

**COMPLIANCE AND SETTLEMENT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND**

_____ (Owner)

This Compliance and Settlement Agreement (the “Agreement”) is entered into as of the date of execution by and between _____

(Owner), _____ (Type of Business Entity)

and _____ (Site Name) (collectively “Owner”) and the BAY AREA AIR QUALITY MANAGEMENT DISTRICT (“DISTRICT”), hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the DISTRICT is the regional agency with primary responsibility for the control of air pollution from stationary sources, such as gasoline dispensing facilities (“GDFs”), in the San Francisco Bay Area air basin; and

WHEREAS, pursuant to its responsibility, the DISTRICT issues permits to operate GDFs and regulates GDFs located within the DISTRICT’s jurisdiction; and

WHEREAS, GDFs are a source of volatile organic compounds (“VOCs”) in the form of gasoline vapors, and gasoline contains over two hundred hydrocarbon compounds, one of which is benzene, a known carcinogen; and

WHEREAS, VOCs are organic compounds that evaporate quickly into the atmosphere and that, reacting with nitrogen oxides (NOx) in sunlight, create ground level ozone; and

WHEREAS, ground level ozone is the primary component of photochemical smog, and smog aggravates respiratory diseases, reduces visibility, causes eye irritation, and damages vegetation; and

WHEREAS, Owner owns and operates a GDF located at

_____ (Site Street Address),

_____ (Site City), California,

GDF No. _____ (“Facility”); and

WHEREAS, Owner states that the Facility has an annual gasoline throughput greater than six hundred thousand (600,000) gallons; and

WHEREAS, pursuant to Certification Procedure CP-201, entitled *Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities* (“CP-201”), incorporated by reference in section 94011 of title 17 of the California Code of Regulations, the California Air Resources Board (“ARB”) required that GDFs install and operate an ARB-certified enhanced vapor recovery (“EVR”) Phase II system (“EVR Phase II Upgrade”); and

WHEREAS, in accordance with Sections 9.1.1 and 9.1.2 of CP-201, ARB has also required that as of September 1, 2010, existing GDFs with an annual gasoline throughput of greater than 600,000 gallons must have completed installation of ARB-certified In-Station Diagnostics equipment (“ISD Upgrade”) as part of the EVR program; and

WHEREAS, ARB asserts that California Health & Safety Code Section 42350 precludes Owner from obtaining from the DISTRICT Hearing Board a variance from the ARB requirements to install and operate the EVR’s ISD Upgrade by the deadline; and

WHEREAS, as of September 1, 2010, the transfer or allowing the transfer of gasoline from underground gasoline storage tanks into motor vehicle tanks at a GDF with an annual gasoline throughput greater than 600,000 gallons, but without use of an ARB-certified ISD Upgrade, violates DISTRICT Regulation 8, Rule 7-302.1 and will result in the issuance of a Notice of Violation (“NOV”); and

WHEREAS, Owner seeks to enter into an agreement with the DISTRICT that enables the Facility to continue such gasoline transfer operations as of September 1, 2010 until a compliance deadline set forth in the agreement, provided Owner meets an expeditious schedule to attain compliance with ISD requirements and District Regulation 8-7-302.1 and submits payment of the monetary penalty to resolve such NOV; and

WHEREAS, given Owner’s agreement to pay the monetary penalty to resolve the NOV described above and to adhere to an expeditious schedule to achieve compliance related to ISD, the DISTRICT finds it reasonable to enter into this Agreement to resolve the violation and to allow the Facility to continue operating until the specified compliance deadline, without the need for further proceedings.

NOW THEREFORE, based on the foregoing recitals, all of which are made a part of this Agreement, and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Owner’s Representations and Agreement:

1. Owner hereby represents and affirms to be the owner and/or operator of this Facility.
2. Owner affirms having completed installation of the EVR Phase II Upgrade at the Facility prior to having executed this Agreement, as a condition for eligibility to enter into this Agreement.
3. Owner agrees to, and shall, comply with all terms of this Agreement, including the Compliance Schedule and payment of civil monetary penalties, as described herein.

Compliance Schedule:

4. **Compliance Date.** On or before March 1, 2011 (“Compliance Date”), Owner shall achieve compliance with DISTRICT Regulation 8-7-302.1 pertaining to ISD by either of the

following two methods:

a. ISD Upgrade: Installation of an ARB-certified ISD Upgrade that meets the requirements of ARB's CP-201. Installation includes completion of the following two tasks:

i. Authority to Construct. Owner shall obtain an authority to construct the ISD prior to commencing the ISD Upgrade.

ii. Start-Up Notification. On or before March 1, 2011, Owner shall submit notice in writing to the DISTRICT that it has completed the ISD Upgrade and will conduct the required source tests of the ISD Upgrade equipment at the Facility in accordance with the schedule set forth in the ISD Upgrade Authority to Construct. Owner will submit said start-up notification to the ISD Permit Coordinator, Engineering Division, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109. **The required source tests, depending on the ISD Upgrade system installed by Owner, are as follows:**

(a) Healy Phase II EVR System: ISD Operability Test (CARB Executive Order VR-202, Exh. 9 [Veeder-Root ISD], or Exh. 10 [INCON ISD]).

