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 RUST AND SONS TRUCKING, INCORPORATED (hereinafter "RUST AND SONS"), 15353 Old Highway 80, El Cajon, CA 92021.

I. RECITALS

(1) California Health and Safety Code section 44011.6 (HSC § 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 HDVIP, chapter 3.5, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).

(2) HSC § 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) 13 CCR § 2190 *et seq*. were adopted under the authority of HSC § 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) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.

(5) 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 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."

(6) 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 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.

(7) RUST AND SONS has elected to utilize the phase-in option provided for in 13 CCR § 2025(i).

(8) 13 CCR § 2025(i), phase-in option, requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs meet the PM BACT requirements by phasing in 90 percent of their fleet by January 1, 2014.

(9) ARB has documented that RUST AND SONS failed to have 90 percent of their fleet meet the PM BACT requirements by January 1, 2014.

(10) 13 CCR § 2183(c) states that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine". ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine.

(11) ARB has documented citation # ECL080315001JA on one of RUST AND SONS' vehicles for failing to have a legible ECL attached to the engine, in violation of HSC § 44011.6, and 13 CCR § 2183, *et seq*. Citation # ECL080315001JA was issued on California Plate WP28531.

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

(13) 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, ARB and RUST AND SONS agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, RUST AND SONS shall pay a civil penalty of $22,000.00. Payment shall be made in 18 monthly payments as described below, beginning on **March 1, 2016**.

Payment Due Date:	**In the Amount of and Payable to:**	
March 1, 2016	**$1,100.00**	to **the Peralta Colleges Foundation**
April 1, 2016	**$1,100.00**	to **the Peralta Colleges Foundation**
May 2, 2016	**$1,100.00**	to **the Peralta Colleges Foundation**
June 1, 2016	**$1,100.00**	to **the Peralta Colleges Foundation**
July 1, 2016	**$1,100.00**	to **the Peralta Colleges Foundation**
August 1, 2016	**$1,270.00**	to **the Air Pollution Control Fund**
September 1, 2016	**$1,270.00**	to **the Air Pollution Control Fund**
October 3, 2016	**$1,270.00**	to **the Air Pollution Control Fund**
November 1, 2016	**$1,270.00**	to **the Air Pollution Control Fund**
December 1, 2016	**$1,270.00**	to **the Air Pollution Control Fund**
January 2, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
February 1, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
March 1, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
April 3, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
May 1, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
June 1, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
July 3, 2017	**$1,270.00**	to **the Air Pollution Control Fund**
August 1, 2017	**$1,260.00**	to **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. Sidney Lau
Air Resources Engineer
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

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, California 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, RUST AND SONS 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 RUST AND SONS, 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 RUST AND SONS, 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 RUST AND SONS, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of RUST AND SONS', its subsidiary, or parent company's properties, or if any deposit account or other property of RUST AND SONS, 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 RUST AND SONS, 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 RUST AND SONS 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 RUST AND SONS 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) RUST AND SONS 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) RUST AND SONS 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) RUST AND SONS 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 RUST AND SONS uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RUST AND SONS 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 RUST AND SONS to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(7) RUST AND SONS shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.

(8) RUST AND SONS shall come into compliance with the ECL regulation as codified in 13 CCR § 2183.

(9) RUST AND SONS shall comply with all terms of this settlement agreement to clear citation # ECL080315001JA.

(10) RUST AND SONS 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) RUST AND SONS shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.

(12) RUST AND SONS shall submit proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), within 120 days of the execution of this Agreement, to **Mr. Sidney Lau, Air Resources Engineer, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**

(13) This Agreement shall apply to and be binding upon RUST AND SONS, 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.

(14) This Agreement constitutes the entire agreement and understanding between ARB and RUST AND SONS concerning the subject matter hereof, and

supersedes and replaces all prior negotiations and agreements between ARB and RUST AND SONS concerning the subject matter hereof.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

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

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 $21,950 or $80.40 per month of violation:

- $21,950 for 13 vehicles not meeting the 90 percent phase-in requirement, (21 months in violation).

The penalty was discounted due to extreme financial hardship and 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.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of $300.00 per vehicle per violation. The penalty obtained for the ECL violations involved in this case is $50.00 for 1 vehicle, or $50.00 per vehicle.

The penalty was discounted due to extreme financial hardship and 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 (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because RUST AND SONS failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(i).

ECL Violations

The penalty provision being applied to the ECL requirements is 13 CCR § 2185(a)(2) because RUST AND SONS failed to provide evidence that 1 of their vehicles have ECLs 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.

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.

ECL Violations

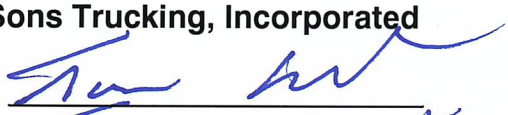
The penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

(20) RUST AND SONS 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.

(21) 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.

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

(23) Now therefore, in consideration of the payment on behalf of RUST AND SONS to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases RUST AND SONS and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (12) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board		**Rust and Sons Trucking, Incorporated**	
Signature:		Signature:	
Print Name:	Dr. Todd P. Sax	Print Name:	Tony Rust
Title:	Chief, Enforcement Division	Title:	VP
Date:	2/26/16	Date:	2-10-16