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6 Debtor-in-Possession

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re: ) Case No. 2:16-bk-26393-SK

) Chapter 11

11 )  
12 KEENEY TRUCK LINES, INC. ) **SECOND SALE MOTION FOR**  
**ORDER:**

13 Debtor. )

14 ) **1. APPROVING SALE OF ESTATE**  
**PROPERTY AND**  
15 ) **AGREEMENTS THEREON;**

16 ) **2. AUTHORIZING SALE OF**  
**PROPERTY FREE AND CLEAR**  
17 ) **OF LIENS;**

18 ) **3. APPROVING MARKETING**  
**AND OVERBID PROCEDURES;**

19 ) **4. FOR ASSUMPTION AND**  
**ASSIGNMENT OF CONTRACT**  
20 ) **WITH DEBTOR AND SOUTH**  
21 ) **COAST AIR QUALITY**  
**MANAGEMENT DISTRICT**

22 ) Date: July 13, 2017

23 ) Time: 10:00 a.m.

24 ) Courtroom: 1575

25 ) Place: 255 E. Temple Street  
Los Angeles, CA 90012

26 ) The Honorable Sandra R. Klein

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1 **TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES BANKRUPTCY**  
2 **JUDGE:**

3 KEENEY TRUCK LINES, INC., the Debtor and Debtor in Possession (“Keeney”)  
4 hereby moves the Court for an order approving the sale of various of its assets, designated  
5 as Lots 2 and 4. This is the second sale motion Keeney is presenting – as the Court is  
6 aware, a sale of the assets designated as Lots 1 and 3 was approved by an order entered  
7 June 9, 2017 (DN 98) and those lots are to be auctioned on June 22, 2017.

8 As discussed below, there are liens against some of the vehicles in Lot 2 and  
9 against all the vehicles in Lot 4. Keeney therefore seeks an order under § 363(b)<sup>11</sup> to sell  
10 the Lot 2 and Lot 4 assets outside the ordinary course of business and, pursuant to §  
11 363(f)(4), free and clear of all liens and interests, and allowing creditors’ claims to attach  
12 the net sale proceeds with the same force, effect and validity as the those creditors held in  
13 the collateral.

14 Keeney has entered into two sales agreements for what are described as Lot 2 and  
15 Lot 4 (the agreements are attached as Exhibits 1 and 2 to this Motion ). However, both  
16 Lots will be marketed and subject to overbids at auction and sold “as is” “where is” with  
17 no warranty expressed or implied.

18 Keeney is also filing and serving the following documents in support of this  
19 second sale motion: a Memorandum of Points & Authorities; a Declaration of Keeney’s  
20 principal, Dan Hubbard; and a Declaration by Keeney’s auctioneer, Ken McCormack of  
21 AGES Professional Services & Associates. Keeney is also filing and serving two  
22 separate notices, a Notice of Motion to Approve Sale of Estate Property Free & Clear,  
23 and a Notice of Sale of Estate Property.

24 Pursuant § 365, Keeney also seeks court authority for assumption and assignment  
25 of the contract affecting the ten Freightliners in Lot 2. This is a Proposition 1B “Goods  
26 Movement Emission Reduction Program” contract with the South Coast Air Quality  
27 Management District (“the AQMD” and “the AQMD Contract “) dated May 23, 2012.,.

28 \_\_\_\_\_  
<sup>1</sup>A section references are to the Bankruptcy Code, 11 U.S.C., unless indicated otherwise.

1 The Motion is based upon 11 U.S.C. §§ 363 and 365, FRBP 6004, 6006, LBR  
2 2002 and 6004-1, all of the papers being filed and served in support of the motion, the  
3 entire record of this bankruptcy case, the statements, arguments and representations of  
4 counsel to be made at the hearing on the Motion, and any other evidence before the court  
5 at the hearing.

6 **I.**

7 **THE ASSETS TO BE SOLD**

8 The contents of the two lots of property and the proposed sale terms on them are as  
9 follows:

10 **A. The Lot 2 Vehicles – Proposed Buyer Flour Transport**

11 Lot 2 consists of two International Harvester tractors and ten Freightliner tractors  
12 (collectively, “Lot 2 Vehicles”). Debtor has entered into a sale agreement on the Lot 2  
13 Vehicles with Flour Transport, Inc. (“Flour Transport”), which has agreed to pay  
14 \$350,000 for Lot 2, subject to the court’s approval and subject to overbidding. A list of  
15 all the Lot 2 vehicles and equipment, with their vehicle identification numbers and other  
16 relevant information is attached to this Motion as **Exhibit 1**.

17 **B. The Lot 4 Vehicles – Proposed Buyer TEC Equipment**

18 Lot 4 consists of five 2013 Volvo tractors (“Lot 4” or “the Volvos”). Debtor has  
19 entered into a sale agreement on the Lot 4 trucks with TEC Equipment, Inc. of Fontana,  
20 California (“TEC Equipment”), which has agreed to pay \$182,500 for the Volvos  
21 (representing a unit price of \$36,500 per truck), subject to the court’s approval and  
22 subject to overbidding. A list of the Volvos, with their license and VIN numbers is  
23 attached to this Motion as **Exhibit 2**.

24 The sales and Lot 2 and Lot 4 shall be pursuant to 11 U.S.C. §§ 363(b) and 363(f),  
25 respectively, free and clear of liens and encumbrances and “as-is, where-is,” without  
26 warranty either expressed or implied.

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1 **II.**

2 **SALE TO BE FREE AND CLEAR OF LIENS**

3 Both the Freightliners in Lot 2 and the Volvos in Lot 4 are liened to People's  
4 Capital and Leasing Corp. ("People's Capital"). The Freightliners are also subject to a  
5 lien in favor of the South Coast Air Quality Management District ("AQMD").

6 Debtor seeks authority per § 363(f) of the Code to sell Lots 2, and 4 free and  
7 clear of liens of both these creditors as a bona fide dispute as to the claims of these  
8 creditors exists or as to the contract with the AQMD the contract may be assumed by  
9 debtor and assigned to the stalking horse bidder.

10 **A. AQMD/South Coast Air Quality Management District**

11 AQMD holds liens on the ten Freightliners in Lot 2 pursuant to a Proposition 1B  
12 "Goods Movement Emission Reduction Program" contract, dated May 23, 2012  
13 ("AQMD Contract"), which will expire in early-2018. To secure the Debtors's  
14 obligations under the AQMD Contract, AQMD took a security interest in the 10  
15 Freightliners, perfecting it with a filing of a financing statement with the California  
16 Secretary of State on February 13, 2013 as document number 13-7348560714. Flour  
17 Transport has offered to seek approval from AQMD for an assignment of the Debtor's  
18 obligations under that AQMD Contract. In this Motion Keeney seeks court authority for  
19 assumption and assignment of the AQMD Contract pursuant to §365. Flour Transport  
20 will make the applications to AQMD, which if accepted, will allow for the sale of the  
21 Freightliners free and clear of the Debtor's obligation on the AQMD Contract.  
22 Alternatively and if an order authorizing assumption and assignment is not granted by the  
23 Court for any reason, Keeney seeks authority to reject and terminate early the AQMD  
24 Contract, which Keeney calculates may result or give rise to a claim by AQMD which  
25 Keeney calculates to be in the range of \$0-\$65,000. This estimation is calculated  
26 pursuant to a formula set forth in the AQMD Contract.

27 **B. People's Capital**

28 People's made a lending commitment and extended loans to Keeney under a

1 Master Loan and Security Agreement No. 3881 (“Loan and Security Agreement”) dated  
2 May 6, 2015. The Loan and Security Agreement was extended to finance Keeney’s  
3 purchase of the Volvos and the Freightliners. To secure repayment of the Loan and  
4 Security Agreement, People’s took a security interest in all of the Trucks, perfecting by  
5 both taking possession of the titles and filing a financing statement with the California  
6 Secretary of State on May 5, 2015 as document number 15-7464768836. The total credit  
7 commitment under the Loan and Security Agreement was \$772,650 and the initial interest  
8 rate was 1.51%.

9 People’s filed a secured proof of claim in this bankruptcy case on March 10, 2017  
10 (Claim No. 7) (“People’s Claim”) in the amount of \$581,034.56 along with accruing  
11 interest and attorney’s fees. People’s Claim valued the Volvos and Freightliners together  
12 at a total of \$602,500.00. Keeney does not agree with either the total amount owed in  
13 People’s Claim nor the valuation of the Trucks.

14 Keeney contends that there is a bona fide dispute as to the claim filed by People’s  
15 as to both the amount of the claim and the interruption of the loan contract terms, thus the  
16 Court may authorize a sale per § 363(f)(4). Keeney is prepared to file an objection to  
17 People’s Proof of Claim number 7 expressly setting forth the dispute. Keeney will create  
18 a cash collateral account in the amounts of the net sale proceeds funds to be held pending  
19 resolution of the claims objection or other further order of the Court.

20 Keeney seeks authority to sell the Freightliners and the Volvos upon the  
21 overbidding terms set forth below, through a public auction to be held on July 18, 2017.  
22 The trucks will all be sold to the highest bidders free and clear of People’s liens pursuant  
23 to § 363(f)(2) or (f)(4). Keeney seeks an order that People’s release the truck titles and  
24 file a termination of its financing statement and that it’s lien attach to net sale proceeds  
25 with the same force, effect, and validity and in the same priority People’s lien was on the  
26 10 Freightliners and 5 Volvos.

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1 **III.**

2 **ASSUMPTION AND ASSIGNMENT OF**  
3 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT CONTRACT**

4 As noted above, the ten Freightliner tractors in Lot 2 are subject to the AQMD  
5 contract. Keeney is in compliance with its obligations under the contract, but because the  
6 contract imposes a lien on the Freightliners, the instant sale requires either assumption  
7 and assignment of the contract (and the liens), or, alternatively, rejection of the contract  
8 (and the lien). Keeney is seeking authority by this motion to go forward on both of these  
9 possibilities, an assumption and assignment, or a rejection, and it hereby gives notice of  
10 this in accordance with the notice requirements of FRBP 6006(a) and (c).

11 **A. Assumption and assignment**

12 Flour Transport, the proposed buyer for Lot 2 (including the Freightliners) is able  
13 and willing to take the Freightliners subject to the AQMD Contract and it is qualified to  
14 perform that contract and to continue in compliance with it through the end of the  
15 contract in February 2018. § 365(f)(2) permits a trustee to assume and assign an  
16 executory contract provided there has been no default and there is “adequate assurance of  
17 future performance” by the assignee. Both conditions will be satisfied here – Keeney is  
18 in compliance with the provisions of the AQMD Contract – there is no default Hubbard  
19 Decl. ¶¶13-15; and Flour Transport can and will qualify to perform the contract with the  
20 AQMD after it is assigned. Hubbard Decl. ¶¶13-15.

21 **B. Rejection and payment for termination**

22 Section 365(g) provides that rejection of an executory contract puts the trustee into  
23 immediate breach. However, the AQMD contract itself specifies the damages to be paid  
24 for any such breach. Paragraph 7.D., of the AQMD contract (Exhibit B to Hubbard  
25 Decl.) provides in relevant part that Keeney, as the “contractor” can terminate early by  
26 “return[ing] to AQMD a prorated share of the funds already paid under this Contract  
27 using the formula in Clause 8.8. below.” Paragraph 8.8 provides the “Reimbursement  
28 Formula for Early Termination” and, as explained in the Hubbard Declaration, according

1 to Keeney's calculations, because the contract is in its fifth year of a six year term, the  
2 termination formula calls for a payment between \$0.00 and \$65,000 to the AQMD  
3 .Hubbard Decl. ¶15.

4 Keeney is proposing under this motion to place \$65,000 of the sale proceeds into a  
5 cash collateral account for the benefit of the AQMD, not to be disbursed or used for any  
6 other purpose, pending further order of the court on the precise amount owed to AQMD  
7 for early termination.

8 This process will protect the AQMD and it allows the court to order a sale free and  
9 clear of the AQMD's lien under § 363(f)(3) because the amount of the lien will be fully  
10 covered by the sale price.

#### 11 IV.

#### 12 OVERBIDDING AND AUCTION

13 Keeney proposes to use the same auctioneer as with the first sale motion, AGES  
14 Professional Services & Associates of San Diego and its principal, Ken McCormack. The  
15 Court approved AGES' employment by an order entered June 1, 2017 (DN 88). AGES  
16 will advertise and sell Lots 2 and 4 in the following manner:

#### 17 A. Marketing Prior to Sale by Auction

18 1.) The sale will be advertised direct to a list of trucking companies who provide  
19 services similar to Keeney's in Southern California, including several of Keeney's  
20 competitors. There are approximately twenty five companies in this group.

21 2.) AGES will also advertise direct to any persons who have contacted Keeney or  
22 its counsel expressing an interest in purchasing any of the property in Lots 2 and 4.

23 3.) Advertising will also be done via Facebook using key words and pop up ads.

24 4.) AGES will also produce a catalog of photographs of all the vehicles and other  
25 assets for interested parties. The catalog will be provided at a minimal cost  
26 (approximately \$15 per each) to anyone who requests it.

27 5.) AGES will arrange for any serious bidders to have a "hands on" observation  
28 by appointment as is possible (some equipment will always be on the road and not

1 available).

2 6.) With the Court's approval, AGES will conduct an auction at Keeney's  
3 premises at 3500 Fruitland Avenue, Maywood CA, 90270 on Tuesday, July 18, 2017 at  
4 11:00 a.m.

5 **B. Overbidding Terms**

6 Lot 2 – Flour Transport has offered \$350,000 for Lot 2 and the minimum overbid  
7 for the lot will be 5% higher (\$367,500).

8 Lot 4 – TEC Equipment has offered \$182,500 for Lot 4 and the minimum overbid  
9 will be 5% higher (\$191,625).

10 In order to participate in the overbidding and auction, interested parties will be  
11 required to do the following:

12 1) Overbidders will sign a Purchase and Sale Agreement in substantially the form  
13 as signed by the initial bidder for each lot;

14 2) Overbidders on Lot 2 will provide the same 10% deposit as Flour Transport  
15 (\$35,000), plus the 5% initial overbid (\$17,500) for a total deposit of \$52,500;

16 3) Overbidders on Lot 4 will execute the same sale agreement as TEC Equipment  
17 Equipment, with the proviso they must overbid the agreed sale price by 5% (\$191,625);

18 3) Bidding will thereafter, go up in increments of 5% or as set by the auctioneer so  
19 as to be commercially reasonable;

20 4) Winning bidders must pay the balance of the winning/successful bid in good  
21 verified funds, i.e. cashier's check or money wired within 48 hours of close of bidding.

22 5) Agree to collection of successful bid to AGES for collecting the funds in gross  
23 on behalf of the Debtor, collection to include sales tax as is required by law;

24 6) Agree that as a winning/successful bidder and unable to consummate their  
25 purchase within 48 hours of closing of bidding, they will forfeit their deposit as liquidated  
26 damages to the estate;

27 7) Agree in a case of failure by the winning/successful bidder, the Lot will be  
28 made available to the next highest or runner up bidder; and

1 8) Agree that the auctioneer's fee will be 1.5% of the total of the final gross bids  
2 on each lot.

3 **C. Waiver of Any Waiting Period**

4 Keeney is seeking an order from the Court waiving the fourteen day waiting period  
5 in FRBP 6004(h) and allowing the sale to take place immediately upon approval of the  
6 motion.

