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 DOLPHIN TRANSPORT, INCORPORATED, DBA DOLPHIN EXPRESS (hereinafter "DOLPHIN"), 11212 Dune Street, Norwalk, CA 90650.

I. RECITALS

(1) California Health and Safety Code (*H&SC*) 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) *H&SC* 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 excess smoke emissions.

(3) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* 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 which operate on the streets or highways within the State of California.

(4) Title 13, CCR sections 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 which 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) *H&SC* 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 violation 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 DOLPHIN failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years of 2011 and 2012 in violation of Title 13, CCR Sections 2190 et seq.

(9) HSC sections 39650-39675 mandate 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.

(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).

(12) The ARB Enforcement Division has documented that DOLPHIN, as a drayage truck owner, failed to bring 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 DOLPHIN, as a motor carrier, dispatched drayage trucks that are not compliant with the emissions standards set forth in the Drayage Truck Regulation.

(13) Failure to comply with Title 13 CCR, Section 2027 (d)(5)(A)(2) and Section 2027 (d) is a violation of state law resulting in penalties. HSC, Section 39674, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

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

(15) 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 DOLPHIN agree as follows:

II. TERMS & RELEASE

In consideration of ARB not filing a legal action against DOLPHIN, for the violations alleged above, ARB and DOLPHIN agree as follows:

(1) Upon execution of this Agreement, DOLPHIN shall pay a civil penalty of $16,050.00. Payment shall be made in check form as described below, and payments shall be made in 6 monthly payments beginning on October 1, 2013:

SETTLEMENT AGREEMENT AND RELEASE – ARB AND DOLPHIN TRANSPORT, INCORPORATED

Payment Due Date:		In the Amount of and Paid to:
(1)	10/1/13	$2,006.25 paid to Peralta Colleges Foundation
(2)	11/1/13	$2,006.25 paid to Peralta Colleges Foundation
(3)	12/2/13	$3,009.38 paid to Air Resources Board
(4)	1/3/14	$3,009.38 paid to Air Resources Board
(5)	2/3/14	$3,009.37 paid to Air Resources Board
(6)	3/3/14	$3,009.37 paid to Air Resources Board

Please submit the signed settlement agreement and checks to:

Mr. Sidney Lau, Air Resources Engineer
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

(2) Effect of Untimely Payment: If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, DOLPHIN shall pay all costs of investigating and

prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if DOLPHIN, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving DOLPHIN, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against DOLPHIN, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of DOLPHIN's, its subsidiary's, or parent company's properties, or if any deposit account or other property of DOLPHIN, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or DOLPHIN, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) It is 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 DOLPHIN 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 DOLPHIN by ARB arising from the facts described in recital paragraphs (1) – (13) are non-dischargeable under 11 U.S.C § 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.

(5) DOLPHIN shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6, et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.

(6) DOLPHIN 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) DOLPHIN 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 DOLPHIN 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, DOLPHIN 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.

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

(8) DOLPHIN shall provide copies of all PSIP compliance records for 2014 to the ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Sidney Lau, ARB, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any DOLPHIN fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(9) DOLPHIN shall not violate HSC Section 43701 et seq., 44011.6 et seq., and Title 13 CCR Section 2190 et seq., 13 CCR Section 2183 et seq., and Title 13 CCR Section 2027 et seq., or any other provision or law under the jurisdiction of ARB.

(10) DOLPHIN 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.

(11) Each 1974 or newer diesel powered heavy-duty commercial vehicle in DOLPHIN's fleet shall maintain compliance with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183(c), within 45 days of this agreement.

(12) DOLPHIN shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of this Agreement.

(13) DOLPHIN shall not violate the Drayage Truck Regulation, as codified in Title 13 CCR, Section 2027.

(14) DOLPHIN 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 DOLPHIN for compliance with Title 13 CCR, Section 2027 (d)(5) any time in the future.

(15) DOLPHIN shall not violate the Truck and Bus Regulation as codified in Title 13 CCR, Section 2025.

(16) This Agreement shall apply to and be binding upon DOLPHIN, 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.

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

(18) 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.

(19) 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.

(20) 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.

(21) 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.

(22) Now, therefore, in consideration of the payment by DOLPHIN, in the amount of sixteen thousand and fifty dollars ($16,050.00), ARB hereby releases DOLPHIN and its principals, officers, directors, agents, subsidiaries, predecessors, and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (13) above. The undersigned represent that they have the authority to enter into this Agreement.

(23) 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 Health and Safety Code sections 42403 and 43024.

Periodic Smoke Inspection Program 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 $2,375 for 19 violations, or $125 per vehicle per violation. The penalty reflects the fact that these were unintentional first time violations, financial hardship, and that DOLPHIN cooperated with the investigation.

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 $13,675 for the years 2012 and 2013. The penalty obtained is as follows: $12,925 for dispatching 517 noncompliant dispatches, or $25 per noncompliant dispatch, and $750 for failing to meet emission standards by the compliance deadlines in Title 13

CCR Section 2027(d) for three drayage trucks, or $250 per vehicle per violation. The penalty reflects the fact that these were unintentional first time violations, financial hardship, and that DOLPHIN cooperated with the investigation.

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

Periodic Smoke Inspection Program Violations

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because DOLPHIN failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2011 and 2012 in violation of the PSIP regulation in Title 13, CCR Sections 2190 et seq, for 10 vehicles.
Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code 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 HSC Sections 39650 – 39675.

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.

The PSIP and drayage 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 trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(24) DOLPHIN acknowledges that ARB has complied with SB 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.

(25) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in further cases might be smaller or larger on a per unit basis.

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

California Air Resources Board

By: _____

Name: Ellen M. Peter

Title: Chief Counsel

Date: 9/27/2013

Dolphin Transport, Incorporated

By: _____

Name: Jorge Osorio

Title: President

Date: 9/16/13