCR, sections 2190 *et seq*.

(9) Under authority of HSC section 39600 and 39601, title 13 CCR, section 2020 and 2022 *et seq*. requires Public Agency and Utility fleet owners to use Best Available Control Technology (BACT) on applicable on-road diesel-fueled heavy-duty vehicles. Applicable vehicles have a manufacturers gross vehicle rating greater than 14,000 pounds with a 1960 to 2006 model-year medium heavy-duty or heavy heavy-duty engine or 2007 model-year engine or newer certified to greater than 0.01 grams per brake horsepower-hour particulate emission standard. Records of the installed diesel emission control strategies and corresponding compliance plans must be accessible at the terminal. Each public agency and utility 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.

(10) Health and Safety Code, 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.

(11) CAW is a private water utility. ARB contends CAW failed to install BACT to vehicles in its fleet according to the implementation schedule outlined in title 13 CCR, section 2022 *et seq*.

(12) In order to resolve these alleged violations, CAW has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(13) 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, the ARB and CAW agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against CAW for the alleged violations referred to above, and CAW's payment of the penalties set forth in Section 1 below, the ARB and CAW agree as follows:

(1) Upon execution of this Agreement, the sum of thirty-four thousand, eight hundred and seventy-five dollars ($34,875.00) shall be paid on behalf of CAW no later than 90 days after the execution of this agreement, as follows:

- $26,150.00 to the **Air Resources Board**
- $8,725.00 to the **Peralta Colleges Foundation**

Please submit the signed settlement agreement and checks to:

Mr. Ryan M. Atencio, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Ave. No. 4
El Monte, CA 91731

(2) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish CAW for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on CAW by ARB arising from the facts described in recital paragraphs 1 – 11 are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(3) CAW shall not violate HSC sections 43701 et seq., 44011.6 et seq., and title 13 CCR, sections 2180 et seq., 2190 et seq., and 2485 et seq.

(4) CAW 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, ECL and the HDVIP.

(a) CAW shall have the fleet manager (or other staff) 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 records maintained in the Company's files; or

(b) CAW 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.

(5) CAW 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 diesel exhaust after-treatment systems (DEATS).

(a) CAW shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS 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; or

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

(6) CAW shall submit copies of all PSIP compliance records for the calendar years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Ryan M. Atencio at the California Air Resources Board, Enforcement Division, 9480 Telstar Ave. No. 4, El Monte, CA 91731. The ARB reserves the right to visit any CAW

fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(7) CAW shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California that have not previously had upgrades installed on them and report back to the ARB on their status within 90 days of this agreement.

(8) Each 1974 or newer diesel powered heavy-duty vehicle in the CAW fleet shall comply with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).

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

(10) Each PAU vehicle shall comply with the label requirements set forth in title 13 CCR, section 2022.1(f)(3) within 45 days of this agreement.

(11) CAW shall retrofit PAU vehicles with best available control technology by July 31, 2013 to meet the implementation schedule specified in title 13 CCR, section 2022.1. Alternatively, CAW will replace PAU vehicles with new vehicles that comply with emission standards for new diesel fueled or gasoline fueled vehicles. CAW will keep the records of the installed diesel control strategy, report the replacement of those vehicles, and update the compliance plan accordingly.

(12) CAW shall submit an updated compliance plan demonstrating compliance by July 31, 2013 with the PAU Rule to Mr. Ryan M. Atencio, ARB, Enforcement Division, 9480 Telstar Ave. No. 4, El Monte, CA 91731 or electronically at ratencio@arb.ca.gov on or before June 15, 2013.

(13) This Agreement shall apply to and be binding upon CAW, 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.

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

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code 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 violation per year. The penalty obtained for the PSIP violations involved in this case is $6,375.00 for 17 vehicles, or $375 per vehicle per violation.

CAW has no prior enforcement history with respect to mobile source regulations.

PAU Violations

The per vehicle penalty for the PAU Rule 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 PAU Rule violations for failing to install best available control technology by the implementation deadline(s) in this case is $28,500.00, or $750 per vehicle per violation.

CAW made efforts to attain compliance by investing in replacement vehicles once CAW learned of the PAU requirements. CAW staff has been cooperative during the course of the investigation by submitting timely and accurate responses and by taking prompt actions to mitigate all identified deficiencies, including replacing non-compliant vehicles.

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 CAW failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2010 and/or 2011 in violation of the PSIP regulation in title13 CCR sections 2190 *et seq* for nine vehicles. 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.

PAU Violations

The penalty provision being applied for the PAU Rule (title 13 CCR section 2022 et seq.) violations is HSC section 39674. The PAU Rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC Sections 39660 et seq. and because CAW failed to use BACT on 16 vehicles by the implementation deadline(s) as required by the PAU Rule during the years of 2007, 2008, 2009, 2010 and 2011 over an unspecified number of days.

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 and PAU 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.

(20) CAW acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or 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.

(21) 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. Penalties in future cases might be smaller or larger on a per unit basis.

(22) The penalty was based on confidential settlement communications between ARB and CAW 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 CAW and reflects ARB's assessment of the relative strength of its case against CAW, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that CAW may have secured from its actions.

(23) Now therefore, in consideration of the payment on behalf of CAW to the California Air Resources Board and the Peralta Community College District, the ARB hereby releases CAW and their principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph 1 through 13 of the Recitals. 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: 9/1/2013

California American Water

By: Robert G. MacLean

Name: Robert G. MacLean

Title: President

Date: 9-18-13