7 **WHEREFORE**, Keeney respectfully requests the Court to enter the following  
8 Order:

- 9 1. Finding the notice Keeney has given in connection with the proposed sales  
10 of the trucks, trailers, and equipment in Lots 2 and 4, and of the hearing on  
11 the Motion is adequate, sufficient, proper, and complies with all applicable  
12 provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy  
13 Procedure and the Local Bankruptcy Rules;
- 14 2. Granting the Motion in its entirety;
- 15 3. Approving the Overbid Procedures;
- 16 4. Authorizing Keeney to sell the Lot 2 tractors and trailers to Flour Transport  
17 or to a successful overbidder, free and clear of all liens, claims, and  
18 encumbrances;
- 19 5. Authorizing Keeney to sell the Lot 4 tractors and trailers to TEC Equipment  
20 or to a successful overbidder, free and clear of all liens, claims, and  
21 encumbrances;
- 22 6. Authorizing Keeney to execute and deliver, on behalf of the Estate, any and  
23 all documents that may be reasonably necessary to consummate the sales of  
24 all the trucks, trailers, and other property;
- 25 7. Waiving the 14-day waiting period prescribed by Rule 6004(h) of the  
26 Federal Rules of Bankruptcy Procedure;
- 27 8. Approving the two proposed buyers or other successful bidders/buyers as a  
28 good faith purchasers entitled to the protections of 11 U.S.C. § 365(m);

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- 9. Authorizing the Debtor-in-Possession to use the sale proceeds to pay AGES commission of 1.5% of the final sales;;
- 10. Authority Keeney to assume the Prop 1B Contract dated May 23, 2012 made with the South Coast Air Quality Management District and assign it to Flour Transport, or, if there is a different prevailing bidder on Lot 2, authorizing Keeney to reject the AQMD Contract and to set aside \$65,000 from the net sale proceeds as cash collateral for AQMD, subject to future Court order; and
- 11. Granting such other and further relief as may be necessary or appropriate under the circumstances.

Respectfully submitted,  
LAW OFFICE OF WILLIAM P. FENNELL, APLC

Dated: June 22, 2017

By: /s/William P. Fennell  
William P. Fennell, Esq.  
Attorney for Debtor and Debtor in Possession

# EXHIBIT 1

**Bid list for Keeney Rolling Stock  
TRACTOR LIST**

EQUIPMENT NUMBER	LICENSE	YEAR	MAKE	VIN	TYPE	DATE PURCHASED	Bid Amount
807	UP41356	2005	INTERNATIONAL	3HSCEAHR75N004284	TRACTOR	08/20/04	\$5,000
808	UP41357	2005	INTERNATIONAL	3HSCEAHR95N004285	TRACTOR	08/20/04	\$5,000
847	9E97309	2013	FREIGHTLINER	3AKJGBD49DSFE4277	TRACTOR	10/29/12	\$31,000
848	9E97310	2013	FREIGHTLINER	3AKJGBD40DSFE4278	TRACTOR	10/29/12	\$31,000
849	9E97311	2013	FREIGHTLINER	3AKJGBD42DSFE4279	TRACTOR	10/29/12	\$31,000
850	9E97312	2013	FREIGHTLINER	3AKJGBD49DSFE4280	TRACTOR	10/29/12	\$31,000
851	9E97313	2013	FREIGHTLINER	3AKJGBD40DSFE4281	TRACTOR	10/29/12	\$31,000
852	9E97314	2013	FREIGHTLINER	3AKJGBD42DSFE4282	TRACTOR	10/29/12	\$31,000
853	9E97315	2013	FREIGHTLINER	3AKJGBD44DSFE4283	TRACTOR	10/29/12	\$31,000
854	9E97316	2013	FREIGHTLINER	3AKJGBD46DSFE4284	TRACTOR	10/29/12	\$31,000
855	9E97317	2013	FREIGHTLINER	3AKJGBD48DSFE4285	TRACTOR	10/29/12	\$31,000
856	9E87930	2013	FREIGHTLINER	3AKJGBD4XDSFE4286	TRACTOR	10/29/12	\$31,000

**TRAILER LIST**

223	1UN3080	1998	FRUEHAUF	1H4V048227J023501	VAN	02/01/88	2600
241	1US9375	1990	FRUEHAUF	1H4V048281J011201	VAN	09/21/89	2600
261	1VE8222	1993	TRAILMOBILE	1PTO1JRJ1P9006801	VAN W/LIFT GATE	01/27/93	4000
274	1VZ5822	1990	GREAT DANE	1GAA9626LS100701	VAN W/LIFT GATE	04/16/97	4000
275	1VZ5821	1990	GREAT DANE	1GAA962XLS100703	VAN W/LIFT GATE	04/16/97	4000
276	1VZ5823	1990	GREAT DANE	1GAA9621LS100704	VAN W/LIFT GATE	04/16/97	4000
289	1UY2285	1990	MONON	1NNVF452XLM142022	VAN W/LIFT GATE	10/08/98	4000
364	4BD6566	2001	TRAILMOBILE	1PTO1JRH719005849	VAN	06/30/01	2600
365	4BD6567	2001	TRAILMOBILE	1PTO1JRH318005850	VAN	06/30/01	2600

\$350,000

# EXHIBIT 2

LOT 4

<b>EQUIPMENT NUMBER</b>	<b>LICENSE</b>	<b>YEAR</b>	<b>MAKE</b>	<b>VIN</b>	<b>TYPE</b>	<b>DATE PURCHASED</b>
842	WP40764	2013	VOLVO	4V4NC9TH0DN131641	TRACTOR	04/30/12
843	WP40765	2013	VOLVO	4V4NC9TH2DN131642	TRACTOR	04/30/12
844	WP40766	2013	VOLVO	4V4NC9TH4DN131643	TRACTOR	04/30/12
845	WP40767	2013	VOLVO	4V4NC9TH6DN131644	TRACTOR	04/30/12
846	WP40768	2013	VOLVO	4V4NC9TH8DN131645	TRACTOR	04/30/12

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6 Attorneys for Keeney Truck Lines, Inc.,  
Debtor-in-Possession

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re: ) Case No. 2:16-bk-26393-SK  
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12 KEENEY TRUCK LINES, INC. ) Chapter 11  
13 ) **MEMORANDUM OF POINTS AND**  
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26 ) **ASSIGNMENT OF CONTRACT**  
27 ) **WITH DEBTOR AND SOUTH**  
28 ) **COAST AIR QUALITY**  
 ) **MANAGEMENT DISTRICT**  
 )  
 ) Date: July 13, 2017  
 ) Time: 10:00 a.m.  
 ) Courtroom: 1575  
 ) Place: 255 E. Temple Street  
 ) Los Angeles, CA 90012  
 )  
 )  
 ) The Honorable Sandra R. Klein

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<i>In re Lionel Corp.</i> 722 F.2d 1063, 1071 (2d Cir. N.Y. 1983) . . . . .	- 7 -
<i>In re Wilde Horse Enterprises, Inc.</i> 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991) . . . . .	- 7 -
<i>Mutual Life Ins. Co. of New York v. Red Oak Farms, Inc. (In re Red Oak Farms, Inc.)</i> 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984) . . . . .	- 10 -
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1 Keeney Truck Lines, Inc., debtor and debtor-in-possession in this Chapter 11  
2 bankruptcy case ("Keeney" or "Debtor") submits this Memorandum of Points and  
3 Authorities in support of its Second Sale Motion for Order 1) Approving Sale of Estate  
4 Property and Agreements Thereon; 2) Authorizing Sale of Property Free and Clear of  
5 Liens; 3) Approving Marketing and Overbid Procedures; and 4) for Assumption and  
6 Assignment of Contract with Debtor and South Coast Air Quality Management District.

7 **I.**

8 **STATEMENT OF FACTS AND OF THE CASE**

9 This is Keeney's second motion regarding sales of its rolling stock and other  
10 equipment. Keeney filed the first motion May 11, 2017 (DN 74) and the Court heard the  
11 motion June 1, 2017 and June 7, 2017, granted the motion by an Order entered June 9,  
12 2017 (DN 98) authorizing the sale of Lots 1 and 3. That first overbid auction sale of Lots  
13 1 and 3 is scheduled to take place June 22, 2017 at 11:00 a.m.

14 The other two Lots, 2 and 4, were withheld from the first sale to resolve issues  
15 regarding liens against most of the vehicles in the two lots and for Keeney to properly  
16 notice one of the lien creditors, South Coast Air Quality Management District ("AQMD")  
17 and because there was not yet a buyer for Lot 4. As discussed below, the issue of the  
18 liens can be resolved as to both People's Capital and Leasing Corp. ("People's Capital" or  
19 "People's"), which holds liens against vehicles in both Lot 2 and Lot 4. The AQMD,  
20 holds liens against the same 10 vehicles as the People's lien but only vehicles in Lot 2.  
21 The AQMD lien may be resolved by the Debtor assuming the contract and with approval,  
22 assigning the present contract to the stalking horse bidder as the law provided for a sale  
23 free and clear of their liens. The liens of both creditors to attach sale proceeds as  
24 described below.

25 **A. Keeney's Pre-Petition and Post-Petition History**

26 Keeney's history as a California trucking corporation going back to 1945, its pre-  
27 petition business as a dry bulk carrier, its problems with increasing costs, and its post-  
28 petition decision to cease operations on May 31, 2017, is set forth in detail in its first sale

1 motion (see May 11, 2017 Points & Authorities in Support of Sale Motion, DN 74-1,  
2 pp.2-3). As the Court is aware, the first sale of Keeney’s rolling stock (Lots 1 and 3) is to  
3 take place on Thursday, June 22, 2017.

4 **B. Keeney’s Proposed Buyers for Lots 2 and 4**

5 **Lot 2 – Flour Transport**

6 Flour Transport, Inc., is a California corporation, whose stock is owned by  
7 Keeney’s Principal, Dan Hubbard (75% ownership of Flour Transport) and Robert  
8 Hubbard (a Keeney corporate officer) (25% ownership of Flour Transport). See Hubbard  
9 Decl. ¶4. Flour Transport is therefore an “affiliate” of Keeney as defined by §101(2)(B).  
10 The relationships and interactions between Dan Hubbard and Keeney (the Debtor) on the  
11 one hand and Flour Transport (the proposed purchaser or stalking horse) on the other  
12 hand, are advantageous to the estate and the creditors for the following reasons: Flour  
13 Transport and its operators (including Dan Hubbard) have considerable knowledge with  
14 respect to the tractors and trailers in Lot 2 that Keeney is proposing to sell. Most of the  
15 trailers are specially constructed and equipped to facilitate the dry bulk shipments which  
16 both Keeney and Flour Transport. Hubbard Decl. ¶6. Third, Flour Transport will operate  
17 in the same air quality control district as Keeney had operated and therefore, Flour  
18 Transport should be able to qualify and be in conformity with the AQMD requirement for  
19 assignment of the contract. Therefore, a sale of the 10 Freightliner tractors (part of Lot 2)  
20 to Flour Transport has an added benefit to the estate of relieving the estate of liability  
21 under the AQMD contract. Additionally, as the specialized trailers will be of considerable  
22 use to Flour Transport, this means it has offered a premium price for the package in Lot 2.  
23 See Hubbard Decl. ¶¶ 13 14. Because of its interest in obtaining Lot 2, Flour Transport  
24 has made the opening bid of \$350,000 and it will serve as a stalking horse bidder.

25 Keeney’s auctioneer, AGES Professional Services & Associates (“AGES”) will  
26 advertise the sale widely with respect to the regional trucking community, so that,  
27 between Flour Transport and any overbidders, the estate will receive the highest return  
28 which is practical under the circumstances. Hubbard Dec. ¶7, McCormack Decl.¶4.



1           **A.     AQMD**

2           AQMD holds liens on the ten Freightliners in Lot 2 pursuant to a Proposition 1B  
3 “Goods Movement Emission Reduction Program” contract (“AQMD”). The AQMD  
4 contract will expire in early-2018. See Exhibit C to Hubbard Dec. Flour Transport has  
5 offered to seek approval, assumption and assignment of the Debtor’s obligations on the  
6 AQMD Contract. Flour Transport will make the applications to AQMD, which if  
7 accepted, will allow for the sale of the Freightliners free and clear of its lien.

8           **B.     People’s Capital Liens**

9           People’s made a lending commitment and extended loans to Keeney under a  
10 Master Loan and Security Agreement No. 3881 (“Loan and Security Agreement”) dated  
11 May 6, 2015. The Loan and Security Agreement was extended to finance Keeney’s  
12 purchase of the 5 Volvos and the 10 Freightliners. To secure repayment of the Loan and  
13 Security Agreement, People’s took a security interest in 15 Trucks, perfecting by both  
14 taking possession of the titles and filing a financing statement with the California  
15 Secretary of State on May 5, 2015 as document number 15-7464768836. The total credit  
16 commitment under the Loan and Security Agreement was \$772,650 and the initial interest  
17 rate was 1.51%.

18           People’s filed a secured proof of claim in this bankruptcy case on March 10, 2017  
19 (Claim No. 7) (“People’s Claim”) in the amount of \$581,034.56 along with accruing  
20 interest and attorney’s fees. People’s Claim valued the 5 Volvos and 10 Freightliners  
21 together at a total of \$602,500.00. Keeney disputes both the total amount alleged to be  
22 owed in People’s Claim and the valuation of the Trucks. Further, Keeney disputes  
23 People’s interpretation of default provisions of the promissory note and the method of  
24 calculating default interest and penalties as well as the facts leading to the alleged defaults  
25 in two petition payments.

26           Keeney and People’s have been negotiating for a stipulation that may resolve their  
27 disputes over the exact amounts owed and the exact valuation of the Freightliners and  
28 Volvos. Their agreement, has not been completed.

1 Keeney seeks authority to sell the Freightliners and the Volvos upon the  
2 overbidding terms set forth below, through a public auction to be held on July 18, 2017.  
3 The trucks will all be sold to the highest bidders free and clear of People's liens pursuant  
4 to § 363(f)(2). Providing the parties can reach a stipulation. Alternatively, Keeney could  
5 file an objection to the claim filed by People's as a bona fide dispute does now exist as to  
6 the amount of the claim and the interruption of the loan contract terms, thus providing for  
7 a sale per 363(f)(4) in either scenario. Keeney seeks an order that People's release the  
8 truck titles and file a termination of its financing statement. In exchange Keeney shall  
9 place \$540,000 of the net sale proceeds from the sale of Lots 2 and 4 into a cash collateral  
10 account with Peoples's security interest attaching to these net auction sale proceeds, with  
11 the same force, effect and validity and priority as this creditor has in these 15 tractors.  
12 There shall be no disbursements from that proposed cash collateral account without  
13 People's consent or further order of the Court.

14 There are two lien claims on the 10 Freightliner tractors. One in favor of People's  
15 and the second in favor of AQMD. Debtor contends these UCC-1 recordings may further  
16 cloud title to these tractors, but that the Court can authorize the sale free of these liens for  
17 the reasons set forth above.

18 **C. The proposed sale and overbid procedures**

19 In order to maximize the value obtained by the estate for the Truck and Trailers,  
20 Keeney seeks Court approval of the following overbid procedures (the "Overbid  
21 Procedures") in connection with the proposed sale:

22 Lot 2 – Flour Transport has offered \$350,000 for Lot 2 and the minimum overbid  
23 for the lot will be will be 5% higher (\$367,500).

