

## 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 Union City Transit (hereinafter "Union City"), 34009 Alvarado-Niles Road, Union City, CA 94587.

### I. RECITALS

- (1) California Health and Safety Code (*H&SC*) 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) *H&SC* 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) The Fleet Rule for Transit Agencies - Urban Bus Requirements, Section 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. Union City reported to the ARB that the diesel PM emission total as of January 1, 2009 was more than 15 percent of its diesel PM emission total on January 1, 2002.
- (4) The Fleet Rule for Transit Agencies - Transit Fleet Vehicle Requirements, Section 2023.2 (b)(1) of Title 13 of the CCR, states that no later than December 31, 2007, the diesel PM emission total for a transit agency's transit fleet vehicle fleet shall be no more than 60 percent of its diesel PM emission total on January 1, 2005. Union City reported to the ARB that the diesel PM emission total as of December 31, 2007 was more than 60 percent of its diesel emission total on January 1, 2005.
- (5) 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.

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- (6) Union City provides urban and transit services to its 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.
- (7) UNION CITY 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 UNION CITY, for the violations alleged above, ARB and UNION CITY agree as follows:

- (1) Upon execution of this Agreement, UNION CITY shall pay a civil penalty of fifteen hundred dollars (\$1,500). Payment shall be made in check form as described below and the payments shall be submitted no later than October 24, 2011.

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- **\$ 1,125** made out to **California Air Pollution Control Fund**
- **\$ 375** made out to **Peralta Community College District**

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

Wendy A. Maienknecht, Air Resources Engineer  
Air Resources Board, Enforcement Division  
P.O. Box 2815  
Sacramento, CA 95812

- (2) UNION CITY shall not violate H&SC sections 43701 *et seq.* and 44011.6 *et seq.* and Title 13, CCR Sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (3) Union City shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET) class, 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 the HDVIP.
  - (a) Union City shall have at least one staff member responsible for compliance with the PSIP and the HDVIP attend the CCDET class. Proof of CCDET

completion shall be provided to ARB within one year of the date of this Agreement and shall be maintained in each applicable employee's file for the term of his or her employment, or as provided by Union City rules, regulations, codes, or ordinances, whichever is longer.

- (b) If Union City uses a contractor to perform the annual smoke opacity testing required under the PSIP, Union City shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provided to ARB with PSIP records as required by this Settlement Agreement and shall be maintained with the annual PSIP records.
- (4) UNION CITY 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/hdvp/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on California Compliance emission regulations and the proper care and maintenance of Verified Diesel Emission Control Strategies (VDECS).
- (a) UNION CITY shall have at least one staff member responsible for maintenance of VDECS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within one year of the date of this Agreement and shall also be maintained in each applicable employee's file for the term of his or her employment, or as provided by UNION CITY, rules, regulations, codes, or ordinance, whichever is longer.
- (b) In case UNION CITY uses a contractor for the maintenance of VDECS, UNION CITY shall obtain proof that the contractor's staff maintaining the VDECS completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by UNION CITY to the ARB within one year of the date of this settlement and shall also be maintained with VDECS maintenance records.
- (5) UNION CITY 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.
- (6) Each 1974 or newer diesel powered heavy-duty vehicle in the UNION CITY 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.

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- (7) UNION CITY shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.
- (8) Union City failed to meet the emission reduction requirements for particulate matter as specified in 13 CCR 2023.2(b). No later than November 18, 2011, the diesel PM emission total for Union City's transit fleet vehicles shall be no more than 40 percent of its diesel PM emission total on January 1, 2005, or equal to 0.01 g/bhp-hr times the total of number of transit fleet vehicles in the current fleet, whichever is greater.
- (9) Union City failed to meet the emission reduction requirements for particulate matter as specified in 13 CCR 2023.1(e). No later than November 18, 2011, the diesel PM emission total for Union City's urban bus fleet vehicles shall be no more than 15 percent of its diesel PM emission total on January 1, 2002, or equal to 0.01 g/bhp-hr times the total of number of transit fleet vehicles in the current fleet, whichever is greater.
- (10) This Agreement shall apply to and be binding upon UNION CITY, 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.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and UNION CITY, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and UNION CITY, concerning the subject matter hereof.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) Now, therefore, in consideration of the payment by UNION CITY, in the amount of fifteen hundred dollars (\$1,500), ARB hereby releases UNION CITY and its

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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) through (6) above. The undersigned represent that they have the authority to enter into this Agreement.

(17) **Senate Bill 1402**

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.

- TFV/UB 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 \$1,500.00 for 4 vehicles, or \$ 375.00 per vehicle per violation. The penalty was discounted based on the fact that this was a first time violation.

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

- TFV/UB Violations

The penalty provision being applied for the TFV regulation violations is HSC section 39674 (the TFV rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39660, *et seq.*) because Union City failed to use best available control technology on 4 vehicles as required by the TFV rule, CCR, title 13, section 2023 *et seq.*, over an unspecified number of days during the years of 2008 through 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.**

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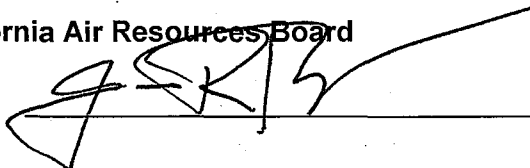
The provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant units involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions.

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

California Air Resources Board

UNION CITY TRANSIT

By:



By:



Name: James Ryden

Name: Mr. Stephen Adams

Title: Division Chief

Title: Transit Planner

Date:

10/31/11

Date:

10/11/2011