



David T. Mitrou  
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617-849-7971

May 9, 2014

Paige Scott Reed, Esq.  
General Counsel  
MBTA  
10 Park Plaza  
Boston, MA 02116

**Re: Commuter Rail Operating Agreement Contract No. 159-12  
Side Letter No. 1**

Dear Ms. Scott Reed:

This **Side Letter No. 1** to Commuter Rail Operating Agreement Contract No. 159-12 ("Operating Agreement") memorializes the agreement of the Massachusetts Bay Transportation Authority ("MBTA") and Keolis Commuter Services, LLC ("Keolis") concerning the implementation of certain benefits accrued and vested before the Agreement Services Commencement Date ("ASCD"), all as specified below (collectively, the "Accrued Benefits") of former MBCR employees who will as of July 1, 2014 become employees of Keolis; who have taken early retirement from MBCR and are eligible for Gap Insurance (as defined below); or who are on disability and are eligible for medical insurance. Upon the MBTA's execution below, it is agreed and intended that this Side Letter No. 1 will serve as an amendment and modification to the Operating Agreement as governed by Section 42 (Modifications) of the Operating Agreement.

WHEREAS the parties hereto wish to assure the continuity of the payments, benefits, and programs described in this Side Letter No. 1 to all affected employees; and

WHEREAS, subject to the limitations below, the parties hereto wish to assure that Keolis is reimbursed by the MBTA for costs incurred in pursuit of this objective;

Keolis and MBTA agree as follows:

This Side Letter No. 1 confirms that Keolis will honor MBCR's current and anticipated obligations with respect to the Accrued Benefits to the extent not timely honored or discharged by MBCR. Keolis shall have no obligation to employees or former employees arising under this Side Letter No. 1 for any Accrued Benefits timely paid out by MBCR prior to or after the termination of its Operating Agreement, and the MBTA assumes no obligations to Keolis with respect to any such Accrued Benefits paid out by MBCR. At such time as Keolis incurs costs with respect to Accrued Benefits, MBTA agrees to promptly reimburse those direct costs without any offset to sums due under the Operating Agreement. Specifically, the Accrued Benefits and the direct costs (without any additional fees or costs) to be reimbursed are the following:

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Boston, MA 02210  
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1. Gap Insurance: Health Insurance premiums and/or costs of self-insurance that Keolis pays for coverage commencing on the ASCD on behalf of former MBCR employees age 60 or over who have taken or take early retirement prior to the ASCD and who are currently receiving or, with respect to employees who retire between the date of this letter and June 30, 2014, are eligible to receive gap insurance from MBCR until each such employee reaches age 65. ("Gap Insurance").
2. Vacation: The costs of any wages and payroll taxes for vacation earned by former MBCR employees in calendar 2013 and not taken in 2014 prior to the agreement services commencement date ("2013 Vacation Accruals"). Keolis will honor its obligations with respect to 2013 Vacation Accruals by allowing MBCR employees that Keolis employs to take vacation and to be paid at their then current wage rates. It is not anticipated that Keolis will be paying employees to cash out these benefits, except upon termination of the employee's employment by Keolis.
3. Sick, Personal and Bank Time: The costs of any wages and payroll taxes for sick leave, personal leave, "bank time" and any other paid leave that was accrued or earned (and not forfeited or discharged in accordance with the terms of any implementing or collective bargaining agreement with MBCR or Keolis, or other employment terms or policy with respect to non-represented employees) but not taken by former MBCR employees prior to the ASCD. In accordance with any applicable implementing or collective bargaining agreements with Keolis, Keolis will honor these benefits by either allowing employees to take accrued leave at their then current wage rates or, to the extent permitted under such agreements and any MBCR collective bargaining agreement or other employment terms or policy with respect to non-represented employees, paying employees to cash out all or a portion of these accrued benefits.
4. Disability Payments: Health insurance premiums and/or costs of self-insurance for former MBCR employees on disability prior to the ASCD, until the earlier of such time as such benefits would cease in accordance with the terms of any MBCR collective bargaining agreement or other employment terms or policy with respect to non-represented employees, or such employees are employed and return to work for Keolis, if at all.

It is agreed and understood by the parties hereto that Keolis will pay the cost of these benefits to former MBCR employees in reliance upon MBTA's representation that these direct costs will be promptly reimbursed upon submitting an appropriate invoice and backup documentation without any offset to sums due under the Operating Agreement. Nothing in this Side Letter No. 1 shall be construed as making Keolis a successor to MBCR's collective bargaining agreements.

It is agreed and understood by the parties hereto that Keolis, as previously committed, will recognize and provide at its sole cost and expense the paid vacation benefit and any other benefits accrued by active MBCR employees hired by Keolis during the 2014 calendar year (including but not limited to the period January 1<sup>st</sup> – June 30<sup>th</sup>), but exercised by such employees during calendar year 2015, or otherwise becoming due and payable.

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It is understood that MBTA has agreed to assume the financial responsibilities contained in the Side Letter No. 1 as a consequence of MBCR's failure to acknowledge and assume these responsibilities, which MBTA asserts are properly allocable to MBCR under its current Amended and Restated Operating Agreement with MBCR. Keolis will cooperate with the MBTA, including but not limited to the provision of information the MBTA deems necessary, in connection with any MBTA effort to recoup from MBCR any payments made to Keolis pursuant to this Side Letter No. 1.

If this properly reflects our agreement, please sign and return one of the duplicate copies of this letter.

Sincerely,



David T. Mitrou  
*Keolis Commuter Services, LLC*  
*General Counsel &*  
*Director – Labor Affairs*

Agreed:



Paige Scott Reed  
*MBTA*  
*General Counsel*