

REVISED SETTLEMENT AGREEMENT AND RELEASE

This REVISED SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Revised Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and Skanska Traylor Shea Joint Venture (hereinafter "STS JV"), 5055 Wilshire, Suite 700, Los Angeles, California 90036.

I. RECITALS

- (1) Health and Safety Code sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use off-road diesel-fueled vehicles (off-road vehicles) are powered by diesel-fueled engines that emit toxic PM. Off-road vehicles are controlled under chapter 9, 13 CCR § 2449.
- (2) California Code of Regulations, title 13, section 2449, subdivision (b) states that, except as provided in § 2449(b)(2)(G), the Regulation for In-Use Off-Road Diesel-Fueled Fleets (In-Use Off-Road Regulation) "applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road."
- (3) California Code of Regulations, title 13, section 2449, subdivision (c)(24) (13 CCR 2449(c)(24)) provides that a large fleet is a "fleet with a total max hp...greater than 5,000 hp."
- (4) STS JV owns and operates a fleet with a total max hp greater than 5,000 hp, and is therefore a large fleet as defined in 13 CCR 2449(c)(24).
- (5) California Code of Regulations, title 13, section 2449, subdivision (d)(6) prohibits large fleets from adding any vehicle with a Tier 1 engine beginning on January 1, 2012.
- (6) On or about July 8, 2016, STS JV allegedly violated California Code of Regulations, title 13, section 2449, subdivision (d)(6) by adding 21 pieces of banned equipment to its fleet, identified by the following EINs: ME7C93, KT4K98, TG3V63, ML4A87, WB9X44, FH5T64, BG3G76, FT7Y75, KW9W36, XJ4Y78, MW8M64, DX3T35, WN6S98, HR3C37, NP9F84, RJ8N55, NL6G94, VC9H67, DT9U83, PA9D35, SM7B78. On or about December 19, 2016, STS JV allegedly violated California Code of Regulations, title 13, section 2449, subdivision (d)(6) by adding an additional 3 pieces of banned equipment to its fleet portion, identified by the following EINs: EP3D57, SL5U43, and JU7W85.

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- (7) STS JV's actions, as alleged in recital paragraphs 1-6, would, if proven, be unlawful and in violation of the In-Use Off-Road Regulation, codified at California Code of Regulations, title 13, section 2449 et seq.
 - (8) If the facts described in recital paragraphs 1-6 hereinabove were proven, civil penalties could be imposed against STS JV pursuant to Health and Safety Code section 39674 for each and every banned vehicle involved in said violations.
 - (9) STS JV admits the facts in recital paragraphs 1-6.
 - (10) STS JV has no prior violations of the In-Use Off-Road Regulation, codified at California Code of Regulations, title 13, section 2449 et seq. STS JV promptly and fully cooperated with CARB throughout its investigation, notified CARB in advance, and sought help complying. Further, the circumstances of the violations were unique, as described hereafter:
 - a. The equipment would be performing work under the Westside Extension Contract, LACMTA No. C-1045, to construct underground twin tunnels for the excavation and construction of three Metro Stations along the route. The tunnels and stations were classified as "gassy" by the California Department of Industrial Relations Division of Occupational Safety and Health (CAL/OSHA) in accordance with California Code of Regulations, title 8, section 8422 (tunnel classifications), Underground Classification Numbers C058-37-14T through C060-37-14T and C071-37-14T through C074-37-14T. The "gassy" classification required STS JV to add approximately 24 pieces of equipment banned under the In-Use Off-Road Regulation, and alter 24 pieces of equipment contrary to the In-Use Off-Road Regulation, to meet the equipment operation requirements in California Code of Regulations, title 8, section 8425. Equipment could not be supplied with unaltered or unbanned Tier 2, 3 or 4 engines, and failure to institute these modifications would have resulted in a serious safety hazard;
- and
- b. The engines added by STS JV were the cleanest Mine Safety and Health Administration (MSHA)-approved engines available or technically feasible that could be used in the types of equipment needed for the project.

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against STS JV for the alleged violations referred to above, of CARB suspending the penalties set forth in

Section (1) below, and of STS JV complying with the conditions in (2) below, CARB and STS JV agree as follows:

