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 SELLAND AUTO TRANSPORT INC. (hereinafter "SELLAND"), 615 S. 96th Street, Seattle, WA 98108.

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.* authorizes 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) The ARB, has documented that SELLAND failed to provide evidence that a portion of 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 ECLs have been set per title 13 CCR, section 2185 (a)(2)(B) at $300 per vehicle per violation.

(7) Health and Safety Code, Section 39650-39675 mandates 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, the Air Resources Board 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 particulate matter. On-Road vehicles are controlled under section 2025 within title 13 of the California Code of Regulations (CCR).

(8) 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 TACs not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

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

(10) Title 13 CCR, section 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 section 2025(f)(4), 2025(g)(3), 2025(g)(4), 2025(h), 2025(i), the credits of section 2025(j), and the agricultural provisions of section 2025(m), single-engine and two-engine street sweeper provisions of section 2025(n), extension or exemptions for vehicles used exclusively in NOx exempt areas of section 2025(p)(1), and the extension for low-mileage construction trucks of section 2025(p)(2).

(11) SELLAND has elected to utilize the phase-in option provided for in title 13 CCR, section 2025(i).

(12) The ARB has documented that SELLAND failed to timely report all vehicles with engines subject to the regulation for which the owner has elected to utilize the compliance options of section 2025(i).

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

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of six thousand four hundred dollars ($6,400.00) shall be paid on behalf of SELLAND no later than **May 16, 2014**, as follows:

- $4,800.00 to the **Air Pollution Control Fund**
- $1,600.00 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:

Heather Brown
Air Resources Board, Enforcement Division
9480 Telstar Ave. 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 2815
Sacramento, CA 95812

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

(3) SELLAND 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) SELLAND 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.

(5) Each 1974 or newer diesel powered heavy-duty vehicle in SELLAND's fleet shall remain in compliance with the ECL regulation as codified in title 13 CCR, section 2183.

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

(8) This Agreement shall apply to and be binding upon SELLAND, 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.

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

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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 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 timely report all required information for all vehicles in the fleet is $5,500 or $500 per vehicle per violation for 11 vehicles.

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 $900 for 3 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.

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 SELLAND failed to timely report all required information for all vehicles in the fleet for which they have elected to utilize compliance options/credits/provisions as required in title 13 CCR, section 2025(r).

ECL Violations

The penalty provision being applied to the ECL requirements set forth in title 13 CCR, section 2185(a)(2) because SELLAND failed to provide evidence that 3 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.

Truck and Bus Violations and ECL Violations

The penalties are not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

(15) SELLAND 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.

(16) 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.

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

(18) Now therefore, in consideration of the payment on behalf of SELLAND to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases SELLAND 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		**SELLAND AUTO TRANSPORT INC.**	
Signature:		Signature:	Betty J. Kuhnau
Print Name:	James R. Ryden	Print Name:	Betty J. Kuhnau
Title:	Chief, Enforcement Division	Title:	Sec / Treas.
Date:	6/16/14	Date:	5-27-2014