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 Cruz Industrial Truck, Inc. (hereinafter "Cruz"), 13000 E. Ramsey St., Banning, California 92220.

I. RECITALS

(1) The Verification Procedure, Warranty, and In-use Compliance Requirements for In-use Strategies to Control Emissions from Diesel Engines (Verification Procedure) California Code of Regulations, title 13, sections 2700-2711 (13 CCR §§ 2700-2711) provides in § 2702 that if the Executive Officer of ARB grants verification of a diesel emission control strategy, he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the diesel emission control strategy to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.

(2) The Verification Procedure provides in § 2706(u) that any party that installs a diesel emission control strategy must be authorized and trained by the party that holds the verification for the diesel emission control strategy.

(3) 13 CCR § 2711(b) states that no person shall sell, offer to sell, or introduce into commerce any ARB verified diesel emission control strategy unless all of the conditions of the governing EO and this chapter are met.

(4) 13 CCR § 2711(d) states that no person shall represent a device as being an ARB verified diesel emission control strategy unless it has received verification pursuant to this article.

(5) California Vehicle Code Section 27156(b) (VC § 27156 (b)) states that no person shall operate or leave standing upon a highway a motor vehicle that is required to be equipped with a motor vehicle pollution control device under Part 5 (commencing with § 43000) of Division 26 of the Health and Safety Code (HSC) or any other certified motor vehicle pollution control device required by any other state law or any rule or regulation adopted pursuant to that law, or required to be equipped with a motor vehicle pollution control device pursuant to the National Emission Standards Act (42 U.S.C. §§. 7521 to 7550, inclusive) and the standards and regulations adopted pursuant to that federal act, unless the motor vehicle is equipped with the required motor vehicle pollution control device that is correctly installed and in operating condition. **No person shall disconnect, modify, or alter any such required device.**

(6) VC § 27156(c) provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a

part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system. An exemption from VC § 27156 is required before any add-on or modified part can be sold in California. Aftermarket parts exemptions are regulated under 13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225 (Aftermarket Parts Regulations).

(7) If a diesel emission control strategy or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the diesel emission control strategy is not verified for that application, rendering it an illegal, non-exempt add-on part.

(8) ARB Enforcement Division staff has alleged a violation of the Verification Procedure including the Aftermarket Parts Regulations and of VC § 27156 with respect to diesel emission control strategy that do not conform to the conditions specified in the Verification Procedure. Specifically, this alleged violation involves installation of a Diesel Particulate Filter (DPF) in a non-verified configuration. In addition, Cruz is not an authorized installer of verified diesel emission control strategy.

(9) HSC §§ 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000) or not to exceed ten thousand dollars ($10,000) respectively, for each day in which the violation occurs. HSC § 43016 provides a penalty of up to $500 per unit for violation of the Aftermarket Parts regulations and HSC § 43008.6 provides for penalties of up to $1,500 per vehicle for violations of VC § 27156.

(10) In order to resolve these alleged violations, Cruz has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.

(11) 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, ARB and Cruz agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of two thousand dollars ($2,000.00) shall be paid on behalf of Cruz no later than February 19, 2016, as follows:

- $1,500.00 payable to the **Air Pollution Control Fund**
- $500.00 payable to the **Peralta Colleges Foundation**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Mr. Tajinder Gill
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731

Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

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

(3) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Cruz for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on Cruz by ARB arising from the facts described in recital paragraphs (1) through (9) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(4) Cruz shall not violate requirements for installers of diesel emission control strategies set forth in 13 CCR § 2706(u).

(5) Cruz shall not advertise, sell, lease, or offer for sale or lease, a used verified diesel emission control strategy pursuant to 13 CCR § 2706(i)(3)(G).

(6) Cruz shall not represent a device as being an ARB verified diesel emission control strategy unless it has received verification (13 CCR § 2711(d)).

(7) Cruz shall not violate Aftermarket parts exemption procedures established in 13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.

(8) Cruz shall not violate VC § 27156.

(9) Cruz shall not violate the Verification Procedure (13 CCR §§ 2700-2711) or any EO issued by ARB.

(10) This Agreement shall apply to and be binding upon Cruz, 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.

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

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 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 HSC §§ 42403 and 43024.

The per violation penalty in this case is a maximum of $1,000 per day for strict liability violations and $10,000 per day for negligent or intentional violations. The penalty in this case is $2.000.00 over an unspecified number of days of violation for installing one non-verified DPF. This penalty was calculated by considering all factors specified in HSC §§ 42403 and 43024, including the fact that this is an innocent, first time violation, Cruz has cooperated with the investigation, and has developed a comprehensive compliance plan and provided the proof of corrective action.

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

The penalty provisions being applied in this case are HSC §§ 39674, 43016 and 43008.6 because Cruz failed to comply with the Verification Procedure (13 CCR §§ 2700-2711), which was adopted under authority of HSC § 39600, et seq., the Aftermarket Parts regulations (13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225) and the VC § 27156.

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 prohibit emissions above a specified level. However, since the hours of operation of the noncompliant unit involved and its individual emission rate is not known, it is not practicable to quantify the excess emissions.

(17) Cruz acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 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.

(18) 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.

(19) The penalty was based on confidential settlement communications between ARB and Cruz that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and Cruz and

reflects ARB's assessment of the relative strength of its case against Cruz, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Cruz may have secured from its actions.

(20) Now therefore, in consideration of the payment on behalf of Cruz to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases Cruz and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (9) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: _____

Print Name: Dr. Todd P. Sax

Title: Chief, Enforcement Division

Date: 3/17/16

Cruz Industrial Truck, Inc.

Signature: Ruben Perez

Print Name: Ruben Perez

Title: Vice President

Date: 03-01-16