SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Boneso Brothers Construction Inc. (hereinafter "Boneso Brothers"), 2758 Concrete Court, Paso Robles, CA 93446-5936.

I. RECITALS

(1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use Off-road diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under section 2449 within chapter 9, article 4.8, Title 13 of the California Code of Regulations (CCR).

(2) CCR, Title13, section 2449 (b) states except as provided in section 2449 (b)(2)(G) this regulation applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

(3) CCR, Title 13, section 2449 (f) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).

(4) CCR, Title 13, section 2449 (g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.

(5) The ARB, has documented that Boneso Brothers failed to report and label equipment prior to the August 1, 2009 deadline.

(6) Failure to report and label equipment is a violation of state law resulting in penalties. Health and Safety Code, Section 39674, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(7) In order to resolve these alleged violations, Boneso Brothers has taken, or agreed to take, the actions enumerated below under "RELEASE".

Further, the ARB accepts this Agreement in termination and settlement of this matter.

(8) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and Boneso Brothers agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against Boneso Brothers for the alleged violations referred to above, and Boneso Brothers payment of the fine set forth in Section 1, below, the ARB and Boneso Brothers agree as follows:

(1) Upon execution of this Agreement, the sum of one thousand one hundred twenty five dollars ($1,125.00) shall be paid on behalf of Boneso Brothers within seven (7) business days following execution of this agreement, as follows:

- $843.75 to the **California Air Pollution Control Fund**
- $281.25 to the **Peralta Community College District**

Please submit the signed settlement agreement and checks to:

Mr. Eric Brown, Investigator/Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) If the Attorney General files a civil action to enforce this settlement agreement, the prevailing party shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) Boneso Brothers shall comply with the requirements for off-road equipment set forth in title 13, CCR section 2449.

(4) No on-road or off-road vehicle or engine subject to the applicable regulation may idle for more than 5 consecutive minutes. The only time a vehicle can idle in excess of 5 consecutive minutes is if one of the exemptions listed in CCR, Title 13, Section 2449(d)(2) or 2485 are in effect.

(5) This Agreement shall apply to and be binding upon Boneso Brothers, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(6) This Agreement constitutes the entire agreement and understanding between ARB and Boneso Brothers concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Boneso Brothers concerning the subject matter hereof.

(7) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(8) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(9) 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.

(10) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(11) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code (*H&SC*) sections 42403 and 43024.

The per vehicle penalty for the Off-Road violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for Boneso Brothers violations involved in this case is

$1,125 or $375 per vehicle for three vehicles for an unspecified number of days.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied for the In-Use Off-Road Diesel Regulation (Title 13, CCR, section 2449 et seq.) violations (including labeling) is Health and Safety Code section 39674 because the Off-Road rule is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in Health and Safety Code Section 39660, et seq. and because Bonseo Brothers failed to register and label three vehicles as required by the In-Use Off-Road Diesel Regulation.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not currently prohibit emissions above a specified level of g/hp-hr. Emission standards for the off-road regulation do not go into effect for small fleets until 2019.

(12) Boneso Brothers acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(13) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(14) The penalty was based on confidential settlement communications between ARB and Boneso Brothers that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and Boneso Brothers and reflects ARB's assessment of the relative strength of its case against Boneso Brothers, the desire to avoid the uncertainty, burden and expense of litigation,

obtain swift compliance with the law and remove any unfair advantage that Boneso Brothers may have secured from its actions.

(15) Now therefore, in consideration of the payment on behalf of Boneso Brothers to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases Boneso Brothers and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board

By: _____

Name: James Ryden
Title: Chief, Enforcement Division
Date: 6/11/12

Boneso Brothers Construction Inc.

By: _____

Name: Steve Boneso
Title: President
Date: 6.5.12