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 Miracle Transportation, Incorporated (hereinafter "MTI"), 6539 Brooklyn Avenue, Suite F San Diego, California 92114.

I. RECITALS

(1) California Health and Safety Code sections 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit this toxic PM. TRUs are regulated under the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM) as codified in California Code of Regulations, title 13, section 2477.1 through 2477.21.

(2) 13 CCR § 2477.5(a) provides that no owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets in-use performance standards established in § 2477.5.

(3) 13 CCR § 2477.5(e) requires that owner/operators of all California-based TRUs and TRU gen sets subject to this regulation shall apply for an ARB Identification Number (IDN) for all California-based TRUs or TRU gen sets operated by the operator by submitting an application to ARB.

(4) 13 CCR § 2477.5(e)(1)(F) requires that within 30 days of receipt of the ARB-issued IDN, owners/operators of California-based TRUs and TRU gen sets permanently affix or paint the IDN to both sides of the TRU chassis housing.

(5) ARB Enforcement Division has documented that MTI failed to bring the TRUs it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation.

(6) Failure to bring the TRU fleet in compliance with applicable in-use emission standards, failure to apply for and affix ARB IDNs and failure to submit an operator report are violations of state law resulting in penalties. HSC § 39674 authorizes civil penalties of up to ten thousand dollars ($10,000) for each day that the violation occurs.

(7) In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under 13 CCR § 2025.

(8) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of section 2025(g) or fleets that report may instead comply with the phase-in option of § 2025(i)."

(9) 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 TACs not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(10) MTI has elected to utilize the phase-in option provided for in 13 CCR § 2025(i)."

(11) 13 CCR § 2025(i), phase-in option, requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs meet the PM Best Available Control Technology (BACT) requirements by phasing in 60 percent by January 1, 2013, and 90 percent by January 1, 2014.

(12) ARB has documented that MTI failed to have 60 percent of their fleet meet the PM BACT requirements by January 1, 2013, and 90 percent by January 1, 2014.

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

(14) 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 MTI agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, MTI shall pay a civil penalty of $75,200.00.00. Payment shall be made in 24 monthly payments as described below, beginning on February 29, 2016.

Payment Due Date:	In the Amount of and Payable to:	
February 29, 2016	$3,135.00	the Peralta Colleges Foundation
March 31, 2016	$3,133.00	the Peralta Colleges Foundation
April 29, 2016	$3,133.00	the Peralta Colleges Foundation
May 31, 2016	$3,133.00	the Peralta Colleges Foundation
June 30, 2016	$3,133.00	the Peralta Colleges Foundation
July 29, 2016	$3,133.00	the Peralta Colleges Foundation
August 31, 2016	$3,139.00	the Air Pollution Control Fund
September 30, 2016	$3,133.00	the Air Pollution Control Fund
October 31, 2016	$3,133.00	the Air Pollution Control Fund
November 30, 2016	$3,133.00	the Air Pollution Control Fund
December 30, 2016	$3,133.00	the Air Pollution Control Fund
January 31, 2017	$3,133.00	the Air Pollution Control Fund
February 28, 2017	$3,133.00	the Air Pollution Control Fund
March 31, 2017	$3,133.00	the Air Pollution Control Fund
April 28, 2017	$3,133.00	the Air Pollution Control Fund
May 31, 2017	$3,133.00	the Air Pollution Control Fund
June 30, 2017	$3,133.00	the Air Pollution Control Fund
July 31, 2017	$3,133.00	the Air Pollution Control Fund
August 31, 2017	$3,133.00	the Air Pollution Control Fund
September 29, 2017	$3,133.00	the Air Pollution Control Fund
October 31, 2017	$3,133.00	the Air Pollution Control Fund
November 30, 2017	$3,133.00	the Air Pollution Control Fund
December 29, 2017	$3,133.00	the Air Pollution Control Fund
January 29, 2018	$3,133.00	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. Aldo Chaney
Air Pollution Specialist
Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731

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, CA 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, MTI 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 MTI, 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 MTI, 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 MTI, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of MTI, its subsidiary, or parent company's properties, or if any deposit account or other property of MTI, 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 MTI, 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 MTI 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 MTI through by ARB arising from the facts described in recital paragraphs (1) through (12) 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) MTI 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) MTI 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) MTI 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 MTI 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, MTI 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) MTI 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) MTI 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 MTI uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, MTI 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 MTI to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(8) MTI 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.

(9) Each 1974 or newer diesel powered heavy-duty vehicle in MTI fleet shall comply with the ECL regulation as codified in 13 CCR § 2183.

(10) MTI 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.

(11) MTI shall not violate TRU ATCM as codified in 13 CCR § 2477.

(12) MTI shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025 *et seq.*

(13) MTI shall comply with the Truck and Bus regulation as codified in 13 CCR § 2025. Within 45 days of the execution of this Agreement, MTI shall submit the proof of compliance to Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte 91731.

(14) This Agreement shall apply to and be binding upon MTI, 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.

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

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the 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.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of $1,000 per unit per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations pursuant to HSC § 39674. The penalty obtained for the nine outstanding TRU citations involved in this case is $13,400.00 (TRU021114002BOP-$1,800.00, TRU042214003JA-$1,800.00, TRU050514002JW-$1,800.00, TRU051314003CCY-$1,800.00, TRU061213001CCY-$1,000.00, TRU062314003RB-$800.00, TRU111413001RB-$800.00, TRU121613001CK-$1,800.00, TRU070615007RB-$1,800.00).

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 Phase-In Compliance Schedule is $57,800.00:

- $27,643.48 for 11 vehicles not meeting the 60 percent phase-in requirement, (12 months in violation); and
- $30,156.52 for 12 vehicles not meeting the 90 percent phase-in requirement, (12 months in violation).

The penalty obtained for the four outstanding Truck and Bus citations involved in this case is $4,000.00 (STB041013002DA-$1,000.00, STB070115001CCY-$1,000.00, STB081915009JW-$1,000.00, STB071615002JW-$1,000.00).

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.

TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations (including registration and labeling) is HSC § 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in HSC § 39002 et seq., 39650-39675 and MTI, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

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 a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because MTI failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025 (i).

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.

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

(21) MTI 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.

(22) 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.

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

(24) Now therefore, in consideration of the payment on behalf of MTI to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases MTI 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 (12) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**Miracle Transportation, Incorporated**	
Signature:	Ellen M. Peter	Signature:	
Print Name:	Ellen M. Peter	Print Name:	Jorge Sanchez Macias
Title:	Chief Counsel	Title:	Vice-President
Date:	3/9/2016	Date:	02-12-14