

**COMPLIANCE AND SETTLEMENT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
_____ (OWNER) ET AL.**

This Compliance and Settlement Agreement (the “Compliance Agreement”) is entered into as of the date of execution by and between _____ (Name of Owner), a _____ (Business Type of Owner), _____ (Name of Operator, if different), a _____ (Business Type of Operator), and _____ (Facility Name or Station Name) (collectively together the “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 a GDF located at _____ (Facility Street Address), _____ (City), California _____ (Zip Code), GDF No. _____ (“Facility”); and

WHEREAS, Owner states that the Facility has an underground gasoline storage tank system that includes a liquid condensate trap (LCT); 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, as modified by the California Air Resources Board (“ARB”) Executive Order G-70-214 concerning the operative date for GDFs with LCTs, ARB required that as of April 1, 2012, GDFs with LCTs use an ARB-certified enhanced vapor recovery (“EVR”) Phase II system that meets the ARB

performance standards and/or performance specifications for Phase II vapor recovery systems with LCTs (“EVR Phase II Upgrade”); and

WHEREAS, in accordance with CP-201, as modified by ARB Executive Order G-70-214, ARB has also required that as of April 1, 2012, 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 Phase II Upgrade or the EVR’s ISD Upgrade by the deadline; and

WHEREAS, as of April 1, 2012, the transfer or allowing the transfer of gasoline from underground gasoline storage tanks equipped with LCTs into motor vehicle tanks but without use of an ARB-certified EVR Phase II Upgrade, violates DISTRICT Regulation 8, Rule 7-302.1 and will result in the issuance of a Notice of Violation (“NOV”); and

WHEREAS, as of April 1, 2012, 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 also result in the issuance of a NOV; and

WHEREAS, Owner seeks to enter into a Compliance Agreement with the DISTRICT that enables the Facility to continue such gasoline transfer operations as of April 1, 2012 for a prescribed limited time, during which time Owner agrees to proceed diligently to attain compliance with EVR Phase II Upgrade and if applicable, the ISD Upgrade, requirements and District Regulation 8-7-302.1; and

WHEREAS, Owner agrees to submit payment of the monetary penalty to resolve the violation(s) of DISTRICT Regulation 8-7-302.1; and

WHEREAS, given Owner’s agreement to pay the monetary penalty to resolve the violation described above and to achieve compliance by the deadline prescribed in said Compliance Agreement, the DISTRICT finds it reasonable to enter into this Compliance 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 Compliance Agreement, and in consideration of the mutual promises and covenants contained in this Compliance Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

COMPLIANCE AGREEMENT

Owner's and Operator's Representations and Agreement:

1. Owner hereby represents and affirms to be the owner of this Facility.
2. Owner hereby affirms that the person designated in this Compliance Agreement as the Operator is designated or authorized by Owner to operate the Facility on behalf of Owner and to perform any and all actions required of the Owner under this Agreement.
3. Owner agrees to, and shall, comply with all terms of this Compliance Agreement, including the Compliance Schedule and payment of civil monetary penalties, as described herein.
4. Operator agrees to, and shall, comply with all terms of this Compliance Agreement, including the Compliance Schedule and payment of civil monetary penalties, as described herein.

Compliance Schedule:

5. Compliance Date. On or before December 31, 2012 ("Compliance Date"), Owner shall achieve compliance with DISTRICT Regulation 8-7-302.1 pertaining to the EVR Phase II Upgrade, and if applicable ISD Upgrade by installation of an ARB-certified EVR Phase II Upgrade that meets the requirements of ARB's CP-201. Installation includes completion of the following tasks:

a. EVR Phase II Upgrade.

i. Authority to Construct. Owner shall obtain an authority to construct from the DISTRICT for the EVR Phase II Upgrade prior to commencing the upgrade work.

ii. Start-Up Notification. On or before December 31, 2012, Owner shall submit notice in writing to the DISTRICT that it has completed the EVR Phase II Upgrade and will conduct the required source tests of the EVR Phase II Upgrade equipment at the Facility in accordance with the schedule set forth in the EVR Phase II Upgrade Authority to Construct. Owner will submit said start-up notification to the EVR Phase II Upgrade Permit Coordinator, Engineering Division, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

b. EVR ISD Upgrade.

i. Authority to Construct. Owner shall obtain an authority to construct from the DISTRICT for the EVR ISD Upgrade prior to commencing the upgrade work.

ii. Start-Up Notification. On or before December 31, 2012, Owner shall submit notice in writing to the DISTRICT that it has completed the EVR ISD Upgrade and will conduct the required source tests of the EVR ISD Upgrade equipment at the Facility in accordance with the schedule set forth in the EVR ISD Upgrade Authority to Construct. Owner

will submit said start-up notification to the EVR ISD Upgrade Permit Coordinator, Engineering Division, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

6. Unforeseen Events. If Owner is unable to meet any of the dates set forth in Paragraph 5 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:

7. Failure to Meet April 1, 2012 Deadline. Failure to operate in compliance with the applicable EVR Phase II and ISD upgrade requirements as of April 1, 2012 is a violation of DISTRICT Regulation 8-7-302.1, for which the DISTRICT will issue a 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. SEVEN HUNDRED FIFTY DOLLARS (\$750.00) if Owner submits the penalty payment and signed Compliance Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or before April 30, 2012.

ii. ONE THOUSAND DOLLARS (\$1,000.00) if Owner submits the penalty payment and signed Compliance Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after May 1, 2012, but on or before June 30, 2012.

iii. ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) if Owner submits the penalty payment and signed Compliance Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after July 1, 2012, but on or before August 31, 2012.

iv. TWO THOUSAND DOLLARS (\$2,000.00) if Owner submits the penalty payment and signed Compliance Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after September 1, 2012, but on or before October 31, 2012.

v. TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) if Owner submits the penalty payment and signed Compliance Agreement to the DISTRICT by hand delivery or by certified mail postmarked on or after November 1, 2012, but prior on or before December 31, 2012.

