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 Paceco Corporation ("Paceco"), 25503 Whitesell Street, Hayward, California 94545-3614 (hereafter collectively the "Parties").

RECITALS

(1) California Code of Regulations (CCR), title 13, chapter 9, article 4: Off-Road Compression-Ignition Engines and Equipment, §§ 2420(a)(1) and (a)(3) (13CCR §§ 2420(a)(1) & (a)(3)) provide that this article shall be applicable to new heavy-duty off-road compression ignition (CI) engines, including all heavy-duty off-road alternate-fueled engines, including those engines derived from existing diesel cycle engines (hereinafter all such engines shall be referred to as CI engines), produced on or after January 1, 1996, and all other new 2000 model year and later off-road CI engines, with the exception of all engines and equipment that fall within the scope of the preemption of § 209(e)(1) of the Federal Clean Air Act (42 U.S.C. 7543(e)(1) and as defined by regulation of the United States Environmental Protection Agency (U.S. EPA).

(2) Every new off-road CI engine that is manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, is required to be certified for use and sale by the manufacturer through the ARB and covered by an Executive Order, issued pursuant to 13 CCR § 2423.

(3) California Health and Safety Code § 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) per vehicle. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

(4) During the months of July and August 2012, Railroad and Marine Enforcement Section (RMES) staff inspected Cargo Handling Equipment (CHE) at over fifty terminals at California Ports and Intermodal Rail Yards. During the inspections it was discovered that some of the terminals were using Rubber Tired Gantries (RTGs) powered by heavy duty off-road CI engines without California or Federal certifications.

(5) ARB represents that further investigation revealed that Paceco manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, and imported into California forty-one (41) model year 2000-2005 RTGs powered by non-compliant Cummins engine models: NTA855 G3, NTA855 G-2, NTA855G2LN2, and NTA855G2LN4, to various port terminals throughout California in violation of 13 CCR § 2420 and 2423. These RTG engines are more particularly described in **Attachment**

"B" hereto ("RTG Engines"). Paceco failed to apply for and obtain an engine certification in California or with the U.S. EPA prior to importing and selling the RTG Engines in California.

(6) In order to resolve the forty-one (41) RTG Engines violations asserted by ARB herein, Paceco has taken, or agrees to take, the actions enumerated below within the Terms and Release. Further, ARB accepts this Agreement in termination and full settlement of this matter.

(7) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and forever 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 Paceco agree as follows:

TERMS AND RELEASE

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

(1) Both the definitions contained in the above recitals, and Attachment "B" are incorporated herein by this reference.

(2) Within twenty (20) calendar days of both parties execution of this Agreement, the sum of twenty thousand and five hundred dollars ($20,500) shall be paid on behalf of Paceco, as follows:

- $15,375.00 to the California Air Pollution Control Fund
- $5,125.00 to the San Joaquin Valley Air Quality Management District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project

The parties shall exchange signed copies of this Agreement, and a facsimile signature shall be as valid as an original. Paceco shall send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Ms. Michelle Shultz Wood
Staff Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue Suite 4
EI Monte, California 91731

Paceco will send 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, California 95812-1436

(3) Paceco represents that it understands the legal requirements applicable to marketing, offering for sale and selling non-California certified engines and agrees not to market, offer for sale or sell non-certified engines in California unless a valid certification has been obtained from the ARB.

(4) Now therefore, in consideration of the payment by Paceco in the amount of twenty thousand and five hundred dollars ($20,500), ARB hereby releases Paceco and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events and the RTG Engines described in recital paragraphs (4) and (5) hereinabove, including claims under Title 13, §§ 2420 and 2423 of the California Code of Regulations. The undersigned each represent that they have the authority to enter into this Agreement.

(5) Paceco shall not violate 13 CCR § 2420-2427 in the future.

(6) Paceco has, and will continue to, use its best efforts to work with the terminal operators to help ensure that all RTG Engines known to have been in violation have been corrected by the terminals or are being corrected by the terminals. The ultimate goal being replacement by the terminals of the listed uncertified RTG Engines with California certified CI engines and the terminals selling the noncompliant RTG Engines out of the United States or retiring them. The equipment previously powered by the illegal RTG Engines should be brought into compliance by the terminals with all requirements as set forth in, 13 CCR, § 2420(a)(1) and (a)(3) and in the CHE regulation, 13 CCR § 2479.

(7) Paceco represents that, to the best of its knowledge, the RTG Engines have been or are scheduled to be corrected by the terminal operators.

(8) This Agreement and its Attachments "A" and "B" constitutes the entire agreement and understanding between ARB and Paceco concerning this settlement of any and all of ARB's claims against Paceco regarding the subject matter hereof and the RTG Engines.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) **SB1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (see H&SC § 39619.7). This information, which is provided throughout this 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 H&SC § 43024 (H&SC § 43024).

The per unit penalty in this case is a maximum of $500.00 per unit per strict liability violation. The penalty obtained in this case is approximately $20,500 for approximately 41 units, each in violation of 13 CCR § 2420 and § 2423.

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

ARB alleges that the penalty provision being applied in this case, Health and Safety Code § 43016, is appropriate because Paceco allegedly manufactured, offered for sale and sold into California the subject RTGs powered by non-California certified new off-road CI engines, referred to herein as the RTG Engines, that were not certified pursuant to CCR, title 13, § 2420 *et seq.* Since there is no penalty specifically provided for such violations, Health and Safety Code § 43016 applies.

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.

The provisions cited above do prohibit emissions above a specified 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.

(14) Paceco 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 H&SC § 43024, has explained the manner in which the penalty amount was calculated

(including a per unit or per vehicle penalty, if appropriate), 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. However, since the hours of operation of the noncompliant units involved, specifically the RTG Engines, and their individual emission rates are not known, it is not practical for ARB to quantify the excess emissions.

(15) 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 case negotiations, and the potential cost and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

(16) The penalty in this case was based in part on confidential business information provided by Paceco that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Paceco that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Paceco, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that Paceco may have secured from its actions.

(17) Now therefore, in consideration of the payment on behalf of Paceco to ARB, for deposit into the California Air Pollution Control Fund and the San Joaquin Valley Air Quality Management District School Bus Diesel Particulate Filter Retrofit Supplemental Environmental Project, ARB hereby releases Paceco and their principals, officers, agents, predecessors, and successors from any and all claims for past violations of 13 CCR § 2420 and 2423 alleged in Recital paragraph 5. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By:
Name: Dr. Todd P. Sax
Title: Enforcement Division Chief
Date: 12/10/15

Paceco Corporation

By: A. Takahashi
Name: Atsufumi Takahashi
Title: President & CEO
Date: November 9, 2015