(b) VST Phase II EVR System with Veeder-Root Vapor Polisher / Carbon Canister: ISD Vapor Flow Meter Operability Test (CARB Executive Order VR-204, Exh. 13).

(c) VST Phase II EVR System with ECS Membrane Processor: ISD Vapor Flow Meter Operability Test (CARB Executive Order VR-204, Exh. 13).

b. Permit Amendment. Receive a permit amendment that limits the permitted twelve-month gasoline throughput to less than or equal to 600,000 gallons ("Permit Amendment"). In order to comply under this method, Owner must complete the following task:

i. Letter Application. Owner shall submit a letter application for a Permit Amendment to the DISTRICT, to the attention of the ISD Permit Coordinator, Engineering Division, at the address set forth above adequately in advance to assure issuance of such Permit Amendment that is effective on or before March 1, 2011.

5. Unforeseen Events. If Owner is unable to meet any of the dates set forth in Paragraph 4 above due to events that are beyond its reasonable control, Owner may request a modification of the schedule to address the unforeseen events. Owner shall describe the events, the new proposed deadline, and the measures Owner shall take to meet the Compliance Date. Events beyond Owner's reasonable control include weather conditions and labor strikes. The DISTRICT will not unreasonably withhold approval of a modification due to unforeseen events.

Penalties:

6. Failure to Meet September 1, 2010 ISD Deadline. Failure to operate in compliance with the ISD requirements as of September 1, 2010 is a violation of DISTRICT Regulation 8-7-302.1, for which the DISTRICT will issue a Notice of Violation ("NOV") to Owner.

a. Owner agrees to and shall pay a civil monetary civil penalty to resolve the

NOV in accordance with the following schedule:

- i.** FIVE HUNDRED DOLLARS (\$500.00) if Owner submits the penalty payment and signed Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or before October 1, 2010.
 - ii.** ONE THOUSAND DOLLARS (\$1,000.00) if Owner submits the penalty payment and signed Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after October 2, 2010, but on or before November 15, 2010.
 - iii.** ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) if Owner submits the penalty payment and signed Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after November 16, 2010, but on or before December 31, 2010.
 - iv.** TWO THOUSAND DOLLARS (\$2,000.00) if Owner submits the penalty payment and signed Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after January 1, 2011, and before March 1, 2011.
- b.** Owner shall pay the applicable civil monetary penalty by cashier's check or money order, made payable to the "Bay Area Air Quality Management District" to the following address:

BRIAN C. BUNGER, DISTRICT COUNSEL
OFFICE OF THE DISTRICT COUNSEL
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET, 7TH FLOOR
SAN FRANCISCO, CALIFORNIA 94109

c. The DISTRICT will not execute the Agreement by the DISTRICT until it has **received both** the civil monetary penalty, the applicable amount to be determined by the hand delivery or postmarked date of the submission, **and** the Owner-executed Agreement. The DISTRICT shall not deposit the civil monetary penalty until the Date of Execution.

Effect of Compliance with this Agreement:

7. Continued Operation Pending Compliance: Prior to the Compliance Date and provided Owner is in compliance with the terms of this Agreement, the District shall not prosecute an action, including an accusation action against Owner, seeking Owner to cease violation of District Regulation 8-7-302.1 related to the facts and circumstances described in the NOV and this Agreement.

8. Satisfaction of Claims. Upon full satisfaction of all tasks set forth in this Agreement, Owner will have satisfied all claims arising out of or relating to the allegations and conduct that are the subject of this Agreement and that have been or could have been asserted between the DISTRICT and Owner related to the ISD requirements. In consideration of Owner's agreement to comply with this Agreement, including DISTRICT's receipt of the civil monetary penalty, the DISTRICT agrees to release Owner and its owners, officers, directors, employees and agents, as well as Owner's parent, subsidiary, predecessor and successor corporations, if any, and their collective officers, directors, employees and agents (collectively, "Owner ENTITIES") from

any further liability pertaining to the violations or conduct alleged in the NOV and/or related to the ISD requirements.

9. This Agreement precludes the DISTRICT from seeking criminal or civil penalties under California Health and Safety Code Sections 42400 *et seq.* or California Business and Professions Code Sections 17200 *et seq.* or from taking an administrative action against Owner or Owner ENTITIES for the same actions and violations that is or are the subject of this Agreement and the NOV, if any. However, nothing in this Agreement shall be construed as limiting in any way the DISTRICT's ability to commence an action or seek relief against Owner as the result of violation(s) that is or are not the subject of this Agreement and is or are not arising from the same action(s) and violation(s) as alleged and subject to this Agreement, including those alleged in the NOV.

