

## SETTLEMENT AGREEMENT AND RELEASE

Yellow Cab/Keolis

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### SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street Sacramento, California 95814, and Keolis Transit America (hereinafter "Yellow Cab/Keolis"), 6053 W. Century Blvd. 9th Floor, Los Angeles, CA 90045.

#### I. RECITALS

- (1) Title 13, CCR section 2472(a) states, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-road vehicle, engine, or equipment pollution control device or system which alters or modifies the original design or performance of any such pollution control device or system."
- (2) California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
- (3) California Health and Safety Code section 43008.6 states "Notwithstanding Section 43012, for the purpose of enforcing or administering Section 27156 of the Vehicle Code, the executive officer of the state board or an authorized representative of the executive officer, upon presentation of credentials or, if necessary under the circumstances, after obtaining a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated used, leased, or rented by an owner or operator of any vehicle operated for commercial purposes in order to inspect any such motor vehicle, secure emission samples therefrom, or inspect and copy any maintenance, