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 KINGS WASTE AND RECYCLING AUTHORITY (hereinafter "KWRA"), 7803 Hanford-Armona Road, Hanford, California 95292.

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 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) 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 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.

(9) Under authority of HSC, sections 39601 and 39660, title 13 CCR, Sections 2020 *et seq*. requires owners of diesel fueled solid waste collection vehicles over 14,000 pounds gross vehicle weight with model-year engines from 1960 to 2006 used to collect solid waste to use best available control technology for each solid waste collection vehicle in the active fleet. Records of the installed diesel emission control strategies and corresponding compliance plan must be accessible at the terminal. Each solid waste collection vehicle must have a legible and durable label with complete and accurate information affixed to the driver's side doorjamb or another readily accessible location known to the driver.

(10) The ARB Enforcement Division contends that KWRA failed to install best available control technology to solid waste collection vehicles in its fleet according to the implementation schedule outlined in title 13 CCR, Sections 2021 et seq. at their terminal in Hanford, California.

(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.

(12) In order to resolve these alleged violations, KWRA has taken, or agreed to take, the actions enumerated below under "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 KWRA agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of six thousand dollars ($6,000) shall be paid on behalf of KWRA no later than August 29, 2014, as follows:

- $4,500 to the **Air Pollution Control Fund**
- $1,500 to the **San Joaquin Valley APCD, with a notation on the check's face "For School Bus Retrofit SEP"**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Stephen Binning
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

Please submit the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, CA 95812-1436

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

(3) KWRA shall not violate the Solid Waste Collection Vehicle regulation as codified in title 13 CCR, section 2021 *et seq*.

(4) KWRA shall not violate the Public Agency and Utility Vehicle regulation as codified in title 13 CCR, section 2022 *et seq*.

(5) KWRA shall not violate HSC sections 43701 *et seq*., 44011.6 *et seq*., and title 13 CCR, sections 2183, 2190 *et seq*, and 2485 *et seq*.

(6) KWRA shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (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) KWRA 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 KWRA uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, KWRA 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 KWRA to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(7) KWRA 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.

(8) KWRA 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.

(9) KWRA shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(10) Citation Number *PAU102213001C.K* shall be closed with the execution of this Agreement.

(11) This Agreement shall apply to and be binding upon KWRA, 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.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

Solid Waste Collection Vehicle Rule Violations

The per vehicle penalty for the Solid Waste Collection Vehicle 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 failing to install best available control technology by the implementation deadline in this case is $6,000 or $750 per vehicle per violation(s). The penalty was discounted based on the fact that 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.

Solid Waste Collection Vehicle Rule Violations

The penalty provision being applied for the Solid Waste Collection Vehicle Rule (title 13 CCR, section 2020 *et seq.*) violations is HSC section 39674. The SWCV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC Section 39660, *et seq.* and because KWRA failed to install

best available control technology on two vehicles by the implementation deadlines as required by the Solid Waste Collection Vehicle Rule during the years 2010-2013 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.

Solid Waste Collection Vehicle Rule Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(18) KWRA 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.

(19) 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.

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

(21) Now therefore, in consideration of the payment on behalf of KWRA to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases KWRA and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (11) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**Kings Waste and Recycling Authority**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	JEFF MONACO
Title:	Chief, Enforcement Division	Title:	EXECUTIVE DIRECTOR
Date:	7/14/14	Date:	7/14/14