24 Lot 4 – TEC Equipment has offered \$182,500 for Lot 4 and the minimum overbid  
25 will be 5% higher (\$191,625).

26 To participate in the overbidding and auction, interested parties will be  
27 required to do the following:

28 1) Provide deposits equal to 10% of the initial offered amounts for each Lot, plus

1 the 5% initial overbid amount;

2 2) Sign a Purchase and Sale Agreement in substantially the form as signed by the  
3 initial bidder for that Lot;

4 3) Initial overbids on Lots 2 and 4 will be as indicated above; thereafter, bidding  
5 will go up in increments of 5% or as set by auctioneer so as to be commercially  
6 reasonable;

7 4) Pay the balance of successfully in good verified funds, i.e., cashier's check or  
8 wired funds within 48 hours of close of bidding.

9 5) Agree to collection of successful bid to AGES for collecting the funds in gross  
10 on behalf of Debtor, collection to include sales tax as is required by law;

11 6) Agree that if they are the winning/successful bidder and unable to consummate  
12 their purchase within 48 hours of closing of bidding, they will forfeit their deposit as  
13 liquidated damages to the estate;

14 7) Agree in a case of failure by the winning/successful bidder, the Lot will be  
15 made available to the next highest or runner up bidder; and

16 8) Agree that the auctioneer's fee will be 1.5% of the total of the final gross bids  
17 on each lot.

18 **III.**

19 **THERE IS GOOD CAUSE TO APPROVE THE PROPOSED SALE**

20 Section 363(b) provides a trustee (or debtor in possession) can sell the debtor's  
21 assets outside the ordinary course of business after notice and a hearing. FRBP 6004(a-c)  
22 specifies there is to be at least 21 days notice of the proposed hearing (in accordance with  
23 FRBP 2002) and that if the proposed sale is to be free and clear of liens, then it must be  
24 presented as a motion according to FRBP 9014. LBR 6004-1 requires the notice of sale  
25 and motion to include a description of overbidding procedures, if any, and of how the  
26 property has been marketed.

27 Bankruptcy courts have added detail and explanation to these requirements, ruling  
28 generally that motions to sell assets outside the ordinary course of business should be

1 evaluated by the following factors:

- 2 A. There must be a good business reason for the sale;
- 3 B. The sale would be in the best interests of the estate, including a fair and  
4 reasonable price;
- 5 C. The sale must have been adequately marketed;
- 6 D. The sale has been negotiated and proposed in good faith and at arms-length;
- 7 E. Finally, all parties in interest must have been given adequate and clear  
8 notice of the proposed sale.

9 *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841-42 (Bankr. C.D. Cal. 1991); *In re*  
10 *Delaware & Hudson Railway Co.*, 124 B.R. 169, 176-77 (D. Del. 1991). See also, *In re*  
11 *Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (a sale must  
12 be geared “to obtain the highest price or greatest overall benefit possible for the estate.”);  
13 *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. N.Y. 1983) (there must be a “good  
14 business reason” for a sale).

15 Keeney has satisfied each of these conditions.

16 **A. Business Reason for the Sale**

17 As discussed above and in the Hubbard Declaration, Keeney is no longer  
18 competitive in the California trucking industry and it anticipates a liquidating plan of  
19 reorganization. The instant sale will be the second step in this process. At the initial  
20 offered prices by the proposed buyers for Lots 2 and 4, the sale will bring net  
21 approximately \$532,500 into the estate. Those monies will be available through the plan  
22 for distribution to creditors. The sale will also eliminate the costs of maintaining and  
23 insuring the trucks and trailers being sold.

24 **B. The Sale is in the Best Interests of the Estate**

25 For the same reasons that Keeney has made a good business judgment in electing  
26 to sell the assets in Lots 2 and 4, it submits the sale is in the best interests of the estate  
27 because it maximizes the return on assets for the creditors. The proposed sale price for the  
28 two lots is fair and reasonable and it is in the estate’s interest based on: (1) the used

1 condition of the trucks, trailers and other assets being sold; (2) the special knowledge by  
2 the proposed buyers of Lots 2 and 4 regarding the value of the rolling stock included in  
3 those Lots; and (3) the fact that all the assets will be subject to competitive overbidding  
4 by anyone who believes they are worth more than the initial bid price – these assets will  
5 auctioned and this will demonstrably bring the best possible return on them.

6 **C. The Sale Will Have Been Adequately Marketed by the Time of the**  
7 **Hearing on this Motion**

8 As discussed above, and in the Hubbard and McCormack declarations, by the time  
9 the auction sale takes place, Keeney will have given notice of the sale to all the interested  
10 parties in this case. AGES, Keeney’s auctioneer, will have advertised the sale in all the  
11 relevant publications and websites that are commonly used to advertise sales of used  
12 commercial trucking assets. Therefore, by the time of the sale, the trucks and trailers will  
13 have been adequately exposed to the market providing an opportunity for overbidding.

14 **D. The Sale Has Been Negotiated in Good Faith and at Arms Length**

15 When a Bankruptcy Court authorizes a sale of assets pursuant to § 363(b)(1), it is  
16 required to make a finding with respect to the “good faith” of the purchaser. *In re Abbotts*  
17 *Dairies*, 788 F.2d 143, 149 (3d Cir. Pa. 1986). Such a procedure ensures that § 363(b)(1)  
18 will not be employed to circumvent creditor protections. *Id.* at 150. With respect to  
19 Keeney’s conduct in conjunction with the sale of the Trucks and Trailers, the good faith  
20 requirement focuses principally on whether there is any evidence of “fraud, collusion  
21 between the purchaser and other bidders or the [debtor], or an attempt to take grossly  
22 unfair advantage of other bidders.” *Abbotts Dairies*, 788 F.2d at 147.

23 Keeney and the proposed buyers have negotiated the terms of the proposed sales of  
24 Lots 2 and 4 in good faith. While the sale of Lot 2 involves an entity which is an affiliate  
25 of Keeney under the terms of § 101(2), as also discussed above, the specialized  
26 knowledge of Flour Transport regarding the vehicles it is buying has led them to make  
27 high initial bids on the vehicles. Additionally, Flour Transport proposes to purchase the  
28 vehicles subject to the obligation created by the Keeney/AQMD Prop. 1B Contract.

1 Hubbard Decl. ¶¶12 13.

2 As also noted above, the sale of Lot 4 to TEC Equipment is an entirely arms-length  
3 from the Debtor and its principals.

4 Finally, as to both lots, the interests of the estate and creditors are safeguarded by  
5 the fact each sale will be subject to overbidding. Hubbard Decl. ¶7, McCormack Decl.  
6 ¶2.

7 There has been no fraud or collusion in connection with the proposed sale of the  
8 Truck and Trailers in that Keeney and its auctioneer have sought and will continue to  
9 seek competitive bids for the Trucks and Trailers up through the hearing date on this  
10 Motion and beyond to the sales date of July 18, 2017. The proposed sale will be  
11 advertised to all who are most likely to be interested in purchasing the Vehicles and  
12 Equipment. No offer of purchase has been or will be ignored, and Keeney has taken  
13 reasonable steps to try to obtain the highest price possible for the Vehicles and  
14 Equipment.

15 **E. Notice: All Parties in Interest, and Interested Buyers, Will Receive**  
16 **Timely and Full Notice of the Proposed Sale**

17 As noted above, the Code and Rules require a notice of sale to include the date,  
18 time and place of any public sale, the terms and conditions of sale, and the time fixed for  
19 filing objections.

20 Keeney has complied with these requirements. Keeney has complied with FRBP  
21 6004(a) and 2002(a)(2), (c)(1), (i) and (k), as well as LBR 6004-1(c)(3), because the  
22 notice of the Motion that has been filed contemporaneously herewith (the“Notice”)  
23 includes all of the required information, including, without limitation, the date, time and  
24 place of the sale and the deadline for objecting thereto, and has been served on the United  
25 States Trustee, all of the Debtor’s known creditors, and all parties requesting special  
26 notice. Keeney has also complied with the requirements of LBR 6004-1(f) because it has  
27 filed the Notice and Form 6004-2 with the Clerk of the Bankruptcy Court for purposes of  
28 publication.

1 IV.

2 **THE COURT SHOULD APPROVE THE SALE FREE AND CLEAR OF LIENS,**  
3 **INTERESTS, AND ENCUMBRANCES**

4 The Bankruptcy Court has the power to authorize sale of the relevant Vehicles free  
5 and clear of liens or interests under § 363(f); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir.  
6 1990). Section 363(f) of the Bankruptcy Code permits a sale of property “free and clear  
7 of any interest in such property of an entity other than the estate” if any one of the  
8 following five conditions is met:

- 9 (1) applicable nonbankruptcy law permits sale of such property free and  
10 clear of such interest;  
11 (2) such entity consents;  
12 (3) such interest is a lien and the price at which such property is to be  
13 sold is greater than the aggregate value of all liens on such property;  
14 (4) such interest is in bona fide dispute; or  
15 (5) such entity could be compelled, in a legal or equitable proceeding, to  
16 accept a money satisfaction of such interest.

17 11 U.S.C. § 363(f). Section 363(f) is written in the disjunctive; therefore, if any one of the  
18 five conditions is satisfied, this will be sufficient to sell the property free and clear. *See*  
19 *e.g., Citicorp Homeowners Services, Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr.  
20 E.D. Pa. 1988); *Mutual Life Ins. Co. of New York v. Red Oak Farms, Inc. (In re Red Oak*  
21 *Farms, Inc.)*, 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984). Keeney has satisfied at least  
22 one: the claims of People’s Capital and the AQMD are the subject of a bona fide dispute  
23 by the Debtor.

24 V.

25 **ASSUMPTION AND ASSIGNMENT OF CONTRACT WITH DEBTOR AND**  
26 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

27 **A. Lot 2 and the AQMD Contract**

28 As noted above, the ten Freightliner tractors in Lot 2 are subject to the AQMD

1 Contract having to do with its “Goods Movement Emission Reduction Program.” Keeney  
2 is in compliance with its obligations under the contract, but because the contract imposes  
3 a lien on the Freightliners, the instant sale requires either assumption and assignment of  
4 the contract (and the liens) to the buyer, or, alternatively, rejection of the contract (and the  
5 lien) by paying the termination penalty specified in the contract itself. Keeney is seeking  
6 authority to move forward on both of these possibilities, and by this motion in accordance  
7 with the notice requirements of FRBP 6006(a) and (c).

8 **B. Assumption and assignment**

9 Flour Transport, the proposed buyer for Lot 2 (including the Freightliners) is able  
10 and willing to take the Freightliners subject to the AQMD Contract and Flour Transport is  
11 qualified to perform that contract and to continue in compliance with it through the end of  
12 the contract in February 2018. § 365(f)(2) permits a trustee to assume and assign an  
13 executory contract provided there has been no default and there is “adequate assurance of  
14 future performance” by the assignee. Both conditions will be satisfied here – Keeney is  
15 in compliance with the provisions of the contract – there is no default Hubbard Decl. ¶14;  
16 and Flour Transport can and will qualify to perform the AQMD Contract if it is assigned.  
17 Hubbard Decl. ¶14.

18 **C. Rejection and payment for termination**

19 Section 365(g) provides that rejection of an executory contract puts the trustee into  
20 immediate breach. However, the AQMD contract itself specifies the damages to be paid  
21 for any such breach. Paragraph 7.D., of the AQMD contract (Exhibit B to Hubbard  
22 Decl.) provides in relevant part that Keeney, as the “contractor” can terminate early by  
23 “return[ing] to AQMD a prorated share of the funds already pad under this Contract using  
24 the formula in Clause 8.8. below.” Paragraph 8.8 provides the “Reimbursement Formula  
25 for Early Termination” and, as explained in the Hubbard Decl. ¶15, according to  
26 Keeney’s calculations, because the contract is in its fifth year of a six year term, the  
27 termination formula calls for a payment between \$0.00 and \$65,000 to the AQMD.

28 Keeney is proposing under this motion to place \$65,000 of the sale proceeds into a

1 cash collateral account for the benefit of the AQMD, not to be disbursed or used for any  
2 other purpose, pending further order of the court on the precise amount owed to AQMD  
3 for early termination.

4 This process will protect the AQMD and it allows the court to order a sale free and  
5 clear of the AQMD's lien under § 363(f)(3) because the amount of the lien will be fully  
6 covered by the sale price.

7 **VI.**

8 **THE DEBTOR REQUESTS THAT THE COURT WAIVE THE 14-DAY**  
9 **WAITING PERIOD SET FORTH IN BANKRUPTCY RULE 6004(h)**

10 FRBP states an order authorizing the sale of property is stayed until the expiration  
11 of fourteen (14) days after entry of the order, unless the court orders otherwise. Here, in  
12 the event sale of the Truck and Trailers is successful, the prompt completion of the sale  
13 will be desired by the purchaser and it would avoid any risk associated with delay (such  
14 as the successful purchaser getting cold feet, losing its financing or otherwise being  
15 unable or unwilling to go through with the sale). The estate assets being sold are  
16 moveable vehicles – any purchaser desiring to have them will necessarily be in the  
17 trucking business and will be eager to have use of the Truck and Trailers at the earliest  
18 possible time. The terms of the sale and auction will have been noticed to all relevant  
19 parties before the hearing on Keeney's Motion, so that no interested purchaser or  
20 interested party in the bankruptcy case will be able to claim it did not have notice  
21 adequate enough to allow it to participate in the sale or to oppose the sale motion and  
22 therefore no one is likely to have a meritorious claim for delay in closing the sale  
23 (assuming the sale motion is granted).

24 Based on the foregoing, Keeney submits the 14-day stay of FRBP 6004(h) should  
25 be waived, permitting Keeney to close the sale of the Truck and Trailers without any  
26 hesitation or delay after the court approves such sale.

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**VII.**

**CONCLUSION**

**WHEREFORE**, Keeney respectfully requests the court enter an Order:

1. Finding the notice Keeney has given in connection with the proposed sales of the trucks, trailers, and equipment in Lots 2 and 4, and of the hearing on the Motion, is adequate, sufficient, proper, and complies with all applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules;
2. Granting the Motion in its entirety;
3. Approving the Overbid Procedures;
4. Authorizing Keeney to sell the Lot 2 tractors and trailers to Flour Transport or to a successful overbidder, free and clear of all liens, claims, and encumbrances;
6. Authorizing Keeney to sell the Lot 4 tractors to TEC Equipment or to a successful overbidder;
7. Authorizing Keeney to execute and deliver, on behalf of the Estate, any and all documents that may be reasonably necessary to consummate the sales of all the trucks, trailers, and other property;
8. Waiving the 14-day waiting period prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure;
9. Granting such other and further relief as may be necessary or appropriate under the circumstances; and
10. An Order authorizing Debtor to assume and assign the contract with South Coast Air Quality Management District, Prop.1B Contract.