10. The DISTRICT reserves the right to rely upon the alleged violation(s) described in this Agreement, including those alleged in NOV that is the subject of this Agreement, and may offer proof thereof in connection with any other administrative or judicial proceeding not related to this Agreement or the violation(s) or conduct alleged by the NOV.

11. No Relief from State Law. Compliance with this Agreement does not grant Owner relief from the requirements of state law or enforcement by the State, including ARB.

Breach of Agreement by Owner:

12. Tag Out. If the DISTRICT reasonably determines that Owner continues to operate the GDF after the Compliance Date but has failed to comply with the ISD requirements, except as provided for in Paragraph 5 above, Owner shall be in breach of this Agreement and the DISTRICT may, at its sole discretion, tag out those portions of the GDF that are not in compliance with Regulation 8-7-302.1, thereby prohibiting Owner from operating those portions of the GDF until the Facility is in compliance with DISTRICT Regulation 8-7-302.1.

13. Enforcement Action. If Owner continues to operate the GDF and fails to comply with any of the requirements or provisions of this Agreement, it will be in breach of this Agreement, and thus, as a remedy and at its sole discretion, the DISTRICT may terminate this Agreement upon written notice to Owner. The DISTRICT may seek civil or criminal penalties, or otherwise take any enforcement action against Owner, including tag out of the Facility.

Modification and Termination:

14. Modification. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion hereof, shall be valid or enforceable unless it is in writing and signed by both Parties or their successors-in-interest.

15. Termination. This Agreement shall terminate upon the earlier of (a) Owner's satisfaction of all claims (as provided for in Paragraph 8 above), or (b) the DISTRICT's termination of this Agreement, pursuant to Paragraph 13 above.

Miscellaneous:

16. Notices. Unless provided for otherwise in this Agreement, all notices and

correspondence pertaining to this Agreement shall be in writing and transmitted by electronic mail (e-mail); personal delivery; overnight mail, postage prepaid; or facsimile (with proof of transmission) to Owner and the DISTRICT at the following addresses:

To Owner

Contact Name		
Contact's Title		
Owner		
Contact Street Address		
Contact City		California
Contact Zip		
E-mail address		
Facsimile: Fax		

To the District

ISD Upgrade Program
 Office of the District Counsel
 Bay Area Air Quality Management District
 939 Ellis Street
 San Francisco, California 94109
 Facsimile: (415) 928-0338

All correspondence shall state that the subject of the correspondence is “ISD Upgrade – GDF No. [REDACTED].” Delivery shall be deemed proper and complete on the day of receipt, if delivery is received by no later than 5:00 p.m. local time (otherwise delivery is deemed made the following day), to the business contact addresses set forth above.

17. The settlement of the matters addressed in this Agreement, including the allegations in the NOV, without further litigation, is fair, reasonable and in the interest of the DISTRICT, Owner, and the public.

18. Date of Execution. This Agreement and all of its terms and conditions shall become effective as of the date of execution by the DISTRICT’s Executive Officer/APCO (“Date of Execution”) and shall be final and binding upon the Parties.

19. This Agreement constitutes the entire agreement and understanding between the DISTRICT and Owner and fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between the Parties concerning the ISD Upgrade.

20. California Law. 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.

21. Successors Bound. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors-in-interest, subsidiaries, partners, limited

partners, agents, principals and assigns. **Owner agrees that in the event of Owner's transfer of any of Owner's ownership interest in the Facility, Owner shall require that Owner's successor-in-interest in the Facility shall agree, as a condition of such transfer, to be bound by the terms of this Agreement and to assume joint and severally Owner's obligations and duties under this Agreement. Owner agrees further that in the event Owner retains any ownership interest in this Facility following such transfer, Owner shall remain a Party to this Agreement and be bound by its terms.**

22. Authority to Execute and Consultation with Counsel. Each of the undersigned expressly affirms that he or she is authorized to execute this Agreement on behalf of the Party whom he or she represents and to bind that Party to the obligations and duties under this Agreement. Owner and the DISTRICT hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and that they have signed it voluntarily and after the opportunity to seek the advice of counsel of their own choosing. The Parties have had the opportunity to consult with their attorneys and any other consultant each deemed appropriate prior to executing this Agreement.

SO AGREED, STIPULATED TO, AND EXECUTED:

BAY AREA AIR QUALITY	_____	(Owner)
MANAGEMENT DISTRICT	_____	(Site Name)
By: _____	By: _____	
JACK P. BROADBENT	_____	(Contact Name)
Executive Officer/APCO	_____	(Contact's Title)
Date: _____	Date: _____	

Approved as to form:

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT
BRIAN C. BUNGER
DISTRICT COUNSEL

By: _____
BRIAN C. BUNGER
District Counsel

Date: _____