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 LINCOLN TRANSPORTATION SERVICES INCORPORATED (hereinafter "LINCOLN"), 250 W. Manville Street, Compton, CA 90220.

I. RECITALS

(1) California Health and Safety Code (*H&SC*) 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) *H&SC* Section 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 excess smoke emissions.

(3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* section 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 which operate on the streets or highways within the State of California.

(4) Title 13, CCR sections 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 which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(5) Title 13, CCR section 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) *H&SC* Section 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 violation 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) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

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

(9) In order to resolve these alleged violations, LINCOLN 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.

(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, the ARB and LINCOLN agree as follows:

II. TERMS & RELEASE

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

(1) Upon execution of this Agreement, the sum of eight thousand and five hundred dollars ($8,500.00) shall be paid on behalf of LINCOLN no later than APRIL 28, 2016, as follows:

- **$ 6,375.00** made out to **Air Pollution Control Fund**
- **$ 2,125.00** 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, LINCOLN shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

(3) LINCOLN 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) LINCOLN 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, ECL and the HDVIP.

(a) LINCOLN 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 LINCOLN 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, LINCOLN 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.

(5) LINCOLN shall provide copies of all PSIP compliance records for 2016 and 2017 to the ARB by January 31 of the following year. **Copies shall be addressed to the attention of Mr. Sidney Lau, ARB, P.O. Box 2815, Sacramento, CA 95812.** The ARB reserves the right to visit any LINCOLN fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(6) LINCOLN 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.

(7) Each 1974 or newer diesel powered heavy-duty commercial vehicle in LINCOLN's fleet shall maintain compliance with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c).

(8) LINCOLN 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.

(9) LINCOLN shall not violate the Drayage Truck Regulation, as codified in Title 13 CCR, Section 2027.

(10) LINCOLN shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of LINCOLN for compliance with Title 13 CCR, Section 2027 (d)(5) any time in the future.

(11) LINCOLN shall not violate the Truck and Bus Regulation as codified in Title 13 CCR, Section 2025.

(12) This Agreement shall apply to and be binding upon LINCOLN, 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.

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

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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 Health and Safety Code sections 42403 and 43024.

Periodic Smoke Inspection Program 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 $8,500.00 for 17 violations, or $500.00 per vehicle per violation.

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

Periodic Smoke Inspection Program Violations

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because LINCOLN 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 Title 13, CCR Sections 2190 et seq, for 9 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety

Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code section 43016 is the applicable penalty provision.

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.

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

(19) LINCOLN 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 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.

(20) 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.

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

(22) Now therefore, in consideration of the payment on behalf of LINCOLN to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases LINCOLN 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 paragraph (1) through (8) 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: 4/14/16

Lincoln Transportation Services Incorporated

Signature: _____

Print Name: Joey Villareal

Title: C.O.O

Date: 3-28-16