Respectfully submitted,

LAW OFFICE OF WILLIAM P. FENNELL, APLC

Dated: June 22, 2017

By: /s/William P. Fennell  
William P. Fennell, Esq.  
Attorney for Debtor and Debtor in Possession

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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re: ) Case No. 2:16-bk-26393-SK  
11 KEENEY TRUCK LINES, INC. ) Chapter 11  
12 Debtor. ) **DECLARATION OF DAN HUBBARD**  
13 ) **IN SUPPORT OF SECOND SALE**  
14 ) **MOTION FOR ORDER:**

- 14 ) **1. APPROVING SALE OF ESTATE**  
15 ) **PROPERTY AND**  
16 ) **AGREEMENTS THEREON;**  
17 ) **2. AUTHORIZING SALE OF**  
18 ) **PROPERTY FREE AND CLEAR**  
19 ) **OF LIENS;**  
20 ) **3. APPROVING MARKETING**  
21 ) **AND OVERBID PROCEDURES;**  
22 ) **4. FOR ASSUMPTION AND**  
23 ) **ASSIGNMENT OF CONTRACT**  
24 ) **WITH DEBTOR AND SOUTH**  
25 ) **COAST AIR QUALITY**  
26 ) **MANAGEMENT DISTRICT**

23 ) Date: July 13, 2017  
24 ) Time: 10:00 a.m.  
25 ) Courtroom: 1575  
26 ) Place: 255 E. Temple Street  
Los Angeles, CA 90012

26 ) The Honorable Sandra R. Klein

27 ///

28 ///

1 I, Dan Hubbard, declare as follows:

2 1. I am the president, chief executive officer, and am the majority shareholder  
3 of the debtor in possession, Keeney Truck Lines, Inc. (“Debtor” or “Keeney”). As CEO,  
4 I am familiar with Keeney’s history, its day to day business operations, and all of its  
5 books and records. The records and documents referred to in this declaration constitute  
6 writings taken, made, or maintained in the regular or ordinary course of Keeney’s  
7 business at or near the time of the acts, conditions or events to which they relate by  
8 persons employed by Keeney who had a business duty to Keeney to accurately and  
9 completely take, make, and maintain such records and documents. The statements set  
10 forth in this declaration are based upon my own personal knowledge and my review of  
11 Keeney’s books and records. I have personal knowledge of the facts discussed in this  
12 declaration except where specifically indicated as being based on information and belief  
13 and as to those matters, I believe them to be true. If called as a witness, I could and  
14 would testify competently to the following:

15 2. Until it ceased business operations May 31, 2017, Keeney was a contract  
16 and common truckload carrier of dry van freight and commodities in dry bulk. Keeney  
17 suffered from significant financial stress over the past ten years which ultimately forced it  
18 to file this Chapter 11 proceeding. The continuing difficulties of operating post-petition  
19 led Keeney to cease operations. A more detailed statement of Keeney’s pre-petition  
20 business history is included in my May 11, 2017 declaration in support of the first sale  
21 motion (DN 74-2, pp. 2-5).

22 3. To maximize the payout to creditors, Keeney is liquidating its assets  
23 through the two sales, the first approved by the court during a hearing June 1, 2017 and  
24 took place June 22, 2017. The instant motion concerns the second of the two anticipated  
25 sales.

26 4. Flour Transport, Inc. has offered to purchase Lot 2. Flour Transport is a  
27 California corporation, whose stock is owned by me (75% ownership of Flour Transport)  
28 and my son, Robert Hubbard (a Keeney corporate officer) (25% ownership of Flour

1 Transport). I am informed and believe therefore this makes Flour Transport an “affiliate”  
2 of Keeney as defined by § 101(2)(B). A true and correct copy of the Purchase and Sale  
3 Agreement under which Flour Transport proposes to pay \$350,000 for Lot 2 is attached  
4 hereto as **Exhibit A**. Despite the relationships between Flour Transport and me and  
5 Robert Hubbard on the one hand, and Keeney Truck Lines, Inc. (the Debtor) on the other  
6 hand, I believe there is no grounds for concern about collusion or insufficient prices in the  
7 proposed sale, rather, for the reasons discussed in paragraph 6 below, I believe the  
8 relationship will actually enhance the value received by the bankruptcy estate.

9 5. Purchaser TEC Equipment, Inc. (“TEC Equipment”) is an Oregon  
10 corporation which sells new and used Mack, Hino, Isuzu and Volvo trucks (such as the  
11 ones in Lot 4). Neither Keeney nor any of its insiders and affiliates has any ownership  
12 relationship with TEC Equipment and the negotiations over Lot 4 were entirely arm’s  
13 length. In my business judgment, the price Keeney has negotiated with TEC Equipment  
14 will be a fair value sale. A true and correct copy of the Purchase and Sale Agreement  
15 under which TEC Equipment will pay \$182,500 for Lot 4 is attached hereto as **Exhibit B**.

16 6. The reason the proposed sale to Flour Transport will result in the best price  
17 for the estate is that the relationships between Keeney and Flour Transport means the  
18 proposed purchasers (Flour) has considerable knowledge with respect to the tractors,  
19 trailers and other items Keeney is proposing to sell as Lot 2. The trailers, in particular,  
20 are especially relevant to this point – most of them are specially constructed and equipped  
21 to facilitate the dry bulk shipments which Keeney and Flour Transport each handle.  
22 Therefore, the trailers will be of considerable use to Flour Transport and their interest in  
23 acquiring them means they have offered a premium prices for the package of trucks and  
24 trailers in Lot 2.

25 7. Moreover, because of their interest in obtaining the tractors, trailers, and  
26 other assets at the opening prices they have both offered, Flour Transport and TEC  
27 Equipment will serve as stalking horse bidders with respect to the proposed overbidding  
28 and auction on Lots 2 and 4. As discussed in the motion and in the declaration of

1 Keeney's auctioneer, AGES/Ken McCormack, AGES will advertise the sale widely with  
2 respect to the regional trucking community, so that, between Flour Transport, TEC  
3 Equipment, and any overbidders, the estate will receive the highest return which is  
4 practical under the circumstances.

5 8. As the court is aware, the Freightliners in Lot 2 and the Volvos in Lot 4 are  
6 liened to People's Capital and Leasing Corp. to secure the May 6, 2015 "Master Loan and  
7 Security Agreement No. 3881" ("Loan and Security Agreement") which is attached to  
8 People's proof of claim. The Loan and Security Agreement was extended to finance  
9 Keeney's purchase of the Volvos and the Freightliners.

10 9. People's March 10, 2017 (Claim No. 7) ("People's Claim") states People's  
11 is owed \$581,034.56 along with accruing interest and attorney's fees and People's Claim  
12 valued the Volvos and Freightliners together at \$602,500.00. Keeney does not agree with  
13 either the total amount owed in People's Claim nor the valuation of the Trucks. People's  
14 has also asserted there is a default with respect to the Loan and Security Agreement.  
15 Keeney disputes there is any default and disputes the amount People's claims as the  
16 default interest and penalties.

17 10. The monthly payment under the Loan and Security Agreement is  
18 \$14,096.80. Keeney was current on all payments on the date of the petition and is current  
19 now. The January and February 2017 payment weres made late to People's Capital; this I  
20 believe was caused by People's neglecting to make an automatic draw from the proper  
21 debtor in possession bank account, it had been advised to do by me. In any case, Keeney  
22 made, and People's accepted, a double payment of \$28,193.60 in March 2017, and the  
23 March payment timely, a week or so thereafter.

24 11. In conjunction with this question of default, Keeney also disagrees with  
25 People's regarding the total amount owed on the Loan and Security Agreement and the  
26 appropriate post-petition interest rate. People's has contended it is entitled to the higher,  
27 default rate permanently through the end of the contract or as a condition of Keeney  
28 assuming it, because of the single missed payment. As I explained above, however, the

1 late payment was made and accepted in March 2017 and the difference between the  
2 contract and default rate may be between \$50,000 and \$80,000.

3 12. While Keeney's attorneys have been engaged in negotiations with People's  
4 attorneys regarding an agreement for a sale free and clear, that agreement has not been  
5 completed.

6 13. The Freightliner tractors in Lot 2 are also subject to a lien in favor of the  
7 South Coast Air Quality Management District ("AQMD") pursuant to a May 23, 2012  
8 Proposition 1B "Goods Movement Emission Reduction Program" contract ("AQMD  
9 Contract"). A true and correct copy of the AQMD contract is attached to this Declaration  
10 as **Exhibit C**.

11 14. The AQMD Contract will by its terms, expire in early-2018. Keeney is  
12 current and has been current under its obligations to AQMD throughout the life of the  
13 AQMD Contract. As principal for the proposed buyer, Flour Transport, I can attest it is  
14 qualified to comply with all the AQMD Contract provisions and it will apply for approval  
15 by the AQMD if it is the successful bidder on Lot 2.

16 15. Alternatively, the AQMD Contract itself specifies the damages to be paid if  
17 Keeney wishes to exit the contract early. Paragraph 7.D., of the AQMD Contract  
18 provides in relevant part that Keeney, as the "contractor" can terminate early by  
19 "return[ing] to AQMD a prorated share of the funds already paid under this Contract  
20 using the formula in Clause 8.8. below." Paragraph 8.8 provides the "Reimbursement  
21 Formula for Early Termination." My calculation, using the formula in the AQMD  
22 contract is that the early-termination payment may be calculated to be as low as \$0.00 and  
23 no higher than \$65,000. I declare under penalty of perjury under the laws of the  
24 United States of America that the foregoing is true and correct and that this declaration  
25 was executed this 22<sup>nd</sup> day of June 2017 at Los Angeles, California.

26  
27   
28 Dan Hubbard

# EXHIBIT A

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between Keeney Truck Lines, Inc., Debtor in Possession in Chapter 11 Bankruptcy Case No. 2:16-bk-26393-SK, Central District of California ("Keeney" or "Debtor") and Flour Transport, Inc., a California Corporation ("Flour Transport").

### RECITALS

- A. Keeney is a motor carrier in intrastate and interstate commerce and it filed its Chapter 11 bankruptcy case on December 14, 2016.
- B. Flour Transport wishes to purchase the tractors, trailers, and equipment belonging to Keeney which are listed in Exhibit A attached to this Agreement.
- C. Keeney wishes to sell the tractors, trailers, and equipment to the highest bidder to maximize return for its bankruptcy estate and creditors.
- D. Keeney has agreed to sell the tractors, trailers, and equipment to Flour Transport on the terms contained in this Agreement, subject to the necessity of bankruptcy court approval and the allowance of interested parties to overbid the amount Flour Transport has offered.

NOW, THEREFORE, IN CONSIDERATION of the provisions contained in this Agreement, the Parties agree as follows:

### 1. Definitions.

The following definitions apply in the Agreement:

- a. The "Assets" to be acquired by Flour Transport as buyer hereunder are set forth on Exhibit A attached hereto.
- b. "Closing" means the completion of the purchase and sale of the Assets as described in this Agreement by the payment of the agreed consideration, and the transfer of title to the Assets.

- c. "Parties" means Keeney as seller and Flour Transport as buyer where it is necessary to refer to them collectively.

## **2. Sale.**

Subject to the terms and conditions of this Agreement, Keeney agrees to sell the Assets listed on Exhibit A hereto to Flour Transport, which agrees to purchase them.

## **3. Purchase Price.**

Flour Transport shall pay to Keeney as Debtor in Possession as the Purchase Price for the Assets the sum of Three Hundred Fifty Thousand dollars (\$350,000). Flour Transport shall make a 10% (\$35,000) deposit against the Purchase Price upon execution of this Agreement.

## **4. Sale to be Free and Clear of Liens**

As indicated in Exhibit A, each of the ten Freightliner tractors being sold ("the Freightliners") (listed as equipment numbers 847-856 on Exhibit A), is liened to secure Keeney's obligations to Peoples Capital and Leasing Corp. ("Peoples Capital"). The Freightliners will be sold to Flour Transport, or the successful overbidder, free and clear of those liens, with Peoples Capital's liens attaching to the sale proceeds. Keeney will seek Peoples Capital's stipulation to the sale free and clear, or, alternatively, Keeney will move the bankruptcy court for an order deeming the sale to be free and clear.

## **5. Bankruptcy Court Approval Required.**

Flour Transport acknowledges and agrees that the bankruptcy court must approve Keeney's sale of the Assets and Keeney promises its best efforts to obtain the court's approval. In the event the court will not approve this agreement, or if the court will not authorize sale of the Freightliners free and clear of liens, Keeney will have no obligation to sell the Assets to Flour Transport, and, aside from a refund of any deposits Flour Transport has made with Keeney, Flour Transport will have no further rights of any kind under this Agreement or with respect to the Assets.

## **6. Sale Subject to Overbidding.**

Flour Transport acknowledges and agrees that the Assets will be offered for public auction on the terms below and are subject to purchase by any third party offering a bid higher than Flour Transport's \$350,000 offer (as specified in paragraph 3 above).

Keeney's auctioneer, AGES, shall hold a public auction of the Assets on June 22, 2017 on the following terms:

- a. All interested parties must make the same \$35,000 deposit Flour Transport has made in order to bid;
- b. The initial overbid will be a minimum of 10% over Flour Transport' original \$350,000 offer;
- c. Any further overbids must be at least 10% higher than the preceding bid;
- d. Deposits of unsuccessful bidders will be returned;
- e. Winning bidders will be required to pay the balance of funds within 48 hours;
- f. If the winning bidder is unable to consummate their purchase, they will forfeit their deposit as liquidated damages to the benefit of the estate;
- g. If the winning bidder is unable to consummate their purchase, the Assets will be offered to the runner up bidder.

## **7. Closing.**

The Closing of the purchase and sale of the Assets will take place immediately after the public auction on June 22, 2017 (the "Closing Date").

If at Closing Flour Transport is the successful buyer, Flour Transport will pay the Purchase Price in full to Keeney by cashier's check or wire transfer and Keeney

will deliver the Assets to Flour Transport along with a bill of sale and, if applicable, Department of Motor Vehicle title documents signed over to Flour Transport. It will be the responsibility of Flour Transport (or the successful overbidder) to complete the paperwork and filings necessary to transfer ownership and registration of the assets; Keeney will co-operate and assist with respect to the re-titling and re-registration, but the ultimate responsibility is that of the buyer.

Flour Transport shall be responsible for paying all applicable taxes, including federal sales tax, state sales tax, duties, and any other taxes or charges payable that are necessary to give effect to the transfer of the Assets from Keeney to Flour Transport.

#### **8. Keeney's Representations and Warranties as Seller.**

Keeney represents and warrants the following:

Keeney has full legal title over the Assets necessary to transfer them to Flour Transport as buyer.

Keeney shall make every reasonable effort to obtain the agreement of Peoples Capital to a sale free and clear of liens and the approval from the Bankruptcy Court for the sale of the Assets to Flour Transport (or any successful overbidder).

Save for the pending authorization of this sale by the Bankruptcy Court and the anticipated agreement of People's Capital, Keeney has all necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under it. The execution and delivery of this Agreement and sale of the assets has been duly authorized by all necessary action on Keeney's part, including approval by a majority interest of the shareholders and the board of directors.

Keeney has not agreed to sell the Assets to any other buyer prior to entering into this Agreement.

Keeney has maintained the Assets in proper registration with the California Department of Motor Vehicles and the federal Department of Transportation and there are no claims against any of the Assets for unpaid registrations or for any accidents and injury to either people or property.

The representations and warranties given in this Agreement are the only representations and warranties. No other representation or warranty, either express or implied, has been given by Keeney to Flour Transport, including, without limitation, any representations or warranties regarding the merchantability of the Assets or their fitness for a particular purpose, including, but not limited to, no warranty is made about the fitness of the vehicles to pass smog inspections or any other legal registration requirements.

#### **9. Reasonable Inspection Access to Assets.**

Upon reasonable request of Flour Transport, Keeney will, from time to time, allow Flour Transport and its agents, counsel, accountant, employees, or other representatives to have access to the Assets and to all records concerning their titling and maintenance.

