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 EARTHWORKS PAVING CONTRACTORS, INC. (hereinafter "EARTHWORKS"), 310 A Kennedy Drive, Capitola, California 95010.

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 HDVIP, 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 old or 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) ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) ARB contends EARTHWORKS failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2013 and 2014 in violation of 13 CCR § 2190 *et seq.*

(9) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under the Statewide Truck and Bus regulation, as codified in 13 CCR § 2025.

(10) 13 CCR § 2025(e)(5) states: "All fleets may utilize the credit provisions of 13 CCR § 2025(j), the provisions of agricultural vehicles and log trucks of 13 CCR § 2025(m), the provisions for construction trucks, vehicles operating exclusively in the NOx exempt areas, or any of the other extensions, delays, and exemptions of 13 CCR § 2025(p)."

(11) EARTHWORKS has elected to utilize the NOx Exempt Areas provisions provided for in 13 CCR § 2025(p)(1).

(12) 13 CCR § 2025 (p)(1)(B) states: "Phase-in Option for NOx Exempt Areas allows fleet owners that use this option for their lighter or heavier vehicles that are used exclusively in NOx exempt areas shall be exempt from meeting the requirements of section 2025(f), 2025(g), 2025(h) or 2025(i). From January 1, 2015 to January 1, 2020, the fleet of vehicles must be brought into compliance with PM Best Available Control Technology (BACT)."

(13) ARB has documented that EARTHWORKS failed to meet PM BACT requirements in accordance to the NOx Exempt Area Compliance Schedule.

(14) 13 CCR § 2025(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of 13 CCR §§ 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of 13 CCR § 2025(j), and the agricultural provisions of 13 CCR § 2025(m), single-engine and two-engine street sweeper provisions of 13 CCR § 2025(n), extension or exemptions for vehicles used exclusively in NOx

exempt areas of 13 CCR § 2025(p)(1), and the extension for low-mileage construction trucks of 13 CCR § 2025(p)(2).

(15) 13 CCR § 2025(e)(8) states: "All information specified in 13 CCR § 2025(r) must be reported to the Executive Officer."

(16) ARB has documented that EARTHWORKS failed to report all vehicles with engines subject to the regulation for which the fleet owner has elected to utilize the compliance options of 13 CCR § 2025 (p)(1).

(17) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. 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 ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

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

(19) 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 EARTHWORKS agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, EARTHWORKS shall pay a civil penalty of $8,000.00. Payment shall be made in two monthly payments as described below, beginning on **July 10, 2015**:

Payment Due Date:	**In the Amount of and Payable to:**	
July 10, 2015	**$2,000.00**	**the Peralta Colleges Foundation**
	$2,000.00	**the Air Pollution Control Fund**
August 10, 2015	**$4,000.00**	**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. Eric Bissinger
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, EARTHWORKS 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 EARTHWORKS, 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 EARTHWORKS, 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 EARTHWORKS, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of EARTHWORKS's, its subsidiary, or parent company's properties, or if any deposit account or other property of EARTHWORKS, 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 EARTHWORKS, 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 EARTHWORKS 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 EARTHWORKS by ARB arising from the facts described in recital paragraphs (1) through (17) 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.

(5) EARTHWORKS 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) EARTHWORKS shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, Emission Control Label (ECL) regulation and the HDVIP.

(a) EARTHWORKS shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If EARTHWORKS uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, EARTHWORKS shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(7) EARTHWORKS shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).

(a) EARTHWORKS shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case EARTHWORKS uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, EARTHWORKS shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by EARTHWORKS to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(8) As is typically required, EARTHWORKS shall submit copies of all PSIP compliance records for the two years (2015 and 2016) after the close of the audit to ARB by January 31 of the following year. ARB acknowledges that EARTHWORKS has already submitted copies of all PSIP compliance records for year 2015 and has therefore complied with that requirement. EARTHWORKS must still submit copies of all PSIP compliance records for year 2016 to ARB by January 31 of the following year. **Copies shall be addressed to the attention of Mr. Eric Bissinger at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812**. ARB reserves the right to visit any EARTHWORKS fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(9) EARTHWORKS 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.

(10) EARTHWORKS shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.

(11) EARTHWORKS 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.

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

(13) EARTHWORKS, by December 31, 2015, shall submit proof of compliance with the January 1, 2016 Truck and Bus deadline, for all regulated heavy-duty diesel vehicles, to **Mr. Eric Bissinger, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812**.

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

(15) This Agreement shall apply to and be binding upon EARTHWORKS, 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.

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

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500.00 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $4,400.00 for 14 violations involving 7 vehicles.

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.

Truck and Bus Violations

The per unit penalty for the Truck and Bus 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 the Truck and Bus violations involved in this case for failure to meet the requirements of the NOx Exempt Area Compliance Schedule is $3,000.00 or $1,000.00 per month of violation for one vehicle with a 1988 model year engine (three months in violation) and $600.00 for failure to report two vehicles used exclusively in the NOx Exempt Area or $300 for each vehicle not reported.

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.

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC § 43016 because EARTHWORKS failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for the years 2013 and 2014 in violation of the PSIP regulation in 13 CCR § 2190 *et seq.*, for seven vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC § 43016 is the applicable penalty provision.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because EARTHWORKS failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(p)(1)(B) and reporting requirements of 13 CCR § 2025(p)(1)(C).

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.

PSIP Violations

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant vehicle involved and its individual emission rate is not known, it is not practicable to quantify the excess emissions.

(22) EARTHWORKS 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.

(23) 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.

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

(25) Now therefore, in consideration of the payment on behalf of EARTHWORKS to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases EARTHWORKS 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 (17) 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: 7/10/15

Earthworks Paving Contractors, Inc.

Signature: Stephanie Straus

Print Name: Stephanie Straus

Title: President

Date: 6/28/15