- (1) An appropriate penalty amount for these alleged violations is \$24,000.
- (2) As a condition of this Revised Agreement, STS JV shall do the following:
 - a. Offset and/or mitigate all oxides of nitrogen (NOx) and particulate matter (PM) emissions associated with use of the equipment with the following EINs, which are equipped with banned Tier 1 engines: ME7C93, KT4K98, TG3V63, ML4A87, WB9X44, FH5T64, BG3G76, FT7Y75, KW9W36, XJ4Y78, MW8M64, DX3T35, WN6S98, HR3C37, NP9F84, RJ8N55, NL6G94, VC9H67, DT9U83, PA9D35, SM7B78, EP3D57, SL5U43, and JU7W85. CARB will provide STS JV an estimate of these emissions. STS JV must provide to CARB proposed measures which will mitigate all excess NOx emissions CARB calculates within 60 calendar days of executing this Revised Agreement. These mitigation measures must be surplus to requirements of any federal, State, or local law, rule, or regulation; may not be used to receive credit under any federal, state, or local law, rule, or regulation; and may not violate any federal, state, or local law, rule, or regulation. STS JV must receive CARB approval of the mitigation measures prior to initiating any emission reduction actions. Once STS JV receives CARB approval of any mitigation measure, it must begin implementing it immediately, unless CARB agrees otherwise in writing;
 - b. Except as otherwise allowed by this Revised Agreement, comply with all requirements of the In-Use Off-Road Regulation, including for the equipment listed in Table 1, below, including but not limited to: annual reporting, reporting changes to the fleet, and submittal of the Responsible Official Affirmations of Reporting (ROAR) form;
 - c. Not add to its fleet and/or operate any banned equipment other than those listed in Table 1, below;
 - d. Not add, operate, or modify any off-road equipment, including in this fleet, other than those pieces of equipment listed in Table 1, below, unless it meets the requirements of the Off-Road Regulation. If any changes to Table 1 are necessary, STS JV shall notify CARB of any proposed necessary actions, including adding, removing or changing any of the equipment in this fleet, listed in Table 1, below, in writing at least 10 calendar days after discovering that any such modification is necessary, and show the need for each such modification, including safety issues if such modification is not instituted and the unavailability of any other equipment to do the work needed; and shall not bring such

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equipment to be added to Table 1 into the State, or add to the fleet or operate such equipment without CARB's prior written approval;

- e. Make the proper modifications, as soon as practicable, to upgrade to cleaner equipment or modifications which result in cleaner operation of the equipment if STS JV, CARB, or any other relevant agency, including, but not limited to, MSHA or CAL/OSHA, at any time identifies cleaner equipment that can be used for the project identified;
- f. Immediately, upon completion of the Westside Extension Contract, take the following actions with regard to all equipment in Table 1, below: either remove it from operation and move it out of the State of California or return it to the equipment's original specifications, except for the equipment with the following EINs, which are equipped with banned Tier 1 engines, which must immediately be moved out of the State of California: ME7C93, KT4K98, TG3V63, ML4A87, WB9X44, FH5T64, BG3G76, FT7Y75, KW9W36, XJ4Y78, MW8M64, DX3T35, WN6S98, HR3C37, NP9F84, RJ8N55, NL6G94, VC9H67, DT9U83, PA9D35, SM7B78, EP3D57, SL5U43, JU7W85. STS JV will not receive any credit under the In-Use Off-Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, or repower or modification of these equipment from the modified specifications;
- g. Notify CARB within 10 calendar days of CAL/OSHA designation of Underground Classification Numbers C058-37-14T through C060-37-14T and C071-37-14T through C074-37-14T to a classification other than "gassy;" and

If a designation of Underground Classification Numbers C058-37-14T through C060-37-14T and C071-37-14T through C074-37-14T, in whole or in part, to a classification other than "gassy" occurs prior to completion of the Westside Extension Contract, the equipment in Table 1, below, must immediately be removed from operation for that portion (or reach) of the tunnel and compliant, un-modified equipment must be used to complete that portion of the contract, if it is safe to do so; and STS JV must notify CARB. If the entire project is designated to a classification other than "gassy", all equipment in Table 1, below, must immediately be either removed from operation and moved out of the State of California or returned to the equipment's original specifications, if it is safe to do so; and STS JV must notify CARB. The equipment with the following EINs, which are equipped with banned Tier 1 engines, must immediately be moved out of the State of California: ME7C93, KT4K98, TG3V63, ML4A87, WB9X44, FH5T64, BG3G76, FT7Y75, KW9W36, XJ4Y78, MW8M64, DX3T35, WN6S98, HR3C37, NP9F84, RJ8N55, NL6G94, VC9H67, DT9U83, PA9D35, SM7B78, EP3D57, SL5U43, JU7W85. STS JV will not receive any credit under the In-Use Off-

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Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, repower, or modification of these equipment from the modified specifications.