#### **10. Notices.**

All notices under this Agreement shall be in writing and shall be deemed effective on the date of delivery if delivered personally (and a receipt obtained therefore), or by email (with a reply that confirms delivery), or on the third calendar day after mailing if mailed by first class mail, registered or certified, postage prepaid, and shall be addressed as follows (or as may be amended by a written communication delivered pursuant to this paragraph):

For Keeney:

c/o William P. Fennell  
Charles F. Bethel  
Law Office of William P. Fennell, APLC  
401 West A Street, Suite 1800  
San Diego, CA 92101  
Phone: (619) 325-1560  
Fax: (619) 325-1558  
william.fennell@fennelllaw.com

For Flour Transport:

Dan Gaston  
Larson & Gaston LLP  
200 S Los Robles Ave #530  
Pasadena, CA 91101  
Phone: (626) 795-6001  
Fax: (626) 795-0016  
Dan Gaston <daniel.gaston@larsongaston.com>

### **11. Facsimile and Email Validity.**

The Parties hereto agree that if this Agreement is executed via facsimile or scanned by electronic mail, that the copy shall have the same validity as an original for all purposes including but not limited to use of the procedures for settling a dispute. The copy shall be used in place and stead of the original until such time that an original is received by the Party receiving an executed copy hereof via facsimile or electronic mail.

### **12. Multiple Counterparts.**

This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

### **13. Severability.**

If any part of this Agreement is held by a court of competent jurisdiction to be invalid, it is the intent of the Parties that such provision be reduced in scope only to the extent deemed necessary to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected or invalidated as a result.

### **14. Governing Law and Dispute Resolution.**

This Agreement shall be governed by and construed in accordance with the California law on contracts. The United States Bankruptcy Court for the Central

District of California shall be the exclusive forum and venue for any disputes involving this Agreement.

**15. Construction and Interpretation.**

Keeney and Flour Transport, along with their respective counsel, have each been involved in the drafting of and negotiation of the terms of this Agreement. Because Keeney and Flour Transport, and their respective counsel, were involved in drafting this Agreement, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

**16. Entire Agreement.**

This Agreement contains all terms and conditions agreed to by the Parties for the sale of the Assets and it supersedes any and all negotiations, promises, inducements, representations, statements or understandings not expressly contained herein.

**17. Amendments Must Be in Writing.**

This Agreement may only be amended or modified by a subsequent written instrument executed by both Parties.

**18. No Right of Unilateral Assignment.**

This Agreement will not be assigned either in whole or in part by either Party without the written consent of the other Party.

**19. No Accumulation of Waivers.**

A waiver by one Party of any right or benefit provided in this Agreement does not imply, constitute, or permit a further waiver of that right or benefit, nor does it

imply, constitute, or permit a waiver of any other right or benefit provided in this Agreement.

**20. Remedies Cumulative.**

All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity.

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consummation of this Agreement and shall continue in full force and effect until fully performed and satisfied.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Keeney Truck Lines, Inc. (Seller)

Dated: 5/10/17  
By: [Signature]  
Dan Hubbard, President

Pallets Plus, Inc.

Dated: 5/10/17  
By: [Signature]  
Dan Hubbard, President

Approved as to form:

LAW OF OFFICE WILLIAM P. FENNELL, APLC

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
William P. Fennell  
Attorneys for Keeney Truck Lines, Inc., Debtor in Possession

Larson & Gaston, LLP

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Dan Gaston  
Attorneys for Pallets Plus, Inc.

consummation of this Agreement and shall continue in full force and effect until fully performed and satisfied.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Keeney Truck Lines, Inc. (Seller)

Dated: 5/10/17  
By: [Signature]  
Dan Hubbard, President

Flour Transport, Inc.

Dated: 5/10/17  
By: [Signature]  
Dan Hubbard, President

Approved as to form:

LAW OF OFFICE WILLIAM P. FENNELL, APLC

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
William P. Fennell

Attorneys for Keeney Truck Lines, Inc., Debtor in Possession

Larson & Gaston, LLP

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Dan Gaston

Attorneys for Flour Transport, Inc.

# EXHIBIT A

**Flour Transport, Inc.**

Bid list for Keeney Rolling Stock  
TRACTOR LIST

REVISED: 3/13/17

EQUIPMENT NUMBER	LICENSE	YEAR	MAKE	VIN	TYPE	DATE	Bid Amount
						PURCHASED	
807	UP41356	2005	INTERNATIONAL	3HSCEAHR75N004284	TRACTOR	08/20/04	\$5,000
808	UP41357	2005	INTERNATIONAL	3HSCEAHR95N004285	TRACTOR	08/20/04	\$5,000
847	9E97309	2013	FREIGHTLINER	3AKJGBD49DSFE4277	TRACTOR	10/29/12	\$31,000
848	9E97310	2013	FREIGHTLINER	3AKJGBD40DSFE4278	TRACTOR	10/29/12	\$31,000
849	9E97311	2013	FREIGHTLINER	3AKJGBD42DSFE4279	TRACTOR	10/29/12	\$31,000
850	9E97312	2013	FREIGHTLINER	3AKJGBD49DSFE4280	TRACTOR	10/29/12	\$31,000
851	9E97313	2013	FREIGHTLINER	3AKJGBD40DSFE4281	TRACTOR	10/29/12	\$31,000
852	9E97314	2013	FREIGHTLINER	3AKJGBD42DSFE4282	TRACTOR	10/29/12	\$31,000
853	9E97315	2013	FREIGHTLINER	3AKJGBD44DSFE4283	TRACTOR	10/29/12	\$31,000
854	9E97316	2013	FREIGHTLINER	3AKJGBD46DSFE4284	TRACTOR	10/29/12	\$31,000
855	9E97317	2013	FREIGHTLINER	3AKJGBD48DSFE4285	TRACTOR	10/29/12	\$31,000
856	9E87930	2013	FREIGHTLINER	3AKJGBD4XDSFE4286	TRACTOR	10/29/12	\$31,000

**TRAILER LIST**

223	1UN3080	1988	FRUEHAUF	1H4V048227J023501	VAN	02/01/88	2500
241	1US9375	1990	FRUEHAUF	1H4V04828LJ011201	VAN	09/21/89	2500
261	1VE8222	1993	TRAILMOBILE	1PTO1JRJ1P9006801	VAN W/LIFT GATE	01/27/93	4000
274	1VZ5822	1990	GREAT DANE	1GRAA9626LS100701	VAN W/LIFT GATE	04/16/97	4000
275	1VZ5821	1990	GREAT DANE	1GRAA962XLS100703	VAN W/LIFT GATE	04/16/97	4000
276	1VZ5823	1990	GREAT DANE	1GRAA9621LS100704	VAN W/LIFT GATE	04/16/97	4000
289	1UV2285	1990	MONON	1NNVF452XLM142022	VAN W/LIFT GATE	10/08/98	4000
364	4BD6568	2001	TRAILMOBILE	1PTO1JRH719005849	VAN	06/30/01	2500
365	4BD6567	2001	TRAILMOBILE	1PTO1JRH318005850	VAN	06/30/01	2500

\$350,000

# EXHIBIT B

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between Keeney Truck Lines, Inc., Debtor in Possession in Chapter 11 Bankruptcy Case No. 2:16-bk-26393-SK, Central District of California ("Keeney" or "Debtor") and TEC Equipment, Inc., an Oregon Corporation ("TEC Equipment").

### RECITALS

- A. Keeney is a motor carrier in intrastate and interstate commerce and it filed its Chapter 11 bankruptcy case on December 14, 2016.
- B. TEC Equipment wishes to purchase the Volvo tractors ("the Volvos") belonging to Keeney which are listed in Exhibit A attached to this Agreement.
- C. Keeney wishes to sell the Volvos to the highest bidder to maximize return for its bankruptcy estate and creditors.
- D. Keeney has agreed to sell the Volvos to TEC Equipment on the terms contained in this Agreement, subject to the necessity of bankruptcy court approval and the allowance of interested parties to overbid the amount TEC Equipment has offered.

NOW, THEREFORE, IN CONSIDERATION of the provisions contained in this Agreement, the Parties agree as follows:

#### 1. Definitions.

The following definitions apply in the Agreement:

- a. The "Volvos" to be acquired by TEC Equipment as buyer are listed with their license numbers and VINS on Exhibit A attached hereto.
- b. "Closing" means the completion of the purchase and sale of the Volvos as described in this Agreement by the payment of the agreed consideration, and the transfer of title to the Volvos.
- c. "Parties" means Keeney as seller and TEC Equipment as buyer where it is necessary to refer to them collectively.

#### 2. Sale.

Subject to the terms and conditions of this Agreement, Keeney agrees to sell the Volvos listed on Exhibit A to TEC Equipment and TEC Equipment agrees to purchase them.

### **3. Purchase Price.**

TEC Equipment shall pay to Keeney as Debtor in Possession as the Purchase Price for the Volvos the sum of One Hundred Eighty Two Thousand Five Hundred Dollars (\$182,500) for the Volvos (representing a unit price of \$36,500 per tractor).

### **4. Sale to be Free and Clear of Liens**

Each of the Volvos is liened to secure Keeney's obligations to People's Capital and Leasing Corp. ("People's Capital"). The Volvos will be sold to TEC Equipment, or the successful overbidder, free and clear of those liens and People's Capital's liens will attach to the sale proceeds. Keeney will seek People's Capital's stipulation to the sale free and clear, or, alternatively, Keeney will move the bankruptcy court for an order deeming the sale to be free and clear.

### **5. Bankruptcy Court Approval Required.**

TEC Equipment acknowledges and agrees that the bankruptcy court must approve Keeney's sale of the Volvos and Keeney promises its best efforts to obtain the court's approval. In the event the court will not approve this agreement, or if the court will not authorize sale of the Volvos free and clear of liens, Keeney will have no obligation to sell the Volvos to TEC Equipment, and, aside from a refund of any deposits TEC Equipment has made with Keeney, TEC Equipment will have no further rights of any kind under this Agreement or with respect to the Volvos.

### **6. Sale Subject to Overbidding.**

TEC Equipment acknowledges and agrees that the Volvos will be offered for public auction on the terms below and are subject to purchase by any third party offering a bid higher than TEC Equipment's \$182,500 offer (as specified in paragraph 3 above).

Keeney's auctioneer, AGES, shall hold a public auction of the Volvos on July 18, 2017 on the following terms:

- a. In order to bid, all interested parties must make a deposit equal to 10% of the initial price.
- b. The initial overbid will be a minimum of 5% over TEC Equipment's original offer (i.e., \$191,625);
- c. Any further overbids must be at least 5% higher than the preceding bid;
- d. Deposits of unsuccessful bidders will be returned;
- e. Winning bidders will be required to pay the balance of funds within 48 hours;
- f. If the winning bidder is unable to consummate their purchase, they will forfeit their deposit as liquidated damages to the benefit of the estate;

- g. If the winning bidder is unable to consummate their purchase, the Volvos will be offered to the runner up bidder.

#### **7. Closing.**

The Closing of the purchase and sale of the Volvos will take place immediately after the public auction on July 18, 2017 (the "Closing Date").

If at Closing TEC Equipment is the successful buyer, TEC Equipment will pay the Purchase Price in full to Keeney by cashier's check or wire transfer and Keeney will deliver the Volvos to TEC Equipment along with a bill of sale and Department of Motor Vehicle title documents signed over to TEC Equipment. It will be the responsibility of TEC Equipment (or the successful overbidder) to complete the paperwork and filings necessary to transfer ownership and registration of the Volvos; Keeney will co-operate and assist with respect to the re-titling and re-registration, but the ultimate responsibility is that of the buyer.

TEC Equipment shall be responsible for paying all applicable taxes, including federal sales tax, state sales tax, duties, and any other taxes or charges payable that are necessary to give effect to the transfer of the Volvos from Keeney to TEC Equipment.

#### **8. Keeney's Representations and Warranties as Seller.**

Keeney represents and warrants the following:

Keeney has full legal title over the Volvos necessary to transfer them to TEC Equipment as buyer.

Keeney shall make every reasonable effort to obtain the agreement of Peoples Capital to a sale free and clear of liens and the approval from the Bankruptcy Court for the sale of the Volvos to TEC Equipment (or any successful overbidder).

Save for the pending authorization of this sale by the Bankruptcy Court and the anticipated agreement of People's Capital, Keeney has all necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under it. The execution and delivery of this Agreement and sale of the Volvos has been duly authorized by all necessary action on Keeney's part, including approval by a majority interest of the shareholders and the board of directors.

Keeney has not agreed to sell the Volvos to any other buyer prior to entering into this Agreement.

Keeney has maintained the Volvos in proper registration with the California Department of Motor Vehicles and the federal Department of Transportation and there are no claims against any of the Volvos for unpaid registrations or for any accidents and injury to either people or property.

The representations and warranties given in this Agreement are the only representations and warranties. No other representation or warranty, either express or implied, has been given by Keeney to TEC Equipment, including, without limitation, any representations or warranties regarding the merchantability of the Volvos or their fitness for a particular purpose, including, but not limited to, no warranty is made about the fitness of the vehicles to pass smog inspections or any other legal registration requirements.

### **9. Reasonable Inspection Access to Volvos.**

Upon reasonable request of TEC Equipment, Keeney will, from time to time, allow TEC Equipment and its agents, counsel, accountant, employees, or other representatives to have access to the Volvos and to all records concerning their titling and maintenance.

### **10. Notices.**

All notices under this Agreement shall be in writing and shall be deemed effective on the date of delivery if delivered personally (and a receipt obtained therefore), or by email (with a reply that confirms delivery), or on the third calendar day after mailing if mailed by first class mail, registered or certified, postage prepaid, and shall be addressed as follows (or as may be amended by a written communication delivered pursuant to this paragraph):

For Keeney:

c/o William P. Fennell, Esq.  
Charles F. Bethel, Esq.  
Law Office of William P. Fennell, APLC  
401 West A Street, Suite 1800  
San Diego, CA 92101  
Phone: (619) 325-1560  
Fax: (619) 325-1558  
william.fennell@fennelllaw.com

For TEC Equipment:

Jon Cinquegrani  
Used Truck Sales  
TEC Equipment  
14166 Valley Blvd  
Fontana, CA 92335  
Office: 909.427.8090 x7619 | Cell: 213.308.7328  
JCinquegrani@tecequipment.com

### **11. Facsimile and Email Validity.**

The Parties hereto agree that if this Agreement is executed via facsimile or scanned by electronic mail, that the copy shall have the same validity as an original for all purposes including but not limited to use of the procedures for settling a dispute. The copy shall be used in place and stead of the original until such time that an original is received by the Party receiving an executed copy hereof via facsimile or electronic mail.

### **12. Multiple Counterparts.**

This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

**13. Severability.**

If any part of this Agreement is held by a court of competent jurisdiction to be invalid, it is the intent of the Parties that such provision be reduced in scope only to the extent deemed necessary to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected or invalidated as a result.

**14. Governing Law and Dispute Resolution.**

This Agreement shall be governed by and construed in accordance with the California law on contracts. The United States Bankruptcy Court for the Central District of California shall be the exclusive forum and venue for any disputes involving this Agreement.

**15. Construction and Interpretation.**

Keeney and TEC Equipment have each been involved in the drafting of and negotiation of the terms of this Agreement. Because Keeney and TEC Equipment were involved in drafting this Agreement, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

**16. Entire Agreement.**

This Agreement contains all terms and conditions agreed to by the Parties for the sale of the Volvos and it supersedes any and all negotiations, promises, inducements, representations, statements or understandings not expressly contained herein.

