

DRAFT SAMPLE ONLY

[--COMPANY--]

AIR QUALITY MITIGATION AGREEMENT

This Air Quality Mitigation Agreement (“Agreement”) is made and entered into this ____ day of _____, 2005, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT (hereafter “DISTRICT”), a unified air pollution control district formed pursuant to California Health and Safety Code section 40150, *et. seq.* and [--COMPANY--] (hereafter “[_____]”). [--COMPANY--] and DISTRICT may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS:

WHEREAS, DISTRICT is classified as a *serious* nonattainment area for particulate matter ten microns in size or less (PM10) and an *extreme* nonattainment area for the 1-hour ozone standard; and

WHEREAS, DISTRICT is the Responsible Agency for Air Quality under the California Environmental Quality Act (“CEQA”) and does comment on CEQA projects and has a limited CEQA authority and performs analyses as needed to determine the impact of development projects on air quality in the San Joaquin Valley Air Basin; and

WHEREAS, [--COMPANY--] requested DISTRICT’s administrative review of the [--CEQA document--] for the proposed [--project--]; and

WHEREAS, the same letter dated [--date--], stated that DISTRICT would be reimbursed for the staff time required on a time and material basis in accordance with DISTRICT’s standard rate schedule by [--company--]; and

WHEREAS, the proposed [--project plan details--]; and

WHEREAS, DISTRICT has performed an administrative review of the Air Quality Assessment for the proposed [--CEQA document--], and

WHEREAS, [--COMPANY--], in consultation with DISTRICT, has included reasonable emissions reductions and design features in the proposed [--project--], and would like to voluntarily gain additional emissions reductions; and

WHEREAS, [--COMPANY--] has proposed the payment of an air quality mitigation fee to be used for air quality benefit programs within the San Joaquin Valley, and as much as possible in the [_____] Region within or near the City of [_____].

NOW, THEREFORE, in exchange for their mutual promises, covenants, and conditions, the parties hereby agree as follows:

1. **AIR QUALITY MITIGATION THROUGH DESIGN FEATURES.**

[EXAMPLES ONLY]

- Prior to issuance of a grading permit, [--COMPANY--] shall prepare and submit a dust control plan. The plan shall be prepared consistent with District Regulation VIII and must be reviewed and approved by DISTRICT prior to the commencement of grading activities. Each contractor working on individual parcels within the [--project--] shall implement the dust control measures outlined in the approved dust control plan. The dust control measures selected shall be incorporated as a note on each grading plan.
- DISTRICT maintains New Source Review requirements that direct owners/operators of certain types of stationary equipment to obtain an Authority to Construct (ATC) and Permits to Operate (PTO) from DISTRICT. As part of this process, the need for emission control equipment is assessed and DISTRICT determines whether a Health Risk Assessment (HRA) must be prepared. All stationary sources shall provide proof of compliance with District Rules and Regulations prior to building permit issuance.
- In the event that a sensitive receptor, such as a day care facility, is constructed within the [--project--] area, an HRA shall be prepared so that such facilities are not subject to significant carcinogenic or toxic air contaminants (including diesel exhaust) emitted by the allowed uses within the [--project area--]. The HRA must demonstrate that the risk thresholds will not be exceeded. This assessment shall be prepared prior to issuance of building permits for any day care proposed within the [--project--] area.
- The following uses will be excluded from the [--project--]:
- Prior to issuance of certificate of occupancy, the applicant for each commercial building proposed on an individual parcel shall achieve a building energy efficiency rating that is Ten Percent (10%) beyond Title 24 requirements. While a variety of methods are available to achieve this efficiency increase, the most common solution is the use of building insulating material having a greater “R-value.” This measure shall be placed as a condition of approval from [--the local agency--] and verification shall occur during the site plan review.
- Prior to issuance of certificate of occupancy, the applicant for each commercial building proposed on an individual parcel shall utilize solar or low emission water heaters to reduce natural gas consumption and emissions. This measure shall be placed as a condition of approval from [--the local agency--] and verification of this measure will occur during site plan review and building inspection.
- Prior to issuance of building permits for each structure proposed on an individual parcel, a landscape plan shall be prepared and submitted to the [--local agency--] Planning Department for review and approval. The plan shall provide shade trees and foliage, which conform to air quality enhancement for urban areas adjacent to buildings to reduce building heating/cooling needs. This measure shall be placed as a condition of approval from [--the local agency--] and

verification of this measure will occur during landscape plan approval conducted as part of the site plan review.

