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 ESTES EXPRESS dba ESTES WEST (hereinafter "ESTES"), 3901 W Broad Street, Richmond, Va. 23230.

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 ESTES failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2012 in violation of title 13 CCR, sections 2190 *et seq*.

(9) HSC section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Drayage trucks are controlled under the Drayage Truck Regulation as codified in title 13 CCR, section 2027. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic particulate matter. On-Road vehicles are controlled under section 2025 within title 13 of the California Code of Regulations (CCR).

(10) Title 13 CCR, section 2027 (d)(3)(A) requires drayage truck owners meet all applicable emission requirements and deadlines set forth in Phases 1 and 2 detailed in Section 2027 (d).

(11) Title 13 CCR, section 2027 (d)(5)(A)(2) requires drayage truck motor carriers only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in Section 2027 (d). Section 2027 (d)(5)(A)(3) requires motor carriers only dispatch drayage trucks that are registered and in good standing with the Drayage Truck Registry (DTR).

(12) The ARB Enforcement Division has documented that ESTES, as a drayage truck owner, failed to bring all drayage trucks in its fleet into compliance by the deadlines set forth in the Drayage Truck Regulation. The ARB Enforcement Division has also documented that ESTES, as a motor carrier, dispatched drayage trucks that are either not compliant with the emissions standards set forth in the Drayage Truck Regulation or not registered with the DTR.

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

(14) Failure to comply with the requirements of title 13 CCR, section 2025 and title 13 CCR, section 2027 is a violation of state law resulting in penalties. California HSC sections 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.

(15) ESTES has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in title 13 CCR, section 2025(g).

(16) Title 13 CCR, section 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012.

(17) The ARB has documented that ESTES failed to meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012.

(18) CCR, title 13, section 2025(w), Disclosure of Regulation Applicability, requires that any person residing in California selling a vehicle with an engine subject to this regulation provide the specified disclosure in writing to the buyer on the bill of sale, sales contract addendum, or invoice.

(19) The ARB has documented that ESTES failed to include the Disclosure of Regulation Applicability on all bills of sales, sales contract addendums, or invoices, in violation of CCR, title 13, section 2025(w).

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

(21) 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 ESTES agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of $50,600.00 dollars ($50,600.00) shall be paid on behalf of ESTES no later than October 9, 2013, as follows:

- $37,950.00 to the **Air Pollution Control Fund**
- $12,650.00 to the **Peralta Colleges Foundation**

Please submit the signed settlement agreement and checks to:

Ms. Debbi Klossing/Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Avenue, No. 4
E l Monte, CA 91731

(2) 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 ESTES 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 ESTES by ARB arising from the facts described in recital paragraphs (1) through (19) 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.

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

(6) ESTES shall submit copies of all PSIP compliance records for the two years (2013 and 2014) for the Calexico, City of Industry, La Mirada, Modesto, and San Jose terminals. The PSIP records are due after the close of the audit to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Ms. Debbi Klossing at the California Air Resources Board, Enforcement Division, 9480 Telstar Ave. No. 4, El Monte, CA 91731. The ARB reserves the right to visit any ESTE's fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(7) ESTES shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of ESTES for compliance with title 13 CCR, Section 2027 (d)(5) any time in the future. ESTES shall have all drayage trucks entered into the Drayage Truck Registry within 30 days of execution of this agreement.

(8) ESTES shall not violate the Drayage Truck Regulation, as codified in title 13 CCR, section 2027.

(9) Within 45 days of the execution of this Agreement, ESTES shall submit proof of compliance with the Truck and Bus regulation (as codified in title

13 CCR, section 2025) to Ms. Debbi Klossing, Air Pollution Specialist, ARB Enforcement Division,9480 Telstar Ave. No. 4, El Monte, CA 91731.

(10) ESTES shall not violate the Truck and Bus regulation as codified in title 13 CCR, section 2025.

(11) ESTES shall submit a draft bill of sale or invoice showing the required disclosure statement as required by title 13 CCR section 2025(w) has been added to ESTES bill of sales.

(12) ESTES shall require Fleet Managers from every terminal attend ARB's "How to Comply with CARB's Diesel Regulations" – Course # 520 within 6 months of this agreement being executed. Proof of attendance for each terminal manager shall be provided to Ms. Debbi Klossing, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Ave, No. 4, El Monte, CA 91731.

(13) ESTES 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.

(14) ESTES 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.

(15) This Agreement shall apply to and be binding upon ESTES, 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.

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

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

PSIP Violations

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 $ 1,500.00 for 3 vehicles, or $ 500 per vehicle per violation.

Drayage Violations

The per vehicle penalty for the drayage 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 pursuant to HSC section 39674. The penalty obtained for the drayage motor carrier violations involved in this case is $27,000.00 for 54 dispatches of trucks not registered in the Drayage Truck Registry or $500.00 per truck after considering the factors specified in HSC section 43024.

Truck and Bus

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 Engine Model Year Compliance

Schedule is $17,000.00 or $1,000 per month of violation for 3 vehicles with a 1996 through 1999 model year engine, with:

- 1 vehicle with a 1996 through 1999 model year engine in violation for 10 months;
- 1 vehicle with a 1996 through 1999 model year engine in violation for 3 months;
- 1 vehicle with a 1996 through 1999 model year engine in violation for 4 months.

Failure to Include Disclosure of Regulation Applicability

The penalties obtained for the Truck and Bus violations involved in this case for failure to disclose appropriate language on the bills of sales, sales contract addendums, or invoices is $5,100.00 or $300.00 per Bill of Sale for 17 Bills of Sale.

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 ESTES failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2012 in violation of the PSIP regulation in title13 CCR sections 2190 *et seq*, for 3 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.

Drayage Violations

The penalty provision being applied for the Drayage Truck Regulation (title 13 CCR, section 2027) violations in this case is HSC section 39674 because the Drayage Truck Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* sections 39650 - 39675 and because ESTES, as a drayage truck owner, failed to bring all its drayage trucks into compliance, and as a motor carrier, dispatched drayage trucks that were either not compliant with the emission standards set forth in the Drayage Truck Regulation or not registered with the DTR.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (title 13 CCR, section 2025) violations in this case is HSC section 39674 because the Truck and Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC section 39002 et seq., 39650-39675 and because ESTES failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(g) and to include the required Disclosure of Regulation on all bill of sales, sales contract addendums, or invoices as set forth in CCR, title 13, section 2025(w).

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.

Drayage Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Violations of Engine Model Year Compliance Schedule

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Failure to Include Disclosure of Regulation Applicability

The provisions cited above do not prohibit emissions above a specified opacity or level of g/hp-hr.

(22) ESTES 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.

(23) 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.

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

(25) Now therefore, in consideration of the payment on behalf of ESTES to the Air Pollution control Fund and the Peralta Colleges Foundation, the ARB hereby releases ESTES 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 (19) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: Ellen Y. Peter

Print Name: Ellen Peter

Title: Chief Counsel

Date: 10/8/2013

Estes West

Signature: Barry D Okes

Print Name: GARY D. OKES

Title: TREASURER

Date: 10/3/13