

HAGEMAN NORTHWEST, LP
AIR QUALITY MITIGATION AGREEMENT

This Air Quality Mitigation Agreement (“Agreement”) is made and entered into this _____ day of December 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 HAGEMAN NORTHWEST, LP (hereafter "HAGEMAN"). HAGEMAN and the District may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the District is classified as a nonattainment area for ozone, and NO_x and ROG are precursors to ozone; and

WHEREAS, the DISTRICT is a Responsible Agency for Air Quality under the California Environmental Quality Act (“CEQA”) and comments on CEQA projects . It has 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, HAGEMAN, in a letter dated May 27, 2005, requested the DISTRICT’s administrative review of the approved “Recirculated Negative Declaration” for Hageman Northwest, LP for the proposed Hageman Road and Heath Road Project (PROJECT); and

WHEREAS, the proposed PROJECT is development of 160.59 acres of real property in the Western Rosedale area of Kern County, just west of city limits of Bakersfield; and

WHEREAS, the DISTRICT has performed a preliminary administrative review of the Air Quality Assessment for the proposed PROJECT; and

WHEREAS, HAGEMAN, in consultation with the DISTRICT, has included reasonable and feasible emissions reductions and design features in the proposed PROJECT, and would like to voluntarily gain additional emissions reductions, and

WHEREAS, HAGEMAN has proposed the payment of an air quality mitigation fee to be used for the air quality benefit programs within the San Joaquin Valley, and particularly the Southern Region within or near the City of Bakersfield, and

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

1. DISTRICT ACCEPTANCE OF AIR QUALITY MITIGATION FEE

Subject to the term set forth in paragraph 14 below, HAGEMAN agrees to contribute to the DISTRICT the sum of eighty-six thousand, five hundred and fifty dollars (\$86,550.00) to be used to reduce project-related ROG and NO_x emissions by a combined 5.77 tons per year, and to ensure localized benefits in the Southern

Region within or near the City of Bakersfield (the "Air Quality Mitigation Fee"). HAGEMAN agrees to pay the Air Quality Mitigation Fee to the DISTRICT within thirty (30) days after the execution of this agreement.

2. PAYMENT OF ADMINISTRATIVE FEES TO DISTRICT

HAGEMAN agrees to pay to DISTRICT, within thirty (30) days following HAGEMAN's receipt of DISTRICT's invoice, administrative fees to reimburse DISTRICT for DISTRICT's administration of this Agreement, including review, verification and preparation of documents, and staff time relating to the performance of DISTRICT's obligations hereunder, based on a time and materials basis at DISTRICT's average weighted labor rates. These fees shall be in addition to the air quality mitigation fees identified in paragraph 1 above.

3. USE OF AIR QUALITY MITIGATION FEE

The DISTRICT agrees to use the Air Quality Mitigation Fee exclusively to establish and implement specific programs that create contemporaneous air quality benefits within the DISTRICT; the final mitigation projects to be selected by the DISTRICT from candidate programs including, but not limited to, Heavy Duty Engine Emission Reduction Incentive Program and REMOVE II Program, other measures set forth in the attainment demonstration plans and any other program deemed by the DISTRICT as appropriate to reduce the emissions of air contaminants in the San Joaquin Valley Air Basin that will provide a localized air quality benefit. The DISTRICT will create sufficient air quality benefits so that the reduction specified in paragraph 1 is met.

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 parties in the Metropolitan Bakersfield 2010 General Plan and the Western Rosedale Specific Plan, and to do or cause all things necessary, proper or advisable to help consummate and make effective the transaction contemplated by this Agreement.

5. GOVERNING LAW

Venue for any action arising out of or relating to this Agreement shall only be in Kern 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.

6. AUTHORITY

Each Party acknowledges and agrees that it has the full right, power and authority to execute this Agreement, and to perform its obligations hereunder.

7. RELATIONSHIP OF THE PARTIES

Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other taxable entity between the Parties. The rights and obligations of the Parties shall be independent of one another and shall be limited to those expressly set forth herein and, except as expressly provided to the contrary, shall not be construed to apply to any affiliate of the Parties.

8. NO THIRD-PARTY BENEFICIARIES /

The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party other than the improvement of air quality in the San Joaquin Valley Air Basin.

9. NOTICING/COMPENSATION / INVOICING

All notices necessary to be given under the terms of this Agreement, except as herein otherwise provided, shall be in writing and shall be communicated by prepaid mail, telegram or facsimile transmission addressed to the respective Parties at the address below or to such other address as respectively designated hereafter in writing from time to time:

To HAGEMAN: P.O. Box 2346
Bakersfield, California 93304
Attn: Annette Davis
Phone: (661) 327-0067
Fax: (661) 326-0361

To DISTRICT: 1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Attn: Mr. Seyed Sadredin
Phone: (559) 230-5900
Fax: (559) 230-6061

10. ASSIGNMENT

This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. No Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the above, the Parties agree that HAGEMAN may freely assign its rights and duties under this Agreement, without the District's prior written consent, to: (a) an affiliate of HAGEMAN; (b) a successor-in-interest by merger, consolidation or reorganization; (c) a purchaser or other transferee of the PROJECT; (d) a lender for purposes of financing the PROJECT.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between HAGEMAN and the 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 be effective upon the date first written above, and shall terminate upon DISTRICT's meeting its obligation to implement projects that provide necessary emissions reductions to fully mitigate the project's net air quality criteria pollutant impact as defined in the approved assessment (the "**Term**"). HAGEMAN may, by written notice to DISTRICT, terminate this Agreement, whereupon, (i) DISTRICT shall acknowledge in writing to the lead agency that HAGEMAN has mitigated the project's air quality criteria pollutant impacts of the Project to the extent and in the types and quantities brought about by Funding Agreements theretofore funded by the Air Quality Mitigation Fee (as specified in paragraph 1 above), (ii) DISTRICT shall refund to HAGEMAN any unused portion of the Air Quality Mitigation Fee (as specified in paragraph 1 above); and (iii) neither HAGEMAN nor DISTRICT shall have any further rights or obligations under this Agreement.

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

Developer 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.

17. SEVERABILITY

In the event that any one or more provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove.

HAGEMAN NORTHWEST, LP

By: _____
Annette Davis
President

DISTRICT

San Joaquin Valley Unified Air Pollution Control District

By: _____
Supervisor Thomas W. Mayfield, Chair
Governing Board
San Joaquin Valley Unified APCD

Recommended for approval:

San Joaquin Valley Unified Air Pollution
Control District

Approved as to legal form:

San Joaquin Valley Unified Air
Pollution Control District

David L. Crow
Executive Director/APCO

Philip M. Jay
District Counsel

Approved as to accounting form:

San Joaquin Valley Unified Air Pollution
Control District

For accounting use only:

Program: _____

Account No.: _____

Roger W. McCoy
Director of Administrative Service