Table 1: Banned and Modified In-Use Off-Road Equipment

Fleet Name	Fleet ID	Equipment Identification Number (EIN)
Westside Purple line ext	125875	DX9C84
Westside Purple line ext	125875	XW8U45
Westside Purple line ext	125875	FP9Y63
Westside Purple line ext	125875	HH6E74
Westside Purple line ext	125875	CV7T79
Westside Purple line ext	125875	HR3C37
Westside Purple line ext	125875	WN6S98
Westside Purple line ext	125875	DX3T35
Westside Purple line ext	125875	MW8M64
Westside Purple line ext	125875	XJ4Y78
Westside Purple line ext	125875	PW7J37
Westside Purple line ext	125875	SN5A59
Westside Purple line ext	125875	EA9V83
Westside Purple line ext	125875	HE8C99
Westside Purple line ext	125875	FV4D55
Westside Purple line ext	125875	ME7C93
Westside Purple line ext	125875	KT4K98
Westside Purple line ext	125875	FH5T64
Westside Purple line ext	125875	KW9W36
Westside Purple line ext	125875	FT7Y75
Westside Purple line ext	125875	BG3G76
Westside Purple line ext	125875	SM7B78
Westside Purple line ext	125875	PA9D35
Westside Purple line ext	125875	DT9U83
Westside Purple line ext	125875	VC9H67
Westside Purple line ext	125875	NL6G94
Westside Purple line ext	125875	RJ8N55
Westside Purple line ext	125875	NP9F84
Westside Purple line ext	125875	NL4S35
Westside Purple line ext	125875	HH7K56
Westside Purple line ext	125875	ES7A94
Westside Purple line ext	125875	SL7D73
Westside Purple line ext	125875	TY4H37
Westside Purple line ext	125875	HC5N56
Westside Purple line ext	125875	WB9X44
Westside Purple line ext	125875	TG3V63
Westside Purple line ext	125875	ML4A87
Westside Purple line ext	125875	EP3D57
Westside Purple line ext	125875	SL5U43

Westside Purple line ext	125875	JU7W85
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- (3) Send the signed Revised Agreement and any future mailings or documents required per the terms of this Revised Agreement to:

Mr. Nelson Van
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812
- (4) If the Attorney General files a civil action to enforce this Revised Agreement, STS JV shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (5) This Revised Agreement shall apply to and be binding upon STS JV and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Revised Agreement.
- (6) This Revised 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.
- (7) This Revised Agreement constitutes the entire agreement and understanding between CARB and SJS TV concerning the claims and settlement in this Revised Agreement, and this Revised Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and STS JV concerning these claims.
- (8) No agreement to modify, amend, extend, supersede, terminate, or discharge this Revised Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties hereto.
- (9) Advice of Counsel. Each Party to this Revised Agreement has reviewed the Revised Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Revised Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Revised Agreement.

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- (10) Severability. Each provision of this Revised Agreement is severable, and in the event that any provision of this Revised Agreement is held to be invalid or unenforceable, the remainder of this Revised Agreement remains in full force and effect to the extent necessary to fulfill the Revised Agreement's purpose and the intent of the parties.
- (11) This Revised 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.
- (12) Waiver. The failure of any Party to enforce any provision of this Revised Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Revised Agreement. The rights and remedies granted all parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Revised Agreement or otherwise provided by law.
- (13) The Parties agree that this Revised Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
- (14) **SB1402 Statement.** Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires CARB to provide information on the basis for the penalties it seeks. This information, which is provided throughout this Revised 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 section 43024. The per-unit penalty in this case is a maximum of \$1,000 per unit per strict liability violation. The penalty obtained in this case is approximately \$1,000 per unit for 24 units. The penalty was reduced because STS JV was fully cooperative with the investigation; because STS JV self-reported to and consulted with CARB on how to come back into compliance with the Off-Road Regulation; and because of the unique circumstances.

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

The penalty provision being applied in this case is Health and Safety Code section 39674, because STS JV added banned vehicles to its fleet after January 1, 2012, in violation of California Code of Regulations, title 13, section 2449(d)(6).

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. In most cases, including this case, it is not practicable to quantify these emissions because the information necessary to do so, such as emission rates and time of use, is not available. Excess emissions were estimated in this case for the purposes of mitigation only based on emission rates and average time of use for similar equipment.

- (15) STS JV acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed in Health and Safety Code 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.
- (16) 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. The penalty was reduced in this matter based on the factors listed above. Penalties in future cases might be smaller or larger on a per-unit basis.
- (17) The penalty in this case was based in part on confidential business information provided by STS JV that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and STS JV that CARB does not retain in the ordinary course of business. The penalty is the product of an arms-length negotiation between CARB and STS JV, and reflects CARB's assessment of the unique circumstances, the desire to obtain swift compliance with the law and remove any unfair advantage that STS JV may have secured from its actions.
- (18) The undersigned represent that they are authorized to enter into this Revised Agreement.

California Air Resources Board

Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 11/20/17

Skanska Traylor Shea Joint Venture

Signature: 

Print Name: BRIAN T. FREEMAN

Title: VICE PRESIDENT

Date: 15 NOV 17