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 DIRT AND AGGREGATE INTERCHANGE (hereinafter "D&A"), 20905 NE Sandy Boulevard, Fairview, OR 97024.

I. RECITALS

(1) California Health and Safety Code section 44011.6 (HSC § 44011.6) established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).

(2) HSC § 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.

(3) 13 CCR § 2190 *et seq.* were adopted under the authority of HSC § 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.

(4) 13 CCR § 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles equipped with engines that are four years and older.

(5) 13 CCR § 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

(6) HSC § 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this part any other specific civil penalty or fine, shall

be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) 13 CCR § 2183(c) states that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine. ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine.

(8) ARB has documented that D&A failed to provide evidence that 2 of their vehicles have ECL's attached to the engines of heavy-duty diesel vehicles in its fleet in violation of HSC § 44011.6, and 13 CCR § 2183, *et seq.* Civil penalties for violation of the regulation covering ECLs have been set per 13 CCR § 2185(a)(2)(B) at $300 per vehicle per violation.

(9) 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 (PM) 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.

(10) 13 CCR § 2449(b) states except as provided in § 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.

(11) 13 CCR § 2449(f) sets forth the requirements for labeling all vehicles with engines subject to the regulation with an ARB-issued equipment identification number (EIN).

(12) 13 CCR § 2449(g) sets forth the requirements for reporting all vehicles with engines subject to the regulation.

(13) ARB Enforcement Division has documented that D&A failed to report and label its off-road vehicles within 30 days of bringing them into the State.

(14) 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.

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

(16) 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 D&A agree as follows:

II. TERMS & RELEASE

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

(1) Upon execution of this Agreement, the sum one thousand and two hundred dollars ($1,200.00) shall be paid on behalf of D&A no later than February 23, 2015, as follows:

- **$ 900.00** made out to **Air Pollution Control Fund**
- **$ 300.00** made out to **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. Sidney Lau, Air Resources Engineer
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

Please submit 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, CA 95812-1436

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

(3) D&A shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, 2190 *et seq*, and 2485 *et seq*.

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

(5) Each 1974 or newer diesel powered heavy-duty commercial vehicle in D&A's fleet shall come into compliance with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183(c), within 45 days of this agreement.

(6) D&A shall comply with the requirements for off-road vehicles set forth in 13 CCR § 2449.

(7) D&A shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.

(8) D&A shall not violate the Truck and Bus Regulation as codified in Title 13 CCR, Section 2025.

(9) This Agreement shall apply to and be binding upon D&A, 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.

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

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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 HSC §§ 42403 and 43024.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of $300 per vehicle per violation. The penalty obtained for the ECL violations involved in this case is $450 for 2 vehicles, or $225 per vehicle. 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.

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 or $10,000 per vehicle per day for negligent or intentional violations. The penalty obtained for D&A violations involved in this case is $750 or $187.50 per vehicle for 4 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.

ECL Violations

The penalty provision being applied to the ECL requirements is 13 CCR § 2185(a)(2) because D&A failed to provide evidence that 2 of their vehicles have ECL labels attached as required.

Off-Road Vehicle Violations

The penalty provision being applied for the In-Use Off-Road Diesel Vehicle Regulation (Off-Road Regulation, 13 CCR § 2449) violations (including labeling) is HSC § 39674 because the Off-Road Regulation is a Toxic Air Contaminant

Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because D&A failed to register and label 4 vehicles 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.

ECL Violations

The penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

Off-Road Vehicle Violations

The provisions cited above do not currently prohibit emissions above a specified level of g/hp-hr. Emission standards for the Off-Road Regulation have not gone into effect at this time. D&A failed to register and label 4 vehicles as required by the Off-Road regulation.

(16) D&A 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 § 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.

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

(18) The penalty was based on confidential settlement communications between ARB and D&A 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 D&A and reflects ARB's assessment of the relative strength of its case against D&A, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that D&A may have secured from its actions.

(19) Now therefore, in consideration of the payment on behalf of D&A to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby

releases D&A 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 paragraphs (1) through (14) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: _____

Print Name: James R. Ryden

Title: Chief, Enforcement Division

Date: 2/2/15

Dirt and Aggregate Interchange

Signature: _____

Print Name: **Henry H. Pelfrey**

Title: **President**

Date: **January 23, 2015**