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 Citori Inc. dba G&M Towing (hereinafter "G&M Towing "), 15963 Main Street, Hesperia, CA 92345.

I. RECITALS

(1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board 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 particulate matter. On-Road vehicles are controlled under section 2025 within title 13 of the California Code of Regulations (CCR).

(2) 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)."

(3) G & M Towing has elected to utilize the phase-in option provided for in title 13 CCR, section 2025(i).

(4) Title 13 CCR, section 2025(i)(1), 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 60 percent of their fleet by Jan 1, 2013, and 90 percent of their fleet by January 1, 2014.

(5) Title 13 CCR, section 2025(e)(5) states: "All fleets may utilize the credit provisions of section 2025(j), the provisions of agricultural vehicles and log trucks of section 2025(m), the provisions for construction trucks, vehicles operating exclusively in the NOx exempt areas, or any of the other extensions, delays, and exemptions of section 2025(p)."

(6) Title 13 CCR, section 2025(p) requires that fleet owners utilizing this provision operate exclusively within NOx exempt areas as defined in section 2025(d)(46) or proposed additional areas as outlined in regulatory advisory MSC-13-28.

(7) G&M Towing has elected to utilize the NOx exempt provisions provided for in title 13 CCR, section 2025(p).

(8) The ARB has documented that G&M Towing failed to comply with the requirements of operating exclusively within a NOx exempt area as required in Title 13 2025(p).

(9) The ARB has documented that G&M Towing failed to have 60 percent of their fleet meet the PM BACT requirements by January 1, 2013, and 90 percent by January 1, 2014.

(10) Failure to comply with the requirements of title 13 CCR, section 2025 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.

(11) In order to resolve these alleged violations, G&M Towing 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.

(12) 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 G&M Towing agree as follows:

II. TERMS AND RELEASE

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

Upon execution of this Agreement, the sum of eighteen thousand dollars ($9,000) shall be paid on behalf of G&M Towing no later than June 30, 2014, as follows:

- $6,750.00 to the **Air Pollution Control Fund**
- $2,250.00 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. Debbi Klossing/Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Avenue No. 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 1436
Sacramento, CA 95812-1436

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

(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 G&M Towing 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 G&M Towing 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.

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

(5) G&M Towing 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) G&M Towing 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.

(7) G&M Towing shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

(8) G&M Towing shall submit proof of compliance with the Truck and Bus regulation (as codified in title 13 CCR, section 2025), within 60 days of the execution of this Agreement, to **Debbi Klossing/Air Pollution Specialist, Air Resources Board, Enforcement Division, 9480 Telstar Avenue No. 4, El Monte, CA 91731.**

(9) G&M Towing is prohibited from using the NOx exemption provision for vehicle units numbers 8 and 24 the remainder of the 2014 calendar year.

(10) This Agreement shall apply to and be binding upon G&M Towing, 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.

(11) This Agreement constitutes the entire agreement and understanding between ARB and G&M Towing concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and G&M Towing concerning the subject matter hereof.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

Truck and Bus Phase-In 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 $9,000.00:

- $375.00 per vehicle per month for 3 vehicles not meeting the 60% phase-in requirement in 2013 (3 months in violation for 2 vehicles, 12 months in violation for 1 vehicle).

- $375.00 per vehicle per month for 2 vehicles not meeting the 90% phase-in requirement in 2014, (3 months in violation for 2 vehicles).

The penalty was discounted due to 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 Phase-In 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 G&M Towing failed to bring their diesel fleet into compliance by the deadlines set forth in title 13 CCR, section 2025(i)(1).

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 Phase-In 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.

(17) G&M Towing 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.

(18) 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.

(19) The penalty was based on confidential settlement communications between ARB and G&M Towing that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and G&M Towing and reflects ARB's assessment of the relative strength of its case against G&M Towing, the

desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that G&M Towing may have secured from its actions.

(20) Now therefore, in consideration of the payment on behalf of G&M Towing to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases G&M Towing 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		**G&M Towing**	
Signature:		Signature:	
Print Name:	James R. Ryden	Print Name:	Dan Murray
Title:	Chief, Enforcement Division	Title:	President
Date:	7-8-14	Date:	6-23-14