**17. Amendments Must Be in Writing.**

This Agreement may only be amended or modified by a subsequent written instrument executed by both Parties.

**18. No Right of Unilateral Assignment.**

This Agreement will not be assigned either in whole or in part by either Party without the written consent of the other Party.

**19. No Accumulation of Waivers.**

A waiver by one Party of any right or benefit provided in this Agreement does not imply, constitute, or permit a further waiver of that right or benefit, nor does it imply, constitute, or permit a waiver of any other right or benefit provided in this Agreement.

**20. Remedies Cumulative.**

All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity.

**21. Survival of Executory Provisions.**

Any and all executory provisions under this Agreement shall survive the consummation of this Agreement and shall continue in full force and effect until fully performed and satisfied.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on

this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Keeney Truck Lines, Inc. (Seller)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Dan Hubbard, President

TEC Equipment, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jon Cinquegrani, Vice President

## EXHIBIT A

<b>EQUIPMENT NUMBER</b>	<b>LICENSE</b>	<b>YEAR</b>	<b>MAKE</b>	<b>VIN</b>	<b>TYPE</b>	<b>DATE PURCHASED</b>
842	WP40764	2013	VOLVO	4V4NC9TH0DN131641	TRACTOR	04/30/12
843	WP40765	2013	VOLVO	4V4NC9TH2DN131642	TRACTOR	04/30/12
844	WP40766	2013	VOLVO	4V4NC9TH4DN131643	TRACTOR	04/30/12
845	WP40767	2013	VOLVO	4V4NC9TH6DN131644	TRACTOR	04/30/12
846	WP40768	2013	VOLVO	4V4NC9TH8DN131645	TRACTOR	04/30/12

# EXHIBIT C



# South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178  
(909) 396-2000 • www.aqmd.gov

August 2, 2012

Dear Prop 1B Contractor:

Subject: Prop 1B Contract

Enclosed is your fully executed original of the above-mentioned contract to replace heavy-duty diesel truck(s) under the FY 2008-09 YR 2 Proposition 1B Program. Please do the following:

### **Step 1 - Order Replacement Truck**

Upon notification by AQMD that your old truck passed the pre-inspection, you may proceed with ordering your new replacement truck. When placing your order, please be sure to order the appropriate replacement truck that meets the approved weight classification and CARB-certified NOx emission level identified in your contract. The deadline for ordering your new replacement truck is **August 31, 2012**.

***Please note: You may order the new replacement truck before the satisfactory completion of a pre-inspection at your own risk.***

### **Step 2 - Post-Inspection**

The new replacement truck must be inspected by AQMD to verify it meets the specifications in your approved application. Grant funds will not be paid until the satisfactory completion of a post-inspection by AQMD.

### **Step 3 - Provide Insurance**

Submit a Certificate of Liability Insurance to AQMD (see Clause 10 of the contract) upon purchase of the new replacement truck.

To schedule a pre-inspection of your old truck or a post-inspection of your new replacement truck, please call Lizette Acosta at (909) 396-3014.

Future correspondence for this contract, including invoices and progress reports, should be sent to the attention of Prop 1B Contracts Administration, AQMD, Technology Advancement.

Sincerely,

Contracts Administration  
Technology Advancement Office  
Science & Technology Advancement

FM:VW:AT  
Attachments



# Air Quality Management District

Proposition 1B: Goods Movement  
Emission Reduction Program-Purchase

This Contract consists of 20 pages.

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District ("AQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and Keeney Truck Lines, Inc. (referred to here as "CONTRACTOR") whose address is 3500 Fruitland Avenue, Maywood, CA 90270.

2. **RECITALS**

- A. In November 2006, California voters approved the Highway Safety, Traffic Reduction, Air Quality and The Port Security Bond Act of 2006, also known as Proposition 1B that, among other things, provided \$1 billion to reduce emissions associated with the movement of freight along California's trade corridors. To establish standards and procedures for the expenditure of these funds, the Legislature adopted and the Governor signed Senate Bill 88 (Stats. 2007, ch. 181) creating the Proposition 1B: Goods Movement Emission Reduction Program ("Program"). Under the Program, the California Air Resources Board ("CARB") is authorized to appropriate \$1 billion to quickly reduce air pollution emissions and health risk from freight movement along California's priority trade corridors. CARB has adopted guidelines and criteria for the Program's implementation entitled, "Final 2010 Guidelines for Implementation, March 2010," as well as resolutions and executive orders for specific equipment categories (collectively referred to here as "Program Guidelines"), each of which are incorporated herein by reference. Copies of the Program Guidelines may be obtained from AQMD or at CARB's website at: <http://www.arb.ca.gov/bonds/gmbond/gmbond.htm>.
- B. AQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. AQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. Through this Program-funded Contract, CONTRACTOR agrees to participate in the Program, and AQMD and CARB agree to partially fund the project described in Attachment 1 – Statement of Work ("Project"), attached hereto and made a part hereof, to generate cost-effective and early or extra emission reductions within the State of California.
- C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
- D. "Equipment," as used in this Contract, means the equipment described in Attachment 1 – Statement of Work and funded in whole or in part by the Program, which may include, but is not limited to, trucks, engines, marine vessels, retrofit devices, electrification infrastructure, cargo handling equipment and/or locomotives, as applicable.

3. **PERFORMANCE REQUIREMENTS**

- A. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees. CONTRACTOR further agrees to immediately notify AQMD in writing of any change in its licensing status which has a material impact on the CONTRACTOR's performance under this Contract.
- B. CONTRACTOR shall submit reports to AQMD as outlined in Attachment 1 - Statement of Work. AQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
- C. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with the duties and responsibilities set forth in Attachment 1 - Statement of Work.
- D. CONTRACTOR shall require its subcontractors to abide by the requirements set forth in this Contract.

4. **TERM** - The term of this Contract is from the last date of execution by the parties, which shall be considered the effective date, to February 28, 2018, unless it terminates earlier as provided in Clause 7 – Termination. CONTRACTOR assumes all financial risk and is in no way guaranteed Program funds for this project prior to the effective date of this Contract. The Contract term shall encompass both the project completion and project implementation/life periods, as referenced in Attachment 1 – Statement of Work, whichever is longer, to ensure that

the AQMD and CARB can fully enforce this Contract during the life of this Goods Movement Emission Reduction Program-funded Project.

- A. Project Completion – Project completion is the time frame starting with the effective date of this Contract to the date of project completion, i.e., the date the Project becomes operational as set forth in Attachment 1-Statement of Work. This includes the time period when the Equipment described in Attachment 1 – Statement of Work is ordered, delivered and/or installed, as applicable. .
  - B. Project Implementation/Life – The project implementation time frame is the second part of the Contract term and equals the project life, which is the number of years that the Equipment must operate as specified in Attachment 1 – Statement of Work to obtain early or extra emission reductions that are cost-effective. CONTRACTOR is required to operate and maintain the Program-funded Equipment according to the terms of this Contract for the full project implementation period.
5. TIME PERIOD FOR CONTRACT EXECUTION – This Contract must be signed by CONTRACTOR and received by AQMD no later than the deadline set forth in Attachment 1A. Failure to timely sign and return the Contract to AQMD may result in the withdrawal of the award.
6. TIME IS OF THE ESSENCE – Time is of the essence with respect to all provisions of this Contract that specify a time for performance.
7. TERMINATION
- A. CONTRACTOR's failure to comply with any term or condition of this Contract shall constitute a material breach of this Contract. The AQMD will either notify the CONTRACTOR that it must timely cure this breach, or provide ten (10) days' written notification of AQMD's intention to terminate this Contract and invoke the penalties under Clause 17. The AQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
  - B. Notwithstanding sub-Clause 7A, this Contract may be terminated prior to completion of the Contract term if the Equipment becomes inoperable through mechanical failure of components or systems and cannot be repaired or replaced and such failure is not caused by CONTRACTOR's negligence, misuse or malfeasance, or if the Equipment has been stolen, as confirmed by a police report and an insurance determination of loss due to theft. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of AQMD. Should CONTRACTOR desire to terminate this Contract under this sub-Clause, CONTRACTOR shall return to AQMD a prorated share of the funds already paid under this Contract using the formula established in Clause 8.A. below.
  - C. AQMD reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as otherwise directed by AQMD, discontinue any work being performed under this Contract and cancel all of CONTRACTOR'S orders in connection with such work, and shall use its best efforts to terminate existing subcontracts upon terms satisfactory to the AQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by AQMD. CONTRACTOR shall also promptly deliver to AQMD all copies of documentation and other information and data prepared or developed by CONTRACTOR under this Contract. CONTRACTOR will be paid in accordance with this Contract for work performed before the effective date of termination.
  - D. Should CONTRACTOR desire to terminate this Contract in whole or in part prior to the completion of the Contract term for reasons other than those stated in sub-Clause 7B, CONTRACTOR shall return to AQMD a prorated share of the funds already paid under this Contract using the formula in Clause 8.B. below.
8. REIMBURSEMENT FORMULA FOR EARLY TERMINATION
- A. Equipment Accidentally Rendered Inoperable or Stolen – CONTRACTOR may replace the inoperable or stolen Equipment with equipment certified to equal or lower emission levels, and continue with the term of the original

Contract, upon the prior written consent of AQMD. Alternatively, CONTRACTOR may request to terminate the Contract pursuant to Clause 7.B. and remit the following amount to the AQMD:

$$\text{Amount due to AQMD} = A - (B \times A/C)$$

Where:

A = total amount paid to CONTRACTOR

B = the number of years Equipment was in operation

C = the project life (i.e. the number of years Equipment is required to be in operation)

- B. Contract Buy-Out – Pursuant to Clause 7.D., CONTRACTOR may request to buy out the remaining time on the Contract prior to the end of the Contract term. The Contract buy-out amount shall be the amount due to AQMD as calculated in Clause 8.A., plus an administrative fee (\$5,000 for each truck project, \$10,000 for each locomotive, commercial harbor craft or cargo handling equipment project, and \$250,000 for each ship at berth project).

9. TRANSFER OF EQUIPMENT

- A. The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by CONTRACTOR without the prior written consent of AQMD, and any attempt by CONTRACTOR to do so shall be void upon inception.
- B. Upon AQMD's written consent to the assignment, sale, license or transfer of the Equipment, and prior to completing the transaction, CONTRACTOR shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Contract. CONTRACTOR is responsible for establishing contact between AQMD and the Buyer and shall assist AQMD in facilitating the transfer of this Contract's terms and conditions to the Buyer. CONTRACTOR will not be relieved of his or her legal obligation to fulfill the terms and conditions of this Contract until and unless the Buyer has assumed responsibility of this Contract's terms and conditions through an executed contract with AQMD.

10. INSURANCE AND WARRANTY – CONTRACTOR must demonstrate proof of warranty and insurance on the Equipment. CONTRACTOR shall:

- A. Furnish evidence to AQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Contract.
- B. Furnish evidence to AQMD of automobile liability insurance with minimum coverage limits of at least equal to the replacement value of the vehicle prior to commencement of any work on this Contract. AQMD and CARB must be named as additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to AQMD.
- C. For truck stop electrification projects, provide and maintain sufficient insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Contract, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California.
- D. Provide updates on the insurance coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of Contract performance. Failure to provide evidence of current coverage shall be grounds for termination for breach of Contract.
- E. Except for workers compensation insurance, require its subcontractors to comply with the above-mentioned insurance requirements and to name AQMD and CARB as additional insureds for the above-mentioned insurance policies.
- F. If CONTRACTOR fails to maintain the required insurance coverage set forth above, AQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.

- G. All insurance certificates should be mailed to: AQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **The AQMD Contract Number must be included on the face of the certificate.**
11. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend and indemnify AQMD, CARB, and their respective officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against AQMD, CARB, and their officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract.
12. COMPLIANCE WITH PROGRAM GUIDELINES – CONTRACTOR shall comply with the Program Guidelines, which include, but are not limited to, the following:
- A. The Program shall only fund emission reductions not otherwise required by any local, state and/or federal rule or regulation, memorandum of understanding/agreement, settlement agreement, mitigation requirement, or other legal mandate.
  - B. The Equipment is certified and/or verified in accordance with Attachment 1 – Statement of Work. No payment will be made under this Contract until and unless CONTRACTOR submits the required certifications and/or verifications to AQMD.
  - C. No emission reductions generated by Program-funded projects may be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity. All emission reductions generated from the expenditure of Program funds may be used for meeting the attainment schedule contained in the applicable State Implementation Plan or California greenhouse gas reduction targets.
  - D. Any vehicle funded under this Contract may not be included in the vehicle owner's fleet compliance strategy until CARB-specified dates allow. These dates vary based on vehicle option as well as fleet size and can be found on the Goods Movement website: <http://www.arb.ca.gov/bonds/gmbond/gmbond.htm>.
  - E. Except for locomotive projects, the Equipment must not have been ordered or paid for prior to: (1) the effective date of the Contract, and (2) the satisfactory completion of the pre-inspection, as described in Task 1 of Attachment 1 – Statement of Work.
  - F. For heavy-duty diesel repower and replacement projects, the existing (old) engine or replaced vehicle (including frame and engine) must be physically destroyed in such a manner to eliminate the possibility of future operation in accordance with the Program Guidelines and Attachment 1 – Statement of Work. There must be no cannibalization of parts from the old engine.
  - G. In signing this Contract, CONTRACTOR certifies that the Equipment is in compliance with all applicable federal state, and local air quality rules and regulations at the time of Contract execution, and that it will maintain compliance for the full Contract term.
13. PROGRAM APPLICATION INCORPORATION – CONTRACTOR's Goods Movement Emission Reduction Program application in response to Solicitation #PA2011-11 issued by AQMD on March 4, 2011 is hereby incorporated by reference and made part of this Contract.
14. MAINTENANCE OF EQUIPMENT – CONTRACTOR shall ensure that the Equipment is maintained in good operating condition and in accordance with the manufacturer's specifications for the Project life, in accordance with the Program Guidelines and Attachment 1 – Statement of Work. No tampering with the Equipment is permitted.
15. INSPECTIONS
- A. Prior to ordering or purchasing the Equipment a Pre-Inspection must be conducted by the AQMD on all existing (old) equipment (including engines and vehicles) to verify that CONTRACTOR has met all requirements of the Program regarding eligibility of the existing equipment. This includes documentation of the following, at a minimum: type of equipment, operational condition, mileage, vehicle and engine identification. This Contract

may be modified or terminated based upon the results of the Pre-Inspection, including, but not limited to, an AQMD determination that: the existing equipment is non-operational; does not match the information submitted as part of the application (i.e. vehicle make, model, model-year, engine type, horsepower, model year, etc.); or other factors exist that would not result in the calculated real, quantifiable and early or extra emission reductions. It is the responsibility of the CONTRACTOR to contact AQMD and arrange a Pre-Inspection of the existing equipment, and to confirm with AQMD that the existing equipment has been pre-inspected and is eligible to participate in the Program.

