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 RKC TRANSPORTATION, LLC. (hereinafter "RKC TRANSPORTATION"), 1683 Hearthstone Lane, Manteca, California 95336.

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) 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 excessive smoke emissions.

(3) Title 13 CCR, section 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.

(4) Title 13 CCR, section 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.

(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) The ARB, has documented that RKC TRANSPORTATION failed to provide evidence that their vehicle has an emission control label (ECL) attached to the engine of the heavy-duty diesel vehicle in its fleet in violation of HSC, section 44011.6, and 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, section 2185 (a)(2)(B) at $300 per vehicle per violation.

(7) In order to resolve these alleged violations, RKC TRANSPORTATION 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.

(8) 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 RKC TRANSPORTATION agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of three hundred dollars ($300.00) shall be paid on behalf of RKC TRANSPORTATION no later than April 25, 2014, as follows:

- $225.00 to the **Air Pollution Control Fund**
- $75.00 to the **Peralta Colleges Foundation**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Ms. Andrea Juarez/Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731

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 2815
Sacramento, CA 95812

(2) If the Attorney General files a civil action to enforce this settlement agreement, RKC TRANSPORTATION shall pay all costs of investigating

and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

(3) RKC TRANSPORTATION 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) RKC TRANSPORTATION 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) RKC TRANSPORTATION 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 RKC TRANSPORTATION uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RKC TRANSPORTATION 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 RKC TRANSPORTATION to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(5) RKC TRANSPORTATION 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.

(6) Each 1974 or newer diesel powered heavy-duty vehicle in RKC TRANSPORTATION's fleet shall comply with the ECL regulation as codified in title 13 CCR, section 2183. Within 45 days of the execution of this Agreement, RKC TRANSPORTATION shall submit the proof of compliance to Ms. Andrea Juarez/Air Pollution Specialist, Air Resources Board, Enforcement Division, 9480 Telstar Ave., Suite 4, El Monte, CA 91731.

(7) RKC TRANSPORTATION shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.

(8) RKC TRANSPORTATION shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(9) RKC TRANSPORTATION, by July 1, 2014, shall submit proof of compliance with the Truck and Bus regulation for all regulated heavy-duty diesel vehicles for which RKC TRANSPORTATION took appropriate actions demonstrating a "good faith effort" to meet the January 1, 2014 compliance deadline as outlined in ARB's Regulatory Advisory (#MSC 13-28). RKC TRANSPORTATION shall submit the proof of compliance to Ms. Andrea Juarez/Air Pollution Specialist, Air Resources Board, Enforcement Division, 9480 Telstar Ave., Suite 4, El Monte, CA 91731.

(10) RKC TRANSPORTATION shall not violate 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 title 13 CCR, section 2477.

(11) This Agreement shall apply to and be binding upon RKC TRANSPORTATION, 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.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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 HSC sections 42403 and 43024.

ECL Violations

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

ECL Violations

The penalty provision being applied to the ECL requirements set forth in title 13 CCR, section 2185(a)(2) because RKC TRANSPORTATION 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.

ECL Violations

The penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

(18) RKC TRANSPORTATION 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 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.

(19) 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.

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

(21) Now therefore, in consideration of the payment on behalf of RKC TRANSPORTATION to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases RKC TRANSPORTATION 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 (6) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**RKC Transportation, LLC.**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	CHARNJIT SINGH
Title:	Chief, Enforcement Division	Title:	Owner
Date:	6-5-14	Date:	05-06-14