

SETTLEMENT AGREEMENT

WHEREAS, the name of the gas dispensing facility (hereinafter "GDF") is,

located at

WHEREAS, the South Coast Air Quality Management District (hereinafter "District") is a body corporate and politic established and existing pursuant to Health & Safety Code §40400, *et seq.* and is the sole and exclusive local agency with the responsibility for comprehensive air pollution control in the South Coast Air Basin.

WHEREAS, the GDF is regulated and permitted by the District, and is subject to District Rules 461 and 203(b) as well as requirements adopted by the California Air Resources Board (hereinafter "CARB"), which are enforceable by the District.

WHEREAS, the GDF is subject to CARB's requirements to install and successfully test Phase II Enhanced Vapor Recovery ("PII-EVR") beginning on and after April 1, 2009, and may be subject to the requirement to install and test an In-Station Diagnostic ("ISD") system by September 1, 2009. Both these requirements are embodied in Title 17 Section 94011 of the California Code of Regulations (CCR) as well as District Rules 461 (c)(2)(A), (e)(3) and 203(b).

WHEREAS, the GDF will not have installed and tested all necessary PII-EVR equipment by April 1, 2009, so that its equipment will not be considered CARB certified as required by that date, and if subject to the September 1, 2009 ISD deadline, it will not have timely installed and tested the ISD system; so that it will be in continuing violation of the above-referenced requirements until it achieves full compliance with the PII-EVR requirements and the ISD requirements.

THEREFORE, for good and valuable consideration, the GDF and the District (collectively referred to as the Parties) agree to the following:

LIMITATIONS OF AGREEMENT

1. This Agreement will not be in effect if the District Hearing Board does not issue a Stipulated Order for Abatement against the GDF.
2. This Agreement resolves **only** those violations associated with the failure, if any, to file a PII-EVR compliance plan by December 31, 2008, the failure to operate CARB certified PII-EVR equipment occurring between April 1, 2009 and December 31, 2009, and the failure to install and operate an ISD system from September 1, 2009 to December 31, 2009; and **not** any other violations, including any violations related to the failure to file either a compliance plan or a Phase II EVR permit application by March 18, 2009. The period of coverage for violations of the PII-EVR and ISD requirements between April 1 and December 31, 2009 may only be extended by mutual agreement in writing between the GDF and the District. Unless this Agreement is extended, operation of the GDF beyond December 31, 2009 is illegal and **the GDF will be subject to prosecution for the full amount of penalties allowed under the law as well as the possible tag-out or shut-down of the GDF.**

PENALTY FOR NOTICE OF VIOLATION

3. If the GDF has received a Notice of Violation for violating District Rule 461(i), it shall pay by separate check \$500 in addition to the monthly penalties set below.

MONTHLY PENALTIES

4. The GDF understands that its continuing violations are subject to penalties under state law of up to \$25,000 per day for each day of negligent emission violations. The District

considers numerous factors in assessing an appropriate level of penalties. Two such factors in this case is the number of dispensers at the GDF and the average monthly throughput in gallons of gasoline dispensed by the GDF from 1/1/08 to 12/31/08. **The GDF thus states under penalty of perjury that it has _____ dispensers and its average monthly throughput of gasoline from 1/1/08 to 12/31/08 is _____ gallons of gasoline per month. The GDF further understands that if the District later determines that either of these stated numbers is inaccurate, this Agreement will be considered void and the GDF will be subject to prosecution for the full amount of penalties allowed under the law as well as the possible tag-out or shut-down of the GDF.**

5. GDF agrees to the penalty and payment schedule attached to this Agreement as Table 1. Based on Table 1, and using the above-stated number of dispensers, GDF represents that its monthly penalty for the months of April, May, June, July and August of 2009 is \$_____/month.
6. The GDF further understands that in order to provide an incentive for early compliance, the monthly penalty will increase beginning September 1, 2009. Again, based on the attached Table 2 and using the above-stated number of dispensers and average monthly throughput, GDF represents that its monthly penalty for the months of September, October, November and December of 2009 is \$_____/month.

REDUCED PENALTIES

7. **Temporary shut-down to avoid penalties:** The GDF may choose at any time to temporarily shut-down its gas dispensing operation until it achieves full compliance with the PII-EVR requirements and the September 1, 2009 ISD requirement, if applicable. The GDF must first notify the District in writing, by completing the enclosed Statement of Temporary Shutdown and submitting it as directed on the form. After notification, there will be no applicable daily penalty for the period of time in which the GDF is shut-down.

MONTHLY PAYMENT SCHEDULE

8. Monthly penalties are due in advance by the first of each month. The first payment shall be included with the return of this fully completed and signed Settlement Agreement. The first payment shall include the monthly payment for the month of April 2009, and any other monthly payments that may be past due. Payments shall be made out to the South Coast Air Quality Management District, marked with your Facility ID No., and mailed to the address listed below.

LATE PAYMENTS

9. Monthly payments received after the due dates are subject to an additional 50% late fee. The late fee payment shall be included with the monthly payment. However, monthly payments received by the 10th of the applicable month will not be deemed late. If a monthly payment is not received within 30 days after the due date, **this Agreement will be considered void and the GDF will be subject to prosecution for the full amount of penalties allowed under the law as well as the possible tag-out or shut-down of the GDF.**

FULL COMPLIANCE

10. Within 5 calendar days after the GDF installs all required Phase II EVR equipment and any ISD system required by September 1, 2009, and successfully tests the installed equipment and system pursuant to District Rule 461(e), the GDF shall notify the District of the date that the GDF has achieved full compliance. Notification shall be made using the District form entitled, Statement of Full Compliance, and shall be submitted as directed on the form.

MISCELLANEOUS

- 11. **Binding.** This Agreement shall be deemed to obligate, extend to, and insure to the benefit of the Parties to the Agreement, and the legal successors, assigns, transferees, grantees, and heirs of each such Party, including those who may assume any or all of the capacities described herein.
- 12. **Entire Agreement.** This Agreement constitutes an integrated contract expressing the entire agreement of the Parties hereto relative to the subject matter discussed herein. This Agreement supersedes all prior proposals, agreements, and understandings between the Parties and may not be changed or terminated orally, and no change, termination, or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the Party against whom the same is sought to be enforced.
- 13. **Authority to Execute.** Each Party represents and warrants to the other Party that the signatories to the Agreement have been duly authorized to execute the Agreement on behalf of the entities identified below.
- 14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. The Parties may execute and deliver this Agreement by transmitting an authorized signature by fax or pdf via e-mail, and copies of this Agreement signed and delivered by means of faxed signatures or signatures in a pdf document shall have the same effect as copies executed and delivered with original signatures.
- 15. **Effective Date.** Agreeing to and accepting all of the provisions herein, the undersigned have executed this Agreement on the date set forth below. The effective date of this Agreement is April 1, 2009.

Mailing Address Send all completed documents and payments to:

**District Prosecutors Office
EVR Phase II
South Coast Air Quality Management District
21865 Copley Dr
Diamond Bar, CA 91765-9819**

IN WITNESS THEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date set forth below their respective signatures.

**SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT**

NAME of GDF

By:

By:

William B. Wong, Esq.
Principal Deputy District Counsel

Name:

Dated _____

Dated _____