This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and CITY OF RIVERSIDE, a California charter city and municipal corporation (RIVERSIDE), 3435 14th Street, Riverside, California 92501.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions, including market-based approaches. (Health & Saf. Code §§38560, 38570.) Pursuant to that authority, ARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation), California Code of Regulations (CCR), title 17, §95801 et seq.

2. The Regulation is crucial to reducing greenhouse gas (GHG) emissions, and includes several provisions intended to ensure a fair and functional market.

3. California Health & Safety Code sections 38580 and 42402.1 provide that one who violates the Regulation through negligence is liable for a penalty of up to $25,000 for each violation.

4. ARB alleges that during 2013, in connection with an allowance auction conducted by ARB, RIVERSIDE failed to comply with the Regulation by submitting bids that exceeded the bid guarantee required by section 95912 subd. (i).

5. In reaching this settlement, ARB considered a variety of circumstances, including the nature of the violator's business, the nature, magnitude, and duration of the violation, any harm to the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.

6. In this matter, there were a number of mitigating factors, including that this was the first allowance auction in which RIVERSIDE participated, RIVERSIDE has no history of regulatory violations, there was no evidence that RIVERSIDE'S alleged act caused any harm, RIVERSIDE immediately instituted internal procedures to ensure that such alleged act would not happen again.

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

8. 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 RIVERSIDE agree as follows.

TERMS

9. Within 15 business days following execution of this agreement by all parties, RIVERSIDE shall deliver payment in the sum of $25,000.00, made payable to the "Air Pollution Control Fund."

The check should note "RIVERSIDE 2013 Cap-and-Trade 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

10. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and are payable to a governmental unit. Therefore, it is agreed that these penalties imposed on RIVERSIDE by ARB arising from the facts described in recital paragraphs 1 – 8 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.

11. RIVERSIDE shall follow its internal procedures to ensure that future bids will not exceed the bid guarantee.

12. This Agreement shall apply to and be binding upon RIVERSIDE 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 RIVERSIDE concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RIVERSIDE 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. 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. 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. RIVERSIDE acknowledges that ARB 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 extent to which the violation deviated from Regulation's requirements, the cause of the violation, and whether the violator gained in any way from the violation. 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 determined based on the fact that the violation was a first time violation for this entity, circumstances suggest that the error may have resulted from the entity's inexperience with the allowance auction procedures, and RIVERSIDE made diligent efforts to cooperate with ARB's investigation and take steps to ensure future compliance.

The legal provisions under which the penalty was assessed. The penalty is based on Health & Safety Code section 42402.1 and CCR, title 17, section 96013, the provisions intended to govern violations of the Regulation.

Whether the governing provisions prohibit emissions at a specified level. The Regulation does not prohibit emissions above a stated level, but Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

19. The penalty was based on confidential settlement communications between ARB and RIVERSIDE. The penalty is the product of an arms length negotiation between ARB and RIVERSIDE and reflects ARB's assessment of the relative strength of its case against RIVERSIDE, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that RIVERSIDE may have secured from its actions.

20. In consideration of the penalty payment and undertaking in paragraph 11, above, ARB hereby releases RIVERSIDE and its officers, directors, receivers, employees, successors and assignees from any claims the ARB may have based on the circumstances described in paragraph 4, above.

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

California Air Resources Board

By: _____
Ellen M. Peter
Chief Counsel

Date: 12/18/2013

City of Riverside

By: _____
Name: SCOTT C. BARBER
Title: CITY MANAGER

Date: 12/3/13

Attest: _____
City Clerk

APPROVED AS TO FORM

_____
City Attorney