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 ANAHEIM (hereinafter "ANAHEIM"), 201 South Anaheim Blvd., Anaheim, CA 92805.

I. RECITALS

(1) HSC sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Public Agency and Utility Vehicles are controlled under the Fleet Rule for Public Agencies and Utilities as codified in Title 13, CCR Section 2020.

(2) California Health and Safety Code Sections 39600 and 39601 and Title 13, CCR sections 2022 and 2022.1 authorize 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 vehicles with a 1960 model-year or newer medium heavy-duty or heavy heavy-duty engine certified to greater than 0.01 grams per brake horsepower-hour (g/bhp-hr) 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.

(3) Title 13 CCR, Section 2022.1 requires public agencies meet all applicable emission requirements and deadlines set forth in the implementation schedule detailed in Section 2022.1 (c).

(4) California 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.

(5) ARB contends ANAHEIM failed to install Best Available Control Technology to vehicles in its fleet according to the implementation schedule outlined in title 13, CCR section 2022.1 (c).

(6) ANAHEIM 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 ANAHEIM for the violations alleged above, ARB and ANAHEIM agree as follows:

(1) Upon execution of this Agreement, ANAHEIM shall pay a civil penalty of **$6,000.00**. Payment shall be made in check form as described below and the payments shall be submitted no later than October 16, 2013:

- **$ 4,500.00** made out to **Air Pollution Control Fund**
- **$ 1,500.00** made out to **Peralta Colleges Foundation**

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

Mr. Sidney Lau, Air Resources Engineer
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) ANAHEIM shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6, et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.

(3) ANAHEIM 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) ANAHEIM 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 ANAHEIM 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,

ANAHEIM 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) ANAHEIM 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) ANAHEIM 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.

(b) In case ANAHEIM uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, ANAHEIM 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 ANAHEIM to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(5) ANAHEIM shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California no later than 45 days after an engine requiring reflash to comply with ARB emission standards is identified or included in its fleet, and return proof to Mr. Sidney Lau, ARB, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

(6) Each heavy-duty gasoline-powered vehicle in ANAHEIM's fleet shall maintain compliance with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183(b), within 45 days of this agreement.

(7) Each PAU vehicle shall comply with the label requirements set forth in title 13, CCR section 2022.1(f)(3) within 30 days of this agreement.

(8) ANAHEIM shall lower the mileage of its noncompliant PAU vehicles to less than 1000 miles or 50 hours per year, based on a 5 year rolling mileage or

engine-hour average, to low-usage status by December 31, 2013. These vehicles can be removed from low-usage status if they are retrofitted with best available control technology as specified in CCR, Title 13, Section 2022.1, as soon as verified diesel emission control strategies for these vehicles become available. ANAHEIM shall keep the records of the installed diesel control strategy and update the compliance plan accordingly.

(9) ANAHEIM shall submit an updated compliance plan demonstrating compliance with the PAU Rule to Mr. Sidney Lau, ARB, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812, or electronically at slau@arb.ca.gov by January 31, 2014.

(10) ANAHEIM shall maintain compliance with the CCR, Title 13, Section 2022 and 2022.1 et seq.

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

(12) This Agreement shall apply to and be binding upon ANAHEIM, 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.

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

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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 Health and Safety Code sections 42403 and 43024.

Public Agency and Utility Rule Violations

The per vehicle penalty for the Public Agency and Utility 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 Public Agency and Utility Rule violations for failing to install best available control technology by the implementation deadline in this case is $6,000, or $1,000 per vehicle per violation.

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

Public Agency and Utility Violations

The penalty provision being applied for the Public Agencies and Utilities Rule (title 13 CCR section 2022 et seq.) violations is Health and Safety Code Section 39674. The Public Agency and Utility Rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in Health and Safety Code Sections 39660 et seq. and because ANAHEIM failed to use best available control technology on 6 vehicles by the implementation deadline as required by the Public Agency and Utility Rule during the year 2012 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 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 rates are not known, it is not practicable to quantify the excess emissions.

(19) ANAHEIM 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.

(20) 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/vehicle basis.

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

(22) Now, therefore, in consideration of the payment by ANAHEIM, in the amount of six thousand dollars ($6,000.00), ARB hereby releases ANAHEIM 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) – (5) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____

Name: James Ryden

Title: Chief, Enforcement Division

Date: 10/29/13

City of Anaheim

By: _____

Name: RON LINDSEY

Title: OPERATIONS SUPERINTENDENT

Date: 10/16/13