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 Jose Arturo Rodriguez Lopez DBA Jose A. Rodriguez Trucking (hereinafter "JOSE RODRIGUEZ TRUCKING"), located at 22231 Caminito Mescalero, Laguna Hills, CA 92653.

I. RECITALS

(1) California Health and Safety Code (HSC) section 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, sections 2180-2188, title 13 California Code of Regulations (CCR).

(2) California Health and Safety Code (HSC) 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 on-road heavy-duty diesel vehicles (heavy-duty vehicles) are powered by diesel fueled engines that emit toxic particulate matter. On-road vehicles are controlled under section 2025 within chapter 1, article 4.5, title 13 of the California Code of Regulations (CCR).

(3) Title 13 CCR, section 2025(b) states the regulation applies to any person, business, federal government agency, school district or school transportation provider that owns or operates, leases, or rents, affected vehicles that operate in California. Affected vehicles are those that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road engines or yard trucks with off-road engines used for agricultural operations, both engines of two-engine sweepers, school buses, and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds (lbs).

(4) Title 13 CCR, section 2025(e)(8) states: "All information specified in section 2025(r) must be reported to the Executive Officer."

(5) Title 13 CCR, section 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 section 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of section 2025(j), and the agricultural provisions of section 2025(m), single-engine and two-engine street sweeper provisions of section 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of section 2025(p)(1), and the extension for low-mileage construction trucks of section 2025(p)(2).

(6) JOSE RODRIGUEZ TRUCKING has elected to utilize the compliance options in 13 CCR, section 2025(h), Small Fleets.

(7) The ARB has documented that JOSE RODRIGUEZ TRUCKING has failed to report all required information correctly for all vehicles in the fleet for which the owner has elected to utilize the compliance options of 13 CCR, section 2025(h).

(8) Title 13 CCR, section 2025(e)(9) states: "Records must be kept as specified in section 2025(s)."

(9) Title 13 CCR, section 2025(s) sets forth the requirements for maintaining specified records as applicable.

(10) The ARB has documented that JOSE RODRIGUEZ TRUCKING has failed to maintain correct specified records as required by section 2025(r).

(11) Failure to comply with the requirements of title 13 CCR, section 2025 is a violation of state law resulting in penalties. California Health and Safety Code (HSC) sections 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.

(12) Title 13 CCR, section 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. The ARB shall base its determination on whether an engine meets the above requirements by inspecting the ECL affixed to the vehicle's engine.

(13) ARB contends JOSE RODRIGUEZ TRUCKING failed to provide evidence that the vehicle had an emission control label attached to the engine of heavy-duty diesel vehicle in its fleet in violation of title 13 CCR, section 2183, et seq. Civil penalties for violation of the regulation covering emission control labels have been set per title 13 CCR, sections 2185(a)(2)(B) at $300 per vehicle per violation.

(14) JOSE RODRIGUEZ TRUCKING is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against JOSE RODRIGUEZ TRUCKING for the violations referred to above, the ARB and JOSE RODRIGUEZ TRUCKING agree as follows:

(1) Upon execution of this Agreement, JOSE RODRIGUEZ TRUCKING shall pay a civil penalty of eight hundred dollars ($800.00). Payment shall be made in check form as described below, and payments shall be made in 2 monthly payments beginning on May 15, 2013.

SETTLEMENT AGREEMENT AND RELEASE ARB AND JOSE RODRIGUEZ TRUCKING :

Payment Due Date:		**In the Amount of and Paid to:**
(1)	May 15, 2013	**$200.00** paid to **Peralta Colleges Foundation**
(2)	May 15, 2013	**$200.00** paid to **California Air Pollution Control Fund**
(3)	June 15, 2013	**$400.00** paid to **California Air Pollution Control Fund**

(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, JOSE RODRIGUEZ TRUCKING 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 JOSE RODRIGUEZ TRUCKING, 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 JOSE RODRIGUEZ TRUCKING, 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 JOSE RODRIGUEZ TRUCKING, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of JOSE RODRIGUEZ TRUCKING'S, its subsidiary, or parent company's properties, or if any deposit account or other property of JOSE RODRIGUEZ TRUCKING, 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 JOSE RODRIGUEZ TRUCKING, 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.

All payments and documents shall be sent to the attention of:

Mr. Randy M. Rhondeau, Air Pollution Specialist
Air Resources Board, Enforcement Division
PO Box 2815
Sacramento, CA 95812

(4) JOSE RODRIGUEZ TRUCKING shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB within 45 days of this Agreement.

(5) Each 1974 or newer diesel powered heavy-duty vehicle in the JOSE RODRIGUEZ TRUCKING fleet shall remain in compliance with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).

(6) JOSE RODRIGUEZ TRUCKING shall instruct all employees who operate diesel fueled commercial vehicles in California to comply with the idling

regulations set forth in title 13 CCR, section 2485 within 45 days of the execution of this agreement.

(7) JOSE RODRIGUEZ TRUCKING shall comply with the Truck and Bus regulation as codified in title 13 CCR, section 2025. Within 30 days of the execution of this Agreement, JOSE RODRIGUEZ TRUCKING shall submit the proof of compliance to Mr. Randy M. Rhondeau, Air Pollution Specialist, ARB Enforcement Division, PO Box 2815, Sacramento, CA 95812.

(8) JOSE RODRIGUEZ TRUCKING 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 JOSE RODRIGUEZ TRUCKING 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 JOSE RODRIGUEZ TRUCKING concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and JOSE RODRIGUEZ TRUCKING 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**

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

- 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 properly report all required information for all vehicles in the fleet is $500.00 or $500.00 per vehicle for 1 vehicle.

- ECL Violations

  The per vehicle penalty for the labeling violations involved in this case is a maximum of $ 300.00 per vehicle per violation. The penalty obtained for the ECL violations involved in this case is $ 300.00 for 1 vehicle, or $300 per vehicle.

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

- Truck and Bus Violations

  The penalty provision being applied for the Truck and Bus regulation (title 13 CCR, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 et seq., 39650-39675 and because JOSE RODRIGUEZ TRUCKING failed to report all required information for all vehicles in the fleet for which they have elected to utilize compliance options/credits/provisions as required in title 13 CCR, section 2025(r).

- ECL Violations

  The penalty provision being applied to the ECL requirements set forth in title 13 CCR, section 2185(a)(2) because JOSE RODRIGUEZ TRUCKING failed to provide evidence that their 1 vehicle has an ECL label attached as required.

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.

- 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 non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- ECL Violations

  The provisions cited above do not prohibit emissions above a specified level of g/hp-hr.

(16) JOSE RODRIGUEZ TRUCKING acknowledges that ARB has complied with SB 1402 in prosecuting and settling the 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.

(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 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/vehicle basis.

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

(19) Now, therefore, in consideration of the payment by JOSE RODRIGUEZ TRUCKING, in the amount of eight hundred dollars ($800.00), ARB hereby releases JOSE RODRIGUEZ TRUCKING and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in Recital paragraphs (1) through (13) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**JOSE A. RODRIGUEZ TRUCKING**	
By:		By:	
Name:	James Ryden	Name:	Jose A Rodriguez
Title:	Chief, Enforcement Division	Title:	Owner
Date:	5-17-13	Date:	5/11/13