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 Compliance 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 Compliance Agreement**.

Effect of Compliance with this Compliance Agreement:

8. Continued Operation Pending Compliance: Prior to the Compliance Date and provided Owner is in compliance with the terms of this Compliance 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(s) and this Compliance Agreement.

9. Satisfaction of Claims. Upon full satisfaction of all tasks set forth in this Compliance Agreement, Owner will have satisfied all claims arising out of or relating to the allegations and conduct that are the subject of this Compliance Agreement and that have been or could have been asserted between the DISTRICT and Owner related to the EVR Phase II Upgrade and ISD Upgrade requirements. In consideration of Owner's agreement to comply with this Compliance 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(s) and/or related to the EVR Phase II Upgrade and ISD Upgrade requirements.

10. This Compliance 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 Compliance Agreement and the NOV(s), if any. However, nothing in this Compliance 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 Compliance Agreement and is or are not arising from the same action(s) and violation(s) as alleged and subject to this Compliance Agreement, including those alleged in the NOV(s).

11. The DISTRICT reserves the right to rely upon the alleged violation(s) described in this Compliance Agreement, including those alleged in NOV(s) that is the subject of this

Compliance Agreement, and may offer proof thereof in connection with any other administrative or judicial proceeding not related to this Compliance Agreement or the violation(s) or conduct alleged by the NOV(s).

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

Breach of Compliance Agreement by Owner:

13. Tag Out. If the DISTRICT reasonably determines that Owner continues to operate the GDF after the Compliance Date but has failed to comply with either the EVR Phase II Upgrade or ISD Upgrade requirements, except as provided for in Paragraph 6 above, Owner shall be in breach of this Compliance 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.

14. Enforcement Action. If Owner continues to operate the GDF and fails to comply with any of the requirements or provisions of this Compliance Agreement, it will be in breach of this Compliance Agreement, and thus, as a remedy and at its sole discretion, the DISTRICT may terminate this Compliance 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:

15. Modification. No agreement to modify, amend, extend, supersede, terminate, or discharge this Compliance 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.

16. Termination. This Compliance 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 Compliance Agreement, pursuant to Paragraph 14 above.

Miscellaneous:

17. Owner and Operator Contact Information. The Owner's and Operator's names, business names, contact information and business addresses for receipt of notices and correspondence, and their representatives authorized, if any, to operate and execute documents on their behalf in connection with this Compliance Agreement are:

<u>Owner (Print or Type Information)</u>	<u>Operator (Print or Type Information)</u>
_____	_____
Name	Name
_____	_____
Business Name (d/b/a)	Business Name (d/b/a)
_____	_____
Street Address	Street Address
_____	_____
City, State and ZIP Code	City, State and ZIP Code
c/o	c/o
_____	_____
Authorized Representative/Title	Authorized Representative/Title
_____	_____
Street Address	Street Address
_____	_____
City, State and ZIP Code	City, State and ZIP Code
Telephone: _____	Telephone: _____
E-mail: _____	E-mail: _____
Facsimile: _____	Facsimile: _____

18. Notices. Unless provided for otherwise in this Compliance Agreement, all notices and correspondence pertaining to this Compliance 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 or Operator at the street addresses set forth in Paragraph 17 above and to the DISTRICT at the following address:

<p><u>To the District</u></p> <p>EVR Phase II Upgrade Program Office of the District Counsel Bay Area Air Quality Management District 939 Ellis Street San Francisco, California 94109 Facsimile: (415) 749-5103</p>	
--	--

All correspondence shall state that the subject of the correspondence is “LCT - EVR Upgrade – GDF No. _____.” 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.

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

20. Date of Execution. This Compliance 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.

21. This Compliance Agreement constitutes the entire agreement and understanding between the DISTRICT and Owner and Operator 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 EVR Phase II Upgrade and ISD Upgrade.

22. California Law. This Compliance 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.

23. Successors Bound. The terms of this Compliance 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 Compliance Agreement and to assume joint and severally Owner’s obligations and duties under this Compliance 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 Compliance Agreement and be bound by its terms.**

24. Authority to Execute and Consultation with Counsel. Each of the undersigned persons expressly affirms that he or she is authorized to execute this Compliance Agreement on behalf of the Party whom he or she represents and to bind that Party to the obligations and duties under this Compliance Agreement. Owner and the DISTRICT hereby affirm and acknowledge that they have read this Compliance 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 Compliance Agreement.

SO AGREED, STIPULATED TO, AND EXECUTED:

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

OWNER
Print Name: _____

By: _____

By: _____

JACK P. BROADBENT
Executive Officer/APCO

Print Name: _____
Print Title: _____

Date: _____

Date: _____

Approved as to form:

OPERATOR

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

Print Name: _____

By: _____

By: _____

Print Name: _____

Print Title: _____

Date: _____

BRIAN C. BUNGER
District Counsel

Date: _____