

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by the California Air Resources Board (ARB) principally located at 1001 I Street, Sacramento, California 95814, and Sierra Foothills Construction, principally located at 130 East Main Street, Grass Valley, California 95945, Sierra Central Credit Union, principally located at 1351 Harter Parkway, Yuba City, California 95993, and C&D Contractors, principally located at PO Box 822, Nevada City, California 95959.

### RECITALS

1. California Health and Safety Code (H&SC) section 39658(b)(1) establishes the Asbestos National Emissions Standard for Hazardous Air Pollutants (title 40, Code of Federal Regulations (CFR) section 61.140, et seq.) as an Airborne Toxic Control Measure (Asbestos ATCM) enforceable by ARB.
2. The Asbestos ATCM defines an owner or operator of a demolition or renovation activity as any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. (40 CFR § 61.141)
3. The Asbestos ATCM requires owner(s) or operator(s) of demolition or renovation activities to provide written notification of the intention to demolish or renovate a regulated facility ten (10) working days before work begins. (40 CFR § 61.145(b))
4. The Asbestos ATCM requires owners or operators of a demolition or renovation activity and prior to the commencement of the demolition or the renovation, to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II non-friable asbestos containing materials. (40 CFR § 61.145(a))
5. On or about January 20, 2016, Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors demolished a structure identified as "Old Perkos Restaurant" located at 1000 Plaza Drive, Grass Valley, CA 95945. The Old Perkos Restaurant is a regulated structure under the Asbestos ATCM.
6. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors were each an operator of a demolition or renovation activity under the Asbestos ATCM, with respect to the demolition activities at the Old Perkos Restaurant.
7. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors admit to the facts identified in Recitals 1 through 6, above.

8. ARB alleges that Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors failed to sample all suspect asbestos containing materials present at the Old Perkos Restaurant prior to commencement of demolition.
9. ARB alleges that Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors failed to notify ARB and U.S. Environmental Protection Agency 10 working days prior to commencing the regulated demolition activity.
10. A violation of the Asbestos ATCM is a violation of State law resulting in penalties. State law authorizes strict liability penalties not to exceed \$10,000.00 per day, for each day that the violation occurs.
11. ARB and Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors desire to resolve this matter completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors agree to take the actions enumerated below within the Terms and Release.

#### **TERMS AND RELEASE**

12. In consideration of ARB not filing a legal action against Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors for the alleged violations referred to above, ARB and Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors agree as follows:

Upon execution of this Agreement Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors agree to pay civil penalties in the total amount of EIGHT THOUSAND dollars (\$8,000.00). Payment shall be made in accordance with the instructions in Attachment A to this agreement.

13. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors agree that they are jointly and severally responsible for the full penalty amount.
14. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors shall not violate the Asbestos ATCM.
15. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors agree that the Effective Date of this Settlement Agreement shall be the earlier of the date upon which Sierra Foothills Construction executes this Settlement Agreement or the date upon which Sierra Central Credit Union executes this Settlement Agreement, or the date upon which C&D Contractors executes this Settlement Agreement.

16. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors will prepare, with ARB input, and distribute a letter to their region's Contractor's Association. The letter will include the ATCM requirements. To demonstrate compliance with this provision, Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors will provide a copy of the letter and a list of recipients within one year of the Effective Date of this Agreement.
17. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors will convene at minimum two discussions between ARB, public works officials, and their region Contractor's Association to discuss the ATCM requirements and answer questions related to the ATCM requirements within one year of the Effective Date of this Agreement.
18. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors each agree to provide to at least one employee, training that meets the Asbestos Hazard Emergency Response Act requirements for Asbestos Contractor/Supervisor Initial (40-hour) training. To demonstrate compliance with this provision, Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors shall each provide to ARB proof of completion, in the form of a copy of the awarded training certificate documenting the date of attainment within one year of the Effective Date of this Agreement and shall be mailed to:

Mr. Nestor Castillo  
Enforcement Division  
Air Resources Board  
P.O. Box 2815  
Sacramento, California 95812

19. This Agreement shall apply to and be binding upon Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors along with their 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.
20. This Agreement constitutes the entire agreement and understanding between ARB and Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors concerning the subject matter.
21. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement. Any failure to comply with this Agreement will be determined individually, such that a failure by one party does not otherwise impact compliance by the remaining parties.

22. 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 is to remain in full force and effect.
23. 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.
24. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (H&SC section 39619.7). This information is provided throughout this Agreement and is summarized here:

**The manner in which the penalty amount was determined, including 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 Health and Safety Code section 42403.

The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000) per violation per day for strict liability violations pursuant to Health and Safety Code section 39674. After considering all factors specified in Health and Safety Code section 42403, the penalty obtained in this case is a total of EIGHT THOUSAND DOLLARS (\$8,000). This reflects a penalty of \$800 for each of 10 working days that a notification was not submitted in advance of demolition. Asbestos is a toxic air contaminant and violations of the Asbestos ATCM, including violations of this nature, could result in immediate and localized exposure. The notification requirement allows ARB to inspect the project for regulated asbestos containing materials (RACM) not identified or disclosed in the pre-project asbestos inspection and not properly abated prior to demolition. The penalty reflects that ARB has not previously issued Asbestos ATCM notices of violation to Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors.

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

The penalty provision is being applied in this case is Health and Safety Code section 39674, because Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors failed to comply with the Asbestos ATCM established under Health and Safety Code section 39658(b).

**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 practical to do so.**

The notification and inspection requirements do not reflect an emission limit.

25. Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors acknowledge that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 42403, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specific level.
26. 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 cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
27. The penalty reflects ARB's assessment of the relative strength of its case against Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors, and the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors may have secured from their actions.
28. Now therefore, in consideration of the payment on behalf of Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors ARB hereby resolves with Sierra Foothills Construction, Sierra Central Credit Union, and C&D Contractors and their principals, officers, agents, predecessors, and successors from any and all claims for the past violations of the Asbestos ATCM ARB may have based on the circumstances described in the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**SIGNATURES**

**California Air Resources Board**

By: 

Name: Todd Sax

Title: Division Chief

Date: 6/25/16

**Sierra Foothill Construction**

By: 

Name: Keoni Allen

Title: President

Date: 5/27/16

**Sierra Central Credit Union**

By: 

Name: Robert White

Title: Facilities Manager

**C&D Construction**

By: 

Name: Charlie Faber

Title: President

Air Resources Board  
1400 17th - 9th Floor  
Accounting Section