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 Tom's Equipment Rental (hereinafter "TER"), 6275 South Anchor Avenue, Orange Cove, California 93646-9414.

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 (TRUs) 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 (13 CCR § 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 TER 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(r) sets forth the requirements for reporting all vehicles with engines subject to the regulation if the owner of a fleet has elected to utilize the compliance options of 13 CCR §§ 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of 13 CCR § 2025(j), and the agricultural provisions of 13 CCR § 2025(m), single-engine and two-engine street sweeper provisions of 13 CCR § 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of 13 CCR § 2025(p)(1), the extension for work trucks of 13 CCR § 2025(p)(2), and the low-use vehicle provision of 13 CCR § 2025(p)(4).

(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) 13 CCR § 2025(e)(8) states: "All information specified in 13 CCR § 2025(r) must be reported to the Executive Officer."

(11) TER has elected to utilize the compliance options/credits/provisions of section 13 CCR § 2025(p)(4).

(12) ARB has documented that TER failed to report all vehicles with engines subject to the regulation for which the fleet owner has elected to utilize the compliance options of 13 CCR § 2025(p)(4).

(13) In order to resolve these alleged violations, TER 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 TER agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of four thousand dollars ($4,000.00) shall be paid on behalf of TER no later than November 13, 2015, as follows:

- $3,000.00 to the **Air Pollution Control Fund**
- $1,000.00 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:

Mr. Aldo Chaney
Air Pollution Specialist
Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 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 1436
Sacramento, CA 95812-1436

(2) If the Attorney General files a civil action to enforce this settlement agreement, TER shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

(3) 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 TER 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 TER 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.

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

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

(7) TER 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.

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

(9) TER 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.

(10) Within 45 days of the execution of this Agreement, TER shall bring its fleet of TRUs operating in California in compliance with the applicable in-use performance standards as required by 13 CCR § 2477.5(a) and apply for an ARB IDN for each of the California-based TRUs or TRU gen sets that it owns and/or operates as required by 13 CCR § 2477.5(e)(1)(A) and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the IDN from ARB as required by 13 CCR § 2477.5(e)(1)(F). TER shall submit the proof of registration in ARB's Equipment Registration system (ARBER) to Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte 91731.

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

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

(13) TER shall comply with the Truck and Bus regulation as codified in 13 CCR § 2025. Within 45 days of the execution of this Agreement, TER 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 TER, 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 TER concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and TER 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.

SB 1402 Statement:

(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 TRU violations involved in this case is $2,000.00 for two non-compliant TRUs operated by TER or $1,000.00 for each violation.

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 report all required information for all vehicles in the fleet is $2,000.00 or $500.00 per vehicle per violation for four vehicles.

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 TER, 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 an Airborne Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because TER failed report all required information for all vehicles in the fleet for which they have elected to utilize compliance options/credits/provisions as required in by the deadlines set forth in 13 CCR § 2025 (r).

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 not prohibit emissions above a specified level.

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

(24) Now therefore, in consideration of the payment on behalf of TER to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases TER 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		**Tom's Equipment Rental**	
Signature:		Signature:	
Print Name:	Dr. Todd P. Sax	Print Name:	Tom Greenwood
Title:	Chief, Enforcement Division	Title:	Pres
Date:	12/17/15	Date:	11/9/15