- Prior to issuance of certificate of occupancy, the applicant for each building proposed on an individual parcel shall submit site plans illustrating the use of light-colored roofing materials as opposed to dark roofing materials when possible. This measure shall be placed as a condition of approval from [--the local agency--] and verification of this measure will occur during site plan review and building inspection.
- Prior to issuance of building permits, [--COMPANY--] shall submit to the Planning Department, the site plan, for review and verification. This review will include consideration of the entrance/exit driveways and ease of turning movements as well as whether a proposed warehousing or industrial use contains parking spaces for heavy-duty trucks to layover overnight. In such cases, the applicant for development of that parcel shall provide electrical hookups for trucker's use. This measure shall be placed as a condition of approval from [--the local agency--] and verification of this measure will occur during site plan review and building inspection.
- Prior to issuance of building permits, [--COMPANY--] shall submit a site plan to the Planning Department, for review and verification that the site circulation includes reduced vehicle queuing at restaurant drive-through locations. This review will consider the use of separate windows for different functions and the provisions of temporary parking for orders not immediately ready for pickup.
- [--COMPANY--] shall come to an agreement with [--county--] Regional Transit regarding scheduled transit stops at the project site for future employees. The agreement will include identification of those locations where bus turnouts will be constructed along with transit shelters, benches, and route signs and displays. [--COMPANY--] shall construct these facilities, and the timing of construction for all planned facilities will be determined in the agreement. A signed copy of the agreement shall be provided to the [local agency] Planning Department for verification prior to issuance of building permits for the [] square foot of combined space within the [--project area--].
- The project shall include provisions that require future construction on individual parcels to install preferential parking for vanpooling and carpooling for site employees.
- Future uses within the project shall provide sidewalks and on-site pedestrian facilities to encourage employee trips to nearby commercial uses that are otherwise destined for off-site locations. This measure will be verified by the Planning and Roads Departments during the building and Plan check process.
- **Air Quality Mitigation Fee.** Subject to the conditions precedent set forth in Section 3 below, [--COMPANY--] agrees to contribute to DISTRICT the sum of [Dollars (\$)] to reduce emissions to the total of [] tpy of [pollutant] to benefit the [] Region within or near the City of [] (the "Air Quality Mitigation Fee"). An outline of the methodology used to determine the Air Quality Mitigation

Fee is attached hereto as Exhibit A, and is incorporated herein by reference. The calculation of the Air Quality Mitigation Fee is attached hereto as Exhibit B, and is incorporated herein by reference. [--COMPANY--] agrees to pay the Air Quality Mitigation Fee to DISTRICT within thirty (30) days after the execution of this agreement in accordance with the following schedule:

The fee includes an additional Ten Percent (10%) of funding for an additional air quality benefit to provide a safety margin to ensure reductions are achieved.

2. **CONDITIONS PRECEDENT.**

The Parties acknowledge and agree that [--COMPANY'S--] obligation to pay the Air Quality Mitigation Fee shall be subject to the fulfillment or waiver (such waiver to be in [--COMPANY'S--] sole discretion) of the following condition precedent:

A. Issuance of the [--project--] Approval for the project

Notwithstanding the above, if the initial building permit for the project has not been issued by [--date--] and if [--project--] has been cancelled or withdrawn, then this Agreement shall automatically terminate, and neither Party shall have any further obligations hereunder.

3. **USE OF AIR QUALITY MITIGATION FEE.**

DISTRICT agrees to use the Air Quality Mitigation Fee exclusively to establish specific programs that create contemporaneous air quality benefits within DISTRICT; the final improvement measures to be selected by DISTRICT from candidate measures including Heavy Duty Engine Retrofit/Replacement and Agricultural Engine Replacement and other measures set forth in the Air Quality Mitigation Measures Plan and any other program deemed by DISTRICT as appropriate to reduce the emissions of air contaminants in the San Joaquin Valley Air Basin. DISTRICT will create sufficient air quality benefits so that the net air quality impacts of the [--project--] as currently defined in the project on the date of this agreement are fully mitigated.

4. **COOPERATION.**

The Parties agree to cooperate with each other with respect to any requests or actions related to this Agreement from the Environmental Protection Agency, the California Air Resources Board, and/or any interveners in the [--project--], and to do or cause all things necessary, proper or advisable to help consummate and make effective the transaction contemplated by this Agreement. The Parties agree to include as a design feature of the [--project--] the terms of this agreement.

5. **GOVERNING LAW.**

Venue for any action arising out of or relating to this Agreement shall only be in [] County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

(a) an affiliate of [--COMPANY--]; (b) a successor-in-interest by merger, consolidation or reorganization; (c) a purchaser or other transferee of the [--project--]; and (d) a lender for purposes of financing the [--project--].

11. **ENTIRE AGREEMENT.**

This Agreement, including all attached exhibits and documents which are referred to and incorporated herein, constitutes the entire agreement between [--COMPANY--] and DISTRICT with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included in this Agreement.

12. **JOINT EFFORT.**

The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

13. **COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

14. **TERM.**

This Agreement shall become effective upon execution by the parties and shall continue until terminated as provided herein. In no event shall the term of this agreement extend past [--date--], without the express, written consent of the parties hereto.

15. **MODIFICATION.**

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

16. **INDEMNIFICATION.**

[--COMPANY--] agrees to indemnify, defend and hold harmless DISTRICT for, from and in connection with any third party claims, losses and/or liabilities arising from or in connection with DISTRICT'S performance of this Agreement, excluding only such claims, losses and/or liabilities which result from or in connection with District's sole negligence, act or omission.