- B. A Post-Inspection shall be conducted by the AQMD after receipt of the invoice from the CONTRACTOR or dealer. AQMD must verify that CONTRACTOR has met all applicable requirements of the Program and this Contract prior to payment under this Contract. AQMD must, at minimum, verify that: the Project specified in the Statement of Work has/have been installed; that the Equipment is operational; and, where applicable, that the existing (old) equipment has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old equipment.
16. ON-SITE INSPECTIONS AND AUDIT - AQMD, CARB, or their designee(s) shall have the right to conduct a fiscal audit of the Project, and to inspect the Equipment described in the Statement of Work and the associated records during the term of the Contract.
17. REMEDIES AND ENFORCEMENT OF CONTRACT TERMS
- A. The parties agree that in addition to AQMD, CARB also has the authority, jointly and severally, to enforce the terms of this Contract, and that CARB is a third-party beneficiary of this Contract. AQMD and CARB will seek whatever legal, equitable and other remedies are available for CONTRACTOR's failure to comply with the terms of this Contract, including the Program criteria and requirements as listed in the Program Guidelines.
- B. Nonperformance under this Contract includes, but is not limited to: failure to meet Contract terms and conditions; non-operational, damaged or malfunctioning Equipment; failure to operate or maintain Equipment in accordance with manufacturer's recommendations, intentional destruction of Equipment, failure to meet Project completion deadlines; failure to allow electronic monitoring device, or tampering with device or its data; misuse of direct payments to vendors; insufficient, incomplete, or faulty documentation; failure to complete a satisfactory pre-inspection; and failure to provide documentation or reports in a timely manner
- C. AQMD and CARB may seek any and all remedies available at law and equity for non-performance, which may include but is not limited to: recovery of all or a portion of the Program funds; other fiscal penalties based on severity of non-performance; Contract termination; a ban on participation in future State or local incentive programs; and prohibition of equipment from State or local incentive program participation.
18. RECORDS AND RECORDS RETENTION – CONTRACTOR shall maintain records related to this Project and retain these records for at least two years after the Contract expires or three years after final payment, whichever is later.
19. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B, attached here to and made a part hereof. Non-compliance with the reporting requirements of this Contract may result in the implementation of on-site monitoring by the AQMD.
20. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.
21. OTHER PUBLIC FUNDS - CONTRACTOR is prohibited from applying for or receiving other State grant funds or incentives for the Project, except CONTRACTOR may apply for and receive Federal funds to implement the Project. Violation of this provision may result in CONTRACTOR being disqualified from receiving any funding for the Project, CONTRACTOR being banned from receiving future grant funds from AQMD, and termination for cause of this Contract, as well as be subject to any enforcement action pursuant to Clause 17.

22. PAYMENT

- A. AQMD shall reimburse CONTRACTOR an amount not to exceed \$560,000 as provided in Attachment 2, Payment Schedule to this Contract, attached hereto and made a part hereof, for work performed as specified in Attachment 1 – Statement of Work. “Reimbursement” means payment of money actually spent by CONTRACTOR for the purchase and/or installation of eligible services, materials and equipment for the Project in accordance with the Program Guidelines. CONTRACTOR may choose to have the payment sent directly to the dealer or financing company, or provide AQMD with proof of payment to the dealer or financing company in order to be reimbursed.
- B. Payment under this Contract will be made within thirty (30) business days after CONTRACTOR submits, and AQMD approves (which approval AQMD will not unreasonably withhold), the required itemized invoice(s) and after AQMD verifies that the Project has been completed according to the terms of this Contract and is fully operational as determined by the AQMD’s Post-Inspection. The itemized invoices must include enough detail to ensure that only eligible project costs are paid, in accordance with the Program Guidelines and Attachment 2 – Payment Schedule. Each invoice must be prepared in duplicate, on company letterhead, and list AQMD’s Contract number, period covered by invoice, and CONTRACTOR’s Social Security Number or Employer Identification Number, and any other specific information required as set forth in Attachment 2 – Payment Schedule. Each invoice shall be submitted to: South Coast Air Quality Management District, Attn: Goods Movement Emission Reduction Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- C. Any payments required under this Contract are contingent upon AQMD’s receipt of funds from CARB in the amount of the required payments.
- D. AQMD may de-obligate from the Contract funds that remain unexpended pursuant to the Contract upon thirty (30) days’ written notice to CONTRACTOR.

23. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

AQMD: South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178  
Attn: Goods Movement Contract Administrator, Technology Advancement

CONTRACTOR: Keeney Truck Lines, Inc.  
3500 Fruitland Avenue  
Maywood, CA 90270  
Attn: Dan Hubbard, (323) 589-3231

24. INDEPENDENT CONTRACTOR – CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of AQMD or CARB, nor shall CONTRACTOR, its officers, employees, agents, representatives, contractors or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by AQMD to its employees. AQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR’s or subcontractor’s means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements. CONTRACTOR shall promptly notify AQMD of any material changes to subcontracts that affect the Project’s scope of work, deliverable schedule, and/or cost schedule.

25. SUBCONTRACTOR APPROVAL – If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from AQMD'S Executive Officer or designee prior to subcontracting any work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from AQMD.
26. SECURITY INTEREST - CONTRACTOR hereby grants AQMD a security interest in the Equipment, which is purchased in whole or in part with funding provided by AQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that AQMD shall have all lien rights as a secured creditor on the Equipment purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The AQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that AQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the Equipment that is the subject of the Contract.** In the event the Equipment is repossessed or CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify AQMD within 10 business days of such repossession or filing.
27. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any intellectual property developed under this Contract shall at all times remain with AQMD. Such material is agreed to be AQMD's proprietary information.
- A. Rights of Technical Data - AQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use data for its own benefit.
- B. Copyright - CONTRACTOR agrees to grant AQMD a royalty free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Contract.
28. PUBLICATION
- A. AQMD shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from AQMD in connection with performance under this Contract.
- B. Information, data, documents, photographs or reports developed by CONTRACTOR for AQMD, pursuant to this Contract, shall be part of AQMD's public record unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to AQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
1. "This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management AQMD (AQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of AQMD. AQMD, its officers and its employees make no warranty, expressed or implied, and assume no legal liability for the information in this report. AQMD has not approved or disapproved this report, nor has AQMD passed upon the accuracy or adequacy of the information contained herein."
- C. CONTRACTOR shall ensure that the Program is clearly identified as a sponsor or source of funding in all of its documents, reports, brochures, advertising and other material relating to this Project.
29. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.

30. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or AQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
31. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
32. FORCE MAJEURE - AQMD, CARB or CONTRACTOR shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of AQMD, CARB or CONTRACTOR.
33. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
34. HEADINGS - Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
35. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
36. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
37. CITIZENSHIP AND ALIEN STATUS
  - A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
  - B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless AQMD and CARB, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or AQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.
38. TAX IMPLICATIONS FROM RECEIPT OF PROGRAM FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Goods Movement Emission Reduction Program, which may include receipt of a "1099G" form.

39. AMENDMENTS TO CONTRACT – This Contract shall only be amended by mutual Contract, in writing and signed by the authorized representatives of all parties.

40. ENTIRE CONTRACT

- A. This Contract represents the entire Contract between the Parties. A Spanish-translated version of this Contract and its Attachments may be provided to CONTRACTOR for information purposes only. The English-language Contract and Attachments shall govern at all times, and shall be the only documents which constitute the Contract between the Parties.
- B. By executing this Contract, CONTRACTOR understands and agrees to implement the Project according to the terms of the Contract and to cooperate with the AQMD and CARB implementation, monitoring, enforcement and other efforts to assure the emissions benefits are real, quantifiable, excess and enforceable. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representatives of all the parties.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

KEENEY TRUCK LINES, INC.

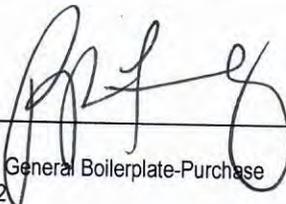
By:   
Barry R. Wallerstein, D.Env., Executive Officer

By:   
Name: Dan R. Hubbard  
Title: Pres/CEO

Date: 5-23-2012

Date: 5/23/12

APPROVED AS TO FORM:  
Kurt R. Wiese, General Counsel

By:   
// Prop 1B – General Boilerplate-Purchase  
Rev. 2.14.12

**ATTACHMENT 1**

**STATEMENT OF WORK  
KEENEY TRUCK LINES INC**

The purpose of this Contract is to reduce emissions by replacing a pre-2004 model year (MY) diesel truck(s), as identified in Table 1 below, with a newer diesel truck(s) that is equipped with an engine certified by the California Air Resources Board (CARB) to meet the 2007 federal emissions levels or lower. Accordingly, CONTRACTOR agrees to purchase a Class 8 or Class 7 replacement truck(s) as indicated in Table 1, with a MY2007 or newer engine that is certified by a CARB Executive Order based on the heavy heavy-duty test cycle for a Class 8 truck, or the heavy or medium heavy-duty test cycle for Class 7 to comply with both Family Emission Level (FEL) and certification (CERT) values equal to or lower than 1.20 g/bhp-hr for NOx (for those trucks committed to meeting the optional 2007 standard, the applicable NOx emissions level is **0.5 g/bhp-hr** and the MY 2010 standard, the applicable NOx emissions level is **0.20 g/bhp-hr**) and 0.01 g/bhp-hr for PM. The replacement truck must comply with the CARB-certified NOx level specified in Table 1 to qualify for the grant funds. The replacement truck(s) shall be subject to the terms and conditions set forth in Tasks 1 through 6 of this Attachment, the due dates specified in Attachment 1A, as well as all other provisions of the Contract. The replaced vehicle is expected to generate emissions reductions, as identified in Table 1 below.

ESTIMATED TOTAL PROJECT COST \$1,327,260

MAXIMUM CONTRACT AWARD \$560,000

**Table 1: Approved Project List**

Project ID	Old Truck			Replacement Truck						
	Drayage Status	Last 7 Digits of VIN (Old Truck)	Engine MY (Old Truck)	Replacement Truck Class	CARB-Certified NOx Level of New Vehicle (g/bhp-hr)	Future Annual CA Vehicle Miles Traveled	Expected Total NOx Reduction (lbs.)	Expected Total PM Reductions (lbs.)	% Operation in CA *	Prop 1B Award Per Vehicle (\$)
139-005 ✓	Non-Drayage	N249852	1999	Class 8	0.20	21,569	5,190.04	125.00	100%	\$60,000
139-010 ✓	Non-Drayage	N748893	1997	Class 8	0.20	23,765	4,489.29	155.00	100%	\$60,000
139-008 ✓	Non-Drayage	N249851	1999	Class 8	0.20	17,225	4,144.77	99.90	100%	\$60,000
139-007 ✓	Non-Drayage	N748895	1997	Class 8	0.20	17,112	3,232.51	111.60	100%	\$60,000
139-006 ✓	Non-Drayage	N249850	1999	Class 8	0.20	14,860	3,575.69	86.10	100%	\$60,000
139-009 ✓	Non-Drayage	N748894	1997	Class 8	0.20	15,323	2,894.57	99.90	100%	\$60,000
139-004 ✓	Non-Drayage	P940012	1998	Class 8	0.20	14,470	2,763.05	91.90	100%	\$50,000
139-002 ✓	Non-Drayage	P940034	1998	Class 8	0.20	10,984	2,097.39	69.80	100%	\$50,000
139-001 ✓	Non-Drayage	DW40118	1999	Class 8	0.20	8,654	2,082.37	50.20	100%	\$50,000

Project ID	Drayage Status	Old Truck Last 7 Digits of VIN (Old Truck)	Engine (Old Truck)	Replacement Truck Class	CARB-Certified NOx Level of New Vehicle (g/bhp-hr)	Future Annual CA Vehicle Miles Traveled	Expected Total NOx Reduction (lbs.)	Expected Total PM Reductions (lbs.)	% Operation in CA *	Prop 1B Award Per Vehicle (\$)
139-003	Non-Drayage	P940011	1998	Class 8	0.20	5,937	1,133.67	37.70	100%	\$50,000

\* All replacement trucks funded by the AQMD Proposition 1B – Goods Movement Program shall operate in California for 100% of the time, unless Table 1 specifies at least 90% operation in California for the replacement truck. Replacement trucks that are allowed to operate outside of California must operate in California for at least 90% of the time, and dual plate and out-of-state registrations are prohibited, except for trucks that carry goods across the California/Mexico border and are required to be dual plated (California/Mexico only)

## **PROJECT REQUIREMENTS:**

Tasks necessary to implement this project are as follows:

### **Task 1: Inspections**

- 1.1 CONTRACTOR shall make all equipment/vehicle(s)/engine(s) that are to be replaced available to AQMD staff or its designee(s) for inspection prior to destruction in accordance with Clause 15 of this Contract. If a pre-inspection has not yet been completed on the truck to be replaced and it is stolen or destroyed such that it cannot be repaired, then such truck is not eligible for funding under this Contract.
- 1.2 CONTRACTOR shall be disqualified from grant funds if the pre-inspection by AQMD reveals a discrepancy with the application submitted by CONTRACTOR that would affect the project's ranking or eligibility status with respect to the Program Guidelines.
- 1.3 CONTRACTOR shall make all new equipment/vehicle(s)/engine(s) available to AQMD staff for inspection after delivery in accordance with Clause 15 of this Contract. A CARB's Executive Order for the replacement vehicle engine shall be provided by CONTRACTOR to AQMD at the time of post-inspection.
- 1.4 CONTRACTOR shall not place a Purchase Order or accept delivery of the replacement truck until notification of a satisfactory completion of the pre-inspection by AQMD as described in Task 1.1.
- 1.5 The replacement vehicle(s) must have less than 500,000 miles for Class 8 truck and less than 250,000 miles for Class 7 truck with odometer verification at the post inspection.

### **Task 2: Procurement of Vehicle(s)**

- 2.1 After receipt of the notice pursuant to Task 1.4, CONTRACTOR shall procure the replacement vehicle(s) identified in Table 1 that meet the above-mentioned emission standards.
- 2.2 CONTRACTOR shall provide documentation of procurement of the replacement vehicle(s) meeting the above-mentioned emissions standards, in addition to the CARB Executive Order in Task 1.3. This documentation shall include, at a minimum: (1) vehicle information such as the manufacturer; price of the vehicle(s), including any taxes, delivery fees and other costs; identification of the vehicle(s) make, model, model year and fuel type; and (2) engine information, including model year, manufacturer, model number, and engine family name.

**Task 3: Global Positioning System Electronic Monitoring Unit**

3.1 CONTRACTOR shall install an on-board Electronic Monitoring Unit (EMU) on all new vehicle(s) at any time during the Contract term, if requested by the AQMD. EMU shall be installed pursuant to a separate contract between an EMU installation contractor and the AQMD or CARB.

**Task 4: Operation of Replacement Vehicle(s)**

4.1 CONTRACTOR shall place the replacement vehicle(s) meeting the above-mentioned emissions standards into regular service and shall inform the AQMD where the vehicle(s) are based in California.

4.2 CONTRACTOR shall operate each replacement vehicle for a minimum of five years or 500,000 miles, whichever comes first.

4.3 CONTRACTOR shall operate the replacement vehicle(s) within California for the minimum percentage of time specified in Table 1 for a minimum of 5 years or 500,000 miles whichever comes first, and with at least 50% of the annual mileage within the four Trade Corridors, as identified in the Goods Movement Emission Reduction Program Guidelines.

4.4 CONTRACTOR shall provide operational information for the vehicle(s) sufficient to establish compliance with Task 4, upon reasonable notice, to AQMD or CARB staff.

4.5 CONTRACTOR shall continue to haul goods a majority of the time (>50%).

4.6 CONTRACTOR shall not remove any vehicle(s) from service in California during the term of this Contract.

4.7 All vehicle(s) funded under this Contract shall maintain California base-plated or California IRP registration at all times during the project life. Dual plate and out-of-state registrations are prohibited, except for trucks that have selected the 90% California option (see Table 1) and carry goods across the California/Mexico border and are required to be dual plated (California/Mexico only).

