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 **COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS** (hereinafter "LADPW") 900 S. Fremont Avenue, Alhambra, California 91803.

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

(9) Title 13, CCR section 2183 (c) states that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine. The ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine.

(10) ARB contends LADPW failed to provide evidence that their vehicles have an ECL attached to the engines of heavy-duty diesel vehicles in its fleet in violation of Title 13, CCR, section 2183, et seq. Civil penalties for violation of the regulation covering emission control labels have been set per Title 13, CCR, section 2185(a)(2)(B) at $300 per vehicle per violation.

(11) Under the authority of HSC sections 39600 and 39601, Title 13, CCR sections 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.

(12) ARB contends LADPW failed to install BACT to vehicles in its fleet according to the implementation schedule outlined in Title 13, CCR section 2022 et seq.

(13) The Fleet Rule for Transit Agencies – Urban Bus Requirements, sections 2020 and 2023.1(e)(3)(A) of Title 13 of the CCR, states that, no later than January 1, 2007, the diesel particulate matter (PM) emission total for a transit agency's on the diesel path shall be no more than 15 percent of its diesel PM emission total as of January 1, 2002 or equal to 0.01 g/bhp-hr times the total number of current diesel-fueled active fleet buses, whichever is greater.

(14) ARB contends that LADPW failed to report to the ARB that the LADPW diesel PM emission total as of January 1, 2010 was more than 15 percent of its diesel PM emission total on January 1, 2002, which is a violation of section 2023.1(e)(3)(A).

(15) The Fleet Rule for Transit Agencies – Transit Feet Vehicle Requirements, sections 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, whichever is greater.

(16) ARB contends that LADPW failed to report to the ARB that the LADPW 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).

(17) LADPW provides urban and transit services to LADPW 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.

(18) The ARB has documented that LADPW failed to meet the 85 percent reduction for agency on the alternative-fuel path by 2009 as required under 2023.1(e)(4).

(19) Failure to comply with programs for the regulation of toxic air contaminants is a violation of state law resulting in penalties. HSC section 39674 authorizes civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(20) In order to resolve these alleged violations, LADPW 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.

(21) 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 LADPW agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of two hundred fifty-six thousand, three hundred seventy-five dollars ($256,375.00) shall be paid on behalf of LADPW and submitted no later than May 31, 2014, as follows:

- $192,281.00 to the **California Air Pollution Control Fund**
- $ 64,094.00 to the **Peralta Colleges Foundation***

*These funds will be distributed directly to the Los Angeles Trade Tech College, 400 West Washington Boulevard, Los Angeles, CA 90015 for the California Council on Diesel Education I and II Classes. Jess Guerra, Primary Contact, (213) 763-3922 or guerraj@lattc.edu: Jordan Cantillano, Registrar, cantilj@lattc.edu.

Please submit the signed settlement agreement and checks to:

Ms. Ann M. Stacy, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) LADPW shall not violate HSC sections 42701 et seq., and 44011.6 et seq., Title 13 CCR, sections 2180 *et seq.*, 2190 *et seq.,* and 2485 *et seq.*

(3) LADPW 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 and ECL.

(a) LADPW 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 LADPW 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, LADPW 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) LADPW shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment System (DEATS) 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 DEATS.

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

(5) LADPW shall submit copies of all PSIP compliance records for years 2013 and 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Ann Stacy at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any LADPW fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(6) LADPW 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 LADPW fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, title 13, section 2183(c) within 45 days of this agreement.

(8) 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.

(9) LADPW shall retrofit PAU vehicles with BACT to meet the implementation schedule specified in Title 13 CCR, section 2022.1. LADPW will keep the records of the installed diesel emission control strategy and update the compliance plan accordingly.

(10) LADPW shall submit an updated compliance plan demonstrating compliance with the PAU Rule to Ms. Ann M. Stacy, ARB, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812 or electronically at astacy@arb.ca.gov by August 1, 2013.

(11) LADPW shall maintain compliance with the Urban Bus Fleet PM emissions of 85 percent reduction from the 2004 Alternative Fuel Path Baseline by January 1, 2009 and 2010 as specified in 13 CCR, section 2023.1(e)(4).

(12) This Agreement shall apply to and be binding upon LADPW, 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 LADPW concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and LADPW 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 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 (*H&SC*) sections 42403 and 43024.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500.00 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $186,000.00 for 364 vehicles, or $375.00 per vehicle per violation.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of $225.00 per vehicle per violation. The penalty obtained for the ECL violations involved in this case is $7875.00 for 35 vehicles.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

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 BACT by the implementation deadline(s) in this case is $48,500.00, or $500 per vehicle for 97 vehicles for an unspecified number of days. The penalties are based on the number of vehicles that were not in compliance at each regulatory deadline. The vehicles were in Group 1, Group 2, and Group 3 of the regulations. The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

Fleet Rule for Transit Agencies Violations

The per vehicle penalty for the Transit Fleet Vehicle (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 $14,000.00 for 14 vehicles, or $1,000.00 per vehicle per violation.

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 violation is HSC section 43016 because LADPW Failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2009 and 2010 in violation of the PSIP regulation in CCR, Title 13, sections 2190 et seq., for 364 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 violation in Part 5, HSC section 43016 is applicable penalty provision.

ECL Violations

The penalty provision being applied for the ECL Program (Title 13, CCR, section 2180 *et seq.*) violations is HSC section 4011.6 because LADPW failed to affix emission control labels as required by Title 13, CCR, section 2183(c).

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 HSC section 39674. The Public Agency and Utility Rule is a Air Toxic Control Measure (ATCM) adopted pursuant to authority contained in HSC Sections 39660 et seq. and because LADPW failed to use BACT on 310 vehicles by the implementation deadline(s) as required by the Public Agency and Utility Rule during the years of 2007, 2009, 2010 and 2011 over an unspecified number of days.

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 an ATCM adopted pursuant to authority contained in HSC section 39660, et seq. and because LADPW failed to reduce the Urban Bus PM emissions by 85 percent from the 2004 Alternative Fuel Path Baseline on 14 urban buses as required by the Rule for Transit Fleet Agencies, Title 13, CCR, section 2023 et seq., over an unspecified number of days during the years of 2009 and 2010.

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 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.

(19) LADPW acknowledges that ARB has complied with SB 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.

(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 basis.

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

(22) Now therefore, in consideration of the payment on behalf of LADPW to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases LADPW 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 (20) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board	**LADPW**
By:	By: Gail Farber
Name: Richard Corey	Name: GAIL FARBER
Title: Executive Officer	Title: DIRECTOR
Date: 5/28/2014	Date: 5/7/14