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 Zanker Road Resource Management, LTD. (hereinafter "Zanker LTD."), 1500 Berger Drive, San Jose, CA 95112.

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) 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 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."

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

(8) ARB contends Zanker LTD. failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2011, 2012, and for some vehicles in 2013 in violation of title 13 CCR, sections 2190 *et seq*.

(9) The ARB, has documented that Zanker LTD. failed to provide evidence that their vehicles have emission control labels (ECL) attached to the engines of heavy-duty diesel vehicles 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.

(10) In order to resolve these alleged violations, Zanker LTD. 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.

(11) 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 Zanker LTD. agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of twelve thousand, one hundred dollars ($12,100.00) shall be paid on behalf of Zanker LTD. no later than June 9, 2014, as follows:

- **$ 9,075** paid to **Air Pollution Control Fund**
- **$ 3,025** paid to **Peralta Colleges Foundation**

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

Allison Spreadborough/Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

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, Zanker LTD. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees and costs.

(3) Zanker LTD. 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) Zanker LTD. 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) Zanker LTD. 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 Zanker LTD. 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, Zanker LTD. 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.

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

(6) Zanker LTD. shall hereafter comply with PSIP for all functioning diesel vehicles whether or not these vehicles operate on the streets or highways within the State of California, and whether or not these vehicles are registered with the California Department of Motor Vehicles.

(7) Zanker LTD. shall submit copies of all PSIP compliance records for the years 2014 and 2015 to the ARB by January 31 of the following year. **Copies shall be addressed to the attention of Ms. Allison Spreadborough at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812**. The ARB reserves the right to visit any Zanker LTD. fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(8) Zanker LTD. 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.

(9) Each 1974 or newer diesel powered heavy-duty vehicle in Zanker LTD.'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, Zanker LTD. shall **submit the proof of compliance to Ms. Allison Spreadborough/Air Pollution Specialist, Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812**.

(10) Zanker LTD. 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.

(11) Zanker LTD. shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(12) This Agreement shall apply to and be binding upon Zanker LTD., 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.

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

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

<u>PSIP Violations</u>

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $11,500 for nine vehicles, or $500 per vehicle per violation.

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 violations involved in this case is $600 for two vehicles, or $300 per vehicle.

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

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC section 43016 because Zanker LTD. failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2011, 2012 and 2013 in violation of the PSIP regulation in title13 CCR sections 2190 *et seq*, for nine vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC section 43016 is the applicable penalty provision.

ECL Violations

The penalty provision being applied to the ECL requirements set forth in title 13 CCR, section 2185(a)(2) because Zanker LTD. failed to provide evidence that two of their vehicles have ECL labels 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.

PSIP Violations

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the non-compliant units involved and their individual emission rate 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.

(19) Zanker LTD. 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.

(20) 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.

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

(22) Now therefore, in consideration of the payment on behalf of Zanker LTD. to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases Zanker LTD. 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 (11) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board		**COMPANY NAME**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	Greg Ryan
Title:	Chief, Enforcement Division	Title:	General Manager
Date:	6/18/14	Date:	6-9-14