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 MOUNTAIN MATERIALS, INC. (hereinafter "MOUNTAIN"), located at 15989 Old Highway 80, El Cajon, California 92021.

I. RECITALS

(1) 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).

(2) 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).

(3) Title 13 CCR, section 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 section 2025(i)."

(4) Failure to comply with the requirements of title 13 CCR, section 2025 is a violation of state law resulting in penalties. California 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.

(5) MOUNTAIN has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in title 13 CCR, section 2025(g).

(6) Title 13 CCR, section 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012.

(7) The ARB has documented that MOUNTAIN failed to meet PM BACT requirements for two 1996 through 1999 engine model years by January 1, 2012.

(8) 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 CCR.

(9) HSC 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.

(10) Title 13 CCR, sections 2190 *et seq.* was adopted under the authority of HSC 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 that operate on the streets or highways within the State of California.

(11) 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 that 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. California based vehicles include, but are not limited to,

vehicles that operate more than fifty percent (50%) of the time on the streets or highways within the State of California.

(12) 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."

(13) HSC 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."

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

(15) MOUNTAIN 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 MOUNTAIN for the violations referred to above, the ARB and MOUNTAIN agree as follows:

(1) Upon execution of this Agreement, MOUNTAIN shall pay a civil penalty of one thousand five hundred dollars ($1,500.00). Payment shall be made in check form as described below and the payments will be made no later than November 29, 2012.

SETTLEMENT AGREEMENT AND RELEASE ARB AND MOUNTAIN:

- $1,125.00 made out to **California Air Pollution Control Fund**
- $375.00 made out to **Peralta Community College District**

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

Ms. Andrea Juarez, Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Ave., No. 4
El Monte, CA 91731

(2) MOUNTAIN 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, MOUNTAIN shall submit the proof of compliance to Ms. Andrea Juarez, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Ave., No. 4, El Monte, CA 91731.

(3) MOUNTAIN shall not violate the Truck and Bus regulation as codified in title 13 CCR, section 2025.

(4) MOUNTAIN shall not violate HSC sections 43701 *et seq.* and 44011.6 *et seq.*, and title 13 CCR, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*

(5) MOUNTAIN 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. MOUNTAIN 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 MOUNTAIN 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, MOUNTAIN 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.

(6) MOUNTAIN 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 exhaust after treatment systems (EATS).

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

(7) MOUNTAIN 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.

(8) Each 1974 or newer diesel powered heavy-duty vehicle in the MOUNTAIN fleet shall comply with the emission control label (ECL) requirements set forth in the title 13 CCR, section 2183(c) within 45 days of this agreement.

(9) MOUNTAIN 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.

(10) This Agreement shall apply to and be binding upon MOUNTAIN 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.

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

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) **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 meet the requirements of the Engine Model Year Compliance Schedule is $1,500.00 or $750.00 per vehicle per violation for 2 trucks 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.

- 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 MOUNTAIN failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(g)(1).

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.

(17) MOUNTAIN 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.

(18) 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.

(19) Penalties in future cases might be smaller or larger on a per unit/vehicle basis.

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

(21) Now, therefore, in consideration of the payment by MOUNTAIN, in the amount of one thousand five hundred dollars ($1,500.00), ARB hereby releases MOUNTAIN 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 (14) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**MOUNTAIN MATERIALS, INC.**	
By:		By:	
Name:	James R. Ryden	Name:	Michele Brace
Title:	Chief, Enforcement Division	Title:	CFO
Date:	12/6/12	Date:	11/20/12