4.8 Contractor shall correct outstanding CARB equipment violations associated with the owner's entire fleet of vehicle(s).

- 5.1 If CONTRACTOR elects to be reimbursed directly, CONTRACTOR shall deliver the vehicle(s) to be replaced, driven under their own power, to a DMV-licensed and AQMD-approved dismantler within 30 calendar days of the receipt of the new replacement vehicle.
- 5.2 Under the reimbursement payment option, CONTRACTOR will not be paid until and unless CONTRACTOR has delivered the vehicle(s) to be replaced to the dismantler in accordance with Task 5.1, and submitted to the AQMD a valid invoice with the top one-half portion of AQMD's Certificate of Replaced Vehicle(s) Receipt and Destruction (Attachment 3) completed for each vehicle. Attachment 3 shall be signed by an authorized representative of the DMV-licensed dismantler as proof of delivery of the replaced vehicle to the dismantler.
- 5.3 If CONTRACTOR elects for AQMD to make the payment(s) directly to the dealer, CONTRACTOR shall deliver the vehicle(s) to be replaced to the dealer prior to the receipt of the new fully operational replacement vehicle(s). Dealer will not be paid until and unless the dealer has agreed not to endorse the AQMD check until the dealer has physical custody of the old equipment and has agreed to ensure that the old equipment will be delivered to a DMV-licensed and AQMD-approved dismantler within 30 calendar days of the issuance of the check.
- 5.4 The old truck(s) must be delivered to a DMV-licensed and AQMD-approved dismantler. The dismantler must cut a six inch by six inch hole in the engine block of each vehicle that was replaced and cut each vehicle's frame rails completely in half within 60 days of receipt of the replaced vehicle. The following digital photos must be taken and labeled for submittal by dismantler:
1. Engine tag with serial number, engine family number, and engine model year.
  2. Destroyed engine block either inside or outside truck body.
  3. Vehicle Identification Number printed by manufacturer inside cab.
  4. Truck view from front angle capturing entire truck with readable license plate.
- 5.5 CONTRACTOR shall ensure that the dismantler provides to AQMD the digital photos referenced above and a fully completed Attachment 3 signed by an authorized representative of the dismantler. The photos and Attachment 3 must be submitted to AQMD within 10 calendar days of the dismantler destroying engines and frames of the replaced vehicle(s) as described above.
- 5.6 CONTRACTOR shall ensure the dismantler files a VIN hold with the DMV, and submits either Reg 488C "Non-Repairable Vehicle Certificate" or Reg 42 "Notice to Dismantler" to the DMV, and submits a copy of this documentation to AQMD within 10 calendar days of destruction of the old vehicle(s).

**Task 6: Reporting**

6.1 CONTRACTOR shall provide annual reports, as described under Deliverables, Attachment 1B.

**ATTACHMENT 1A**  
**PROJECT MILESTONES**  
**KEENEY TRUCK LINES INC**

<u>Milestone</u>	<u>Due Date</u>
Contract Signed By Contractor <u>and</u> Received By AQMD	May 31, 2012
Truck(s) Delivery and Acceptance Completed	December 7, 2012
Truck(s) in Service	December 7, 2012
Submittal of All Invoices Note: Post-Inspection must be completed prior to any invoices paid by AQMD	December 7, 2012
Annual Progress Reports	January 31, 2014 January 31, 2015 January 31, 2016 January 31, 2017
Final Annual Progress Report	January 31, 2018

**ATTACHMENT 1B**  
**DELIVERABLES**

**KEENEY TRUCK LINES INC**

CONTRACTOR shall submit annual progress reports (using Attachment 4 or other template that includes the required information) to the AQMD under this Contract for a period of at least five (5) years after the equipment is placed into service. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera-ready originals.

CONTRACTOR shall provide two stapled copies of each progress report to be submitted annually for the term of the Contract. This document shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.). The annual report shall include, but not be limited to, the following for the equipment funded under this Contract:

- a. Reference to AQMD contract number, project number, and title of project.
- b. Name, address and phone number of the contact person.
- c. Proof of California registration for each piece of equipment. Either California base-plated registration or California IRP registration is acceptable. For replacement trucks that are allowed to operate up to 10% of the time outside of California (see Table 1), dual plate and out-of-state registrations are prohibited, except for trucks that carry goods across the California/Mexico border and are required to be dual plated (California/Mexico only).
- d. Proof of vehicle(s) insurance.
- e. A description of the operation of the equipment, including:
  - Current odometer reading and the date the odometer reading was taken.
  - Annual miles traveled per vehicle in service during the reporting period (including mileage/activity logs for documentation).
  - Percentage of annual miles traveled in each of the four trade corridors.
  - Discussion of vehicle performance, including any inspections, repairs and/or maintenance performed.
- f. Certification of % operated in California.
- g. Certification and documentation of at least 50% of travel within the four Trade Corridors, as identified in the Goods Movement Emission Reduction Program Guidelines.
- h. Certification that the vehicle funded was operated in accordance with signed contract and that all information submitted is true and accurate.
- i. Problems - a discussion of any significant problems encountered during the year and how they were resolved.

CONTRACTOR shall provide supporting documentation for any information in the annual report if requested by AQMD.

# South Coast Air Quality Management District

## Certificate of Replaced Vehicle(s) Receipt and Destruction

Contract No: \_\_\_\_\_ Project ID: \_\_\_\_\_  
 Owner Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Owner Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
 Phone: \_\_\_\_\_

### Old Vehicle Information

Make:		Vehicle ID Number:	
Model:		Odometer Reading:	_____, _____ miles
Year:			

### Old Engine Information

Make:		Horsepower:	
Model:		ID or Serial No.:	
Year:			

Date Vehicle Accepted for Dismantle: \_\_\_\_\_ By: (Salvage Rep.) \_\_\_\_\_  
Print name

Signature: \_\_\_\_\_

### Scrapage Yard Authorized Representative:

Date vehicle destroyed: \_\_\_\_\_  
 Photos taken according to requirements (submit with form): \_\_\_\_\_  
Initial

**Salvaged Yard Statement:** I certify under penalty of perjury that within 60 days of the date I received this vehicle, a 6x6 inch hole was cut into the engine block and the vehicle frame rails were cut. The following photos of the destroyed vehicle are attached to this Certificate of Replaced Vehicle Receipt and Destruction: (1) engine tag with serial number, engine family number, and engine model year; (2) destroyed engine block, either inside or outside truck body; (3) Vehicle ID number printed by manufacturer inside cab; and (4) truck view from front angle capturing entire truck with readable license plate.

Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Authorized Name: \_\_\_\_\_  
Print name  
 Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT 2**  
**PAYMENT SCHEDULE**  
**KEENEY TRUCK LINES INC**

CONTRACTOR shall be reimbursed in an amount not to exceed the approved Grant Award, as defined in Clause 22, for the replacement of each pre-2004 vehicle with a 2007-certified or newer engine, as specified in Attachment 1 – Table 1. The total cumulative amount of payments made under this Contract shall not exceed the Maximum Contract Award, as specified in Attachment 1.

CONTRACTOR shall submit an invoice for each replacement vehicle to the AQMD after a satisfactory post-inspection, as described in Clause 15 of this Contract.

- A. Invoices will not be paid by AQMD until after the satisfactory completion of a post-inspection pursuant to Clause 15 for each vehicle listed on the invoice and CONTRACTOR has demonstrated compliance with the Air Resources Board’s Truck and Bus Regulation, California Code of Regulation Title 13 Section 2025.
- B. Payments under this Contract shall be sent to CONTRACTOR unless otherwise specified in the Contract or specifically requested by CONTRACTOR in writing. Grant funds paid under this Contract shall only be used to offset the capital cost of the Equipment and shall reduce the principal owed by the CONTRACTOR to purchase the equipment. Grant funds may only be used to reimburse equipment owners or other entities up to the amount of funds contributed in cash toward the purchase of the program-funded equipment. Equipment project funds shall not be applied toward administration cost.
- C. In addition to the information required in Clause 22.B, the invoice must also include the project number, the replaced vehicle’s vehicle identification number (VIN) and the replacement vehicle’s VIN, vehicle manufacturer, price of the vehicle including any taxes, delivery fees and other costs, identification of the vehicle make and model, model year and fuel type.

1 William P. Fennell (SBN 164210)  
Of Counsel: Melissa A. Blackburn Joniaux (SBN 105470)  
2 Of Counsel: Charles F. Bethel (SBN 126036)  
LAW OFFICE OF WILLIAM P. FENNELL, APLC  
3 401 West A Street, Suite 1800  
San Diego, CA 92101  
4 Tel: (619) 325-1560  
Fax: (619) 325-1558

5 Attorneys for Keeney Truck Lines, Inc.,  
6 Debtor-in-Possession

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re: ) Case No. 2:16-bk-26393-SK  
11 ) Chapter 11  
12 KEENEY TRUCK LINES, INC. ) **DECLARATION OF KEN**  
13 ) **McCORMACK IN SUPPORT OF**  
Debtor. ) **SECOND SALE MOTION FOR**  
14 ) **ORDER:**  
15 ) **1. APPROVING SECOND SALE OF**  
16 ) **ESTATE PROPERTY AND**  
17 ) **AGREEMENTS THEREON;**  
18 ) **2. AUTHORIZING SALE OF**  
19 ) **PROPERTY FREE AND CLEAR**  
20 ) **OF LIENS;**  
21 ) **3. APPROVING MARKETING**  
22 ) **AND OVERBID PROCEDURES;**  
23 ) **4. FOR ASSUMPTION AND**  
24 ) **ASSIGNMENT OF CONTRACT**  
25 ) **WITH DEBTOR AND SOUTH**  
26 ) **COAST AIR QUALITY**  
27 ) **MANAGEMENT DISTRICT**  
28 ) Date: July 13, 2017  
Time: 10:00 a.m.  
Courtroom: 1575  
Place: 255 E. Temple Street  
Los Angeles, CA 90012  
The Honorable Sandra R. Klein

27 I, Ken McCormack, declare as follows:

28 1. I am an employee of AGES Professional Services & Associates, the

1 auctioneer for the debtor in possession Keeney Truck Lines, Inc. (“Keeney or “Debtor”)  
2 as approved by this court’s June 1, 2017 Order approving AGES’ employment (DN 88).  
3 I am an auctioneer and appraiser with the Certified Auctioneers Institute designation  
4 (CAI) and Graduate Personal Property Appraiser (GPPA) certification. I make this  
5 declaration based upon personal knowledge, except where stated upon information and  
6 belief, which matters I believe to be true, and if called upon to testify could competently  
7 testify to the following:

8       2.       In the fall of 2016, I was asked by William P. Fennell, attorney for Keeney  
9 Truck Lines, Inc. (“Keeney” or “Debtor”), to perform an inventory and contracted  
10 valuation analysis of various trucks and trailers to be offered for sale at Keeney’s yard at  
11 3500 Fruitland Avenue, Maywood, CA 90270. My opinion of the value of these assets is  
12 that the aggregate values of Lots 2, and 4, respectively, is congruent with the offers made  
13 by Flour Transport and TEC Equipment, respectively, to purchase the two lots.

14       3.       AGES and Keeney will be holding the first overbid auction, as approved by  
15 the court, on June 22, 2017. The instant motion for approval of a second sale is to be  
16 heard July 13, 2017 and Keeney is requesting approval to hold the overbid sale on July  
17 18, 2017. Accordingly, AGES will begin the marketing procedures discussed below on  
18 July 5, 2017.

19       4.       Assuming the court approves the overbid procedures and the proposed sales  
20 of Lots 2 and 4 at the July 13, 2017 hearing, AGES will continue advertising the Debtor’s  
21 assets through July 17, 2017, the day before the intended sale. The full range of the  
22 marketing and sale procedures AGES has already been undertaking (and will continue to  
23 do) is the following:

24       a.) The sale is and will be advertised direct to a list of trucking companies who  
25 provide services similar to Keeney’s in Southern California. This includes various  
26 of Keeney's competitors. There are approximately twenty five companies in this  
27 group.

28       b.) AGES is also advertising direct to any persons who have contacted Keeney or

1 its counsel expressing interest in purchasing any of the property in Lots 1 and 3 (the  
2 first sale) or 2 and 4 (and we will continue to do so).

3 c.) Advertising is also being done via Facebook using key words and pop up ads  
4 (and we will continue to do so).

5 d.) AGES will also produce a catalog of photographs of all the vehicles and other  
6 assets for interested parties. The catalog will be provided at a minimal cost  
7 (approximately \$15 per each) to anyone who requests it.

8 e.) AGES will arrange for any serious bidders to have a "hands on" observation by  
9 appointment as is possible (some equipment will always be on the road and not  
10 available).

11 f.) AGES will conduct an auction at Keeney's premises at 3500 Fruitland Ave,  
12 Maywood CA, 90270 on Tuesday, July 18, 2017 at 11:00 a.m.

13 5. The overbidding in the auction will be handled as follows:

14 a.) Lot 2 – Flour Transport has offered \$350,000 for Lot 2 and the minimum  
15 overbid for the lot will be 5% higher (\$367,500); and

16 b.) Lot 4 – TEC Equipment has offered \$182,500 for Lot 4 and the minimum  
17 overbid will be 5% higher (\$191,625).

18 In order to participate in the overbidding and auction, interested parties will be  
19 required to do the following:

20 6. Provide a deposit equal to 10% of the initial offered amounts for each Lot  
21 they wish to bid on, plus the whole of the initial 5% overbid increment;

22 7. Sign a Purchase and Sale Agreement in substantially the form and  
23 substance of the Agreement signed by the first proposed buyer of that lot;

24 8. Initial overbids on Lots 2 and 4, as indicated above, will go up in  
25 increments of 5%;

26 9. Winning bidders will be required to pay the balance of funds within 48  
27 hours;

28 10. AGES will collect the funds in gross including sales tax as is necessary;

1 11. If a winning bidder is unable to consummate their purchase, they will forfeit  
2 their deposit as liquidated damages to the estate;

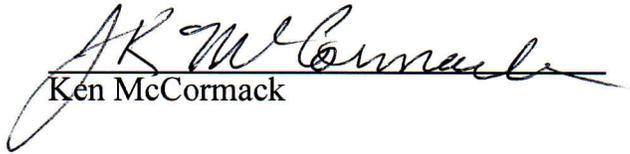
3 12. In a case of failure by the winning bidder, the lot will be made available to  
4 the runner up bidder; and

5 13. The auctioneer's fee will be 1.5% of the total of the final gross bids on each  
6 lot.

7 14. In accordance with the U.S. Trustee Guideline IV.E.2., my office will  
8 prepare an auctioneer's report detailing the results of the July 18, 2017 overbid auction,  
9 including lists of buyers, prices, funds received, taxes and commissions deducted, and  
10 funds disbursed to the debtor in possession. That report will be filed with the court and  
11 served on the U.S. Trustee's office.

12 15. The main variable in the process of disbursing funds and making the report  
13 is typically how quickly the successful bidders make their full payments. It is my  
14 expectation, based on past experience, the net sale proceeds will be disbursed to the  
15 debtor in possession, and the auctioneer's report will be generated, filed and served,  
16 within seven days of the sale date.

17 I declare under penalty of perjury under the laws of the United States of America  
18 that the foregoing is true and correct, executed this 22<sup>nd</sup> day of June 2017, at Spring  
19 Valley, California.

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21   
22 Ken McCormack  
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