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 DELTA EXCAVATING INC. (hereinafter "DELTA"), PO BOX 338, Knightsen, California 94548.

I. RECITALS

(1) HSC §§ 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter from diesel-fueled engines as a toxic air contaminant. In-use off-road heavy duty diesel vehicles (off-road vehicles) are powered by diesel fueled engines that emit toxic particulate matter. Off-road vehicles are controlled under chapter 9, 13 CCR § 2449.

(2) 13 CCR § 2449(b) states that, except as provided in § 2449(b)(2)(G), the In-Use Off-Road Diesel Vehicle Regulation (Off-Road 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) 13 CCR § 2449(f) sets forth the requirements for labeling all vehicles with engines subject to the Off-Road Regulation with an ARB-issued equipment identification number (EIN).

(4) 13 CCR § 2449(g) sets forth the requirements for reporting all vehicles with engines subject to the Off-Road Regulation.

(5) 13 CCR § 2449(g)(4) states that "any person selling a vehicle with an engine subject to this regulation in California must notify ARB within 30 days from the date the vehicle was sold. If the reporting date under section 2449(g)(2) occurs within 30 days of the vehicle being sold, the annual reporting may serve as the notification to ARB that the vehicle was sold."

(6) ARB Enforcement Division has documented that DELTA sold 26 vehicles on July 21, 2009 and failed to notify ARB until December 29, 2014.

(7) DELTA failed to notify ARB within 30 days, as required in 13 CCR § 2449(g)(4).

(8) Failure to report and label off-road vehicles is a violation of state law resulting in penalties. HSC § 39674 authorizes 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.

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

(10) 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 DELTA agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, DELTA shall pay a civil penalty of $6,500.00 Payment shall be made in seven monthly payments as described below, beginning on **May 15, 2015.**

Payment Due Date:	**In the Amount of and Payable to:**	
May 15, 2015	**$813.00**	**to the Peralta Colleges Foundation**
June 15, 2015	**$812.00**	**to the Peralta Colleges Foundation**
July 15, 2015	**$975.00**	**to the Air Pollution Control Fund**
August 15, 2015	**$975.00**	**to the Air Pollution Control Fund**
September 15, 2015	**$975.00**	**to the Air Pollution Control Fund**
October 15, 2015	**$975.00**	**to the Air Pollution Control Fund**
November 15, 2015	**$975.00**	**to the Air Pollution Control Fund**

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

Mr. Nelson Van
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

(2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, DELTA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if DELTA, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving DELTA, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against DELTA, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of DELTA's, its subsidiary, or parent company's properties, or if any deposit account or other property of DELTA, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or DELTA, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) 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 DELTA 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 DELTA by ARB arising from the facts described in recital paragraphs (1) through (8) 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 the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(5) DELTA shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*

(6) DELTA shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.

(7) DELTA shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.

(8) DELTA shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.

(9) DELTA shall comply with the requirements for off-road vehicles set forth in 13 CCR § 2449.

(10) This Agreement shall apply to and be binding upon DELTA, 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 DELTA concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and DELTA 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 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.

Off-Road Vehicle Violations

The per vehicle penalty for the off-road vehicle violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations. The penalty obtained for DELTA violations involved in this case is $6,500.00, or $250.00 per vehicle for 26 vehicles for an unspecified number of days.

The penalty was discounted based on the fact that this was a first time violation and the violator made diligent efforts to comply and to cooperate with the investigation.

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

Off-Road Vehicle Violations

The penalty provision being applied for the Off-Road Regulation (13 CCR § 2449) violations (including labeling) is HSC § 39674 because the Off-Road Regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because DELTA failed to report changes to its off-road vehicles within 30 days, as required by the Off-Road 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.

Off-Road Vehicle Violations

The provisions cited above do not currently prohibit emissions above a specified level of g/hp-hr. DELTA failed to report changes to its off-road vehicles within 30 days, as required by the Off-Road regulation.

(17) DELTA 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 DELTA that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and DELTA, and reflects ARB's assessment of the relative strength of its case against DELTA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that DELTA may have secured from its actions.

(20) Now therefore, in consideration of the payment on behalf of DELTA to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases DELTA 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 (8) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**Delta Excavating, Inc.**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	Ron Bianchini
Title:	Chief, Enforcement Division	Title:	President
Date:	4/28/15	Date:	4/27/15