This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and KEEP ON TRUCKING COMPANY, LLC. (hereinafter "KOT"), 11355 Arrow Route, Rancho Cucamonga , California 91730.

I. RECITALS

(1) California Health and Safety Code (HSC) section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, chapter 3.5, sections 2180-2188, title 13 California Code of Regulations (CCR).

(2) HSC section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.

(3) Title 13 CCR, section 2190 *et seq.* was adopted under the authority of HSC section 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.

(4) Title 13 CCR, section 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(5) Title 13 CCR, section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

(6) HSC section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this part any other

specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500.00) per vehicle."

(7) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(8) ARB contends KOT failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for year 2011 and 2012 in violation of title 13 CCR, sections 2190 *et seq.*

(9) HSC section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Drayage trucks are controlled under the Drayage Truck Regulation as codified in title 13 California Code of Regulation (CCR), section 2027.

(10) Title 13 CCR, section 2027(d)(3)(A) requires drayage truck owners meet all applicable emission requirements and deadlines set forth in Phases 1 and 2 detailed in Section 2027(d).

(11) Title 13 CCR, section 2027(d)(5)(A)(2) requires drayage truck motor carriers only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in Section 2027(d). Section 2027(d)(5)(A)(3) requires motor carriers only dispatch drayage trucks that are registered and in good standing with the Drayage Truck Registry (DTR).

(12) The ARB Enforcement Division has documented that KOT, as a drayage truck owner, failed to bring all drayage trucks in its fleet into compliance by the deadlines set forth in the Drayage Truck Regulation. The ARB Enforcement Division has also documented that KOT, as a motor carrier, dispatched drayage trucks that are either not compliant with the emissions standards set forth in the Drayage Truck Regulation or not registered with the DTR.

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

(14) In order to resolve these alleged violations, KOT has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE".

Further, the ARB accepts this Agreement in termination and settlement of this matter.

(15) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and KOT agree as follows:

II. TERMS AND RELEASE

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

(1) Upon execution of this Agreement, the sum of two thousand and six hundred dollars ($2,600) shall be paid on behalf of KOT no later than (August 22, 2014), as follows:

- $1,950 to the **Air Pollution Control Fund**
- $ 650 to the **Peralta Colleges Foundation**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Mr. Ryman Simangan, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

Please submit the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

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

(3) KOT shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at

http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.

(a) KOT shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If KOT uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, KOT shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(4) KOT shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET II) CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).

(a) KOT shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case KOT uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, KOT shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by KOT to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

(5) KOT shall submit copies of all PSIP compliance records for the years 2014 and 2015 to the ARB by January 31 of the following year. **Copies shall be addressed to the attention of Mr. Ryman Simangan at the**

California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any KOT fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(6) KOT shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.

(7) KOT shall not violate HSC sections 43701 *et seq.*, and 44011.6. and title 13 CCR. Section 2190 et seq., 13 CCR section 2183, *et seq* an, or any other provision of law under the jurisdiction of the ARB.

(8) KOT shall not violate the Drayage Truck Regulation, as codified in Title 13, CCR, section 2027.

(9) KOT shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or drayage trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of KOT for compliance with Title 13, CCR, section 2027(d)(5) any time in the future.

(10) KOT shall not violate the Truck and Bus Regulation as codified in title 13 CCR, section 2025.

(11) Each 1974 or newer diesel powered heavy-duty vehicle in the KOT fleet shall comply with the emission control label (ECL) requirements set forth in the title 13 CCR section 2183(c).

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

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

(14) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(15) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(16) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(17) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(18) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC sections 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $1,000 for 2 vehicles, or $500 per vehicle per violation.

Drayage Violations

The per vehicle penalty for the drayage violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations pursuant to HSC section 39674.

The penalty obtained for the drayage motor carrier violations involved in this case is $100 for one dispatch not compliant with in-use standards at $100 per dispatch for dispatching a vehicle not compliant with in-use standards and $500 for one vehicle not registered in the drayage truck registry after considering the factors specified in HSC section 43024. The penalty obtained for the drayage truck owner violations involved in this case is $1,000 for one vehicle non-compliant with in-use standards or $1,000 per vehicle after considering the factors specified in HSC section 43024.

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

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC section 43016 because KOT failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2011 and 2012 in violation of the PSIP regulation in title13 CCR sections 2190 *et seq*, for 2 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC section 43016 is the applicable penalty provision.

Drayage Violations

The penalty provision being applied for the Drayage Truck Regulation (title 13 CCR, section 2027) violations in this case is HSC section 39674 because the Drayage Truck Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* sections 39650 - 39675 and because KOT, as a drayage motor carrier and owner dispatched drayage trucks that were either not compliant with the emission standards set forth in the Drayage Truck Regulation or not registered with the DTR.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The PSIP and Drayage provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(19) KOT acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(20) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining

swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

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

(22) Now therefore, in consideration of the payment on behalf of KOT to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases KOT and their principals, officers, directors, receivers, trustees, employees, assignees, subsidiary, parent corporations, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (13) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board	**Keep on Trucking Company, LLC.**
By: [signature]	By: [signature]
Name: PAUL E. JA Cobs Jim R. Ryden	Name: DEAN WILKES
Title: Chief, Enforcement Division	Title: SAFETY DIRECTOR
Date: 8-13-14	Date: 7-23-14