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 RM PRODUCE CORPORATION (hereinafter "RM PRODUCE"), 1601 East Olympic Boulevard Bay 101, Los Angeles, California 90021.

I. RECITALS

(1) 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 ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under California Code of Regulations, title 13, section 2025 (13 CCR § 2025).

(2) 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.

(3) 13 CCR § 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.

(4) ARB has documented that RM PRODUCE failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices, in violation of 13 CCR § 2025(w).

(5) Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit 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 13 CCR § 2477.1 through 2477.21.

(6) 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.

(7) ARB Enforcement Division has documented that RM PRODUCE failed to bring a TRU it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation.

(8) Failure to bring the TRU fleet in compliance with applicable in-use performance standards is a violation 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.

(9) 13 CCR § 2477.6(a)(1) requires all operators to submit an Operator Report to ARB by January 31, 2009 (delayed until July 31, 2009) which includes TRU and TRU gen set inventory information for each TRU and TRU gen set based in California that is owned or leased by the operator.

(10) 13 CCR § 2477.6 (a) (2) states: The Operator Report shall be updated within 30 days when any changes to any operator information occur.

(11) 13 CCR § 2477.6 (a) (3) states: Failure to report or submittal of false information is a violation of state law subject to civil penalty.

(12) The ARB Enforcement Division has documented that RM PRODUCE, failed to update their Operator Report within 30 days of changes to their TRU fleet information, resulting in false information.

(13) 13 CCR § 2477.5(e)(1)(A) states: that on or before January 31, 2009 (delayed until July 31, 2009), 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.

(14) 13 CCR § 2477.5(e)(1)(A)(3) requires the applicant to indicate who is filling out the application, either: a.) The owner, or b.) A third party entering the application information under a third party agreement between the owner and a consultant.

(15) The ARB Enforcement Division has documented that RM PRODUCE, failed to indicate the third party consultant filled out the application.

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

(17) 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 RM PRODUCE agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of two thousand-one hundred dollars ($2,100.00) shall be paid on behalf of RM PRODUCE no later than October 27, 2014, as follows:

- $1,575.00 to the **Air Pollution Control Fund**
- $525.00 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. Eric Bissinger
Air Pollution Specialist
California 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 1436
Sacramento, CA 95812-1436

(2) If the Attorney General files a civil action to enforce this settlement agreement, RM PRODUCE 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 RM PRODUCE 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 RM PRODUCE through by ARB arising from the facts described in recital paragraphs (1) through (17) 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) RM PRODUCE 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) RM PRODUCE shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (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) RM PRODUCE 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 RM PRODUCE uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RM PRODUCE 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 RM PRODUCE to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(6) RM PRODUCE 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.

(7) RM PRODUCE 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) Each 1974 or newer diesel powered heavy-duty vehicle in RM PRODUCE's fleet shall comply with the Emission Control Regulation (ECL) regulation as codified in 13 CCR § 2183.

(9) RM PRODUCE shall not violate the Truck & Bus regulation as codified in 13 CCR § 2025 *et seq.*

(10) Within 45 days of the execution of this Agreement, RM PRODUCE 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) RM PRODUCE shall

submit the proof of compliance with in-use standards in ARBER system to Mr. Eric Bissinger, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

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

(12) This Agreement shall apply to and be binding upon RM PRODUCE, 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 RM PRODUCE concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RM PRODUCE 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 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 Violation

The penalty obtained for the Truck and Bus violation involved in this case for failure to disclose appropriate language on the bill of sale, sale contract addendum, or invoice is $300.00 or $300.00 per vehicle per violation for one vehicle.

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 $1,000.00 for one noncompliant TRU operated by RM PRODUCE or $1,000.00 for each violation. The penalty obtained for submitting the TRU with false information is $300.00 for one TRU or $300 for each TRU entered with false information in the Operator Report. The penalty obtained for RM PRODUCE for failing to indicate the third-party consultant is $500.00 or $500.00 for each violation.

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

Truck and Bus Violation

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 a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because RM PRODUCE failed to include the Disclosure of Regulation Applicability on the bill of sale, contract addendum, or invoice.

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 RM PRODUCE, as an owner of TRUs, failed to bring its TRU in compliance with the in-use performance standards and failed to correctly register the TRUs in its fleet in the Operator Report.

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 not prohibit emissions above a specified level.

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 TRU involved and its individual emission rate is not known, it is not practicable to quantify the excess emissions.

(19) RM PRODUCE 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.

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

(22) Now therefore, in consideration of the payment on behalf of RM PRODUCE to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases RM PRODUCE 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 (17) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement

California Air Resources Board

Signature: _____

Print Name: James R Ryden

Title: Chief, Enforcement Division

Date: 11/7/2014

RM Produce Corporation

Signature: _____

Print Name: RAMON MANUEL NIEBLA

Title: Owner

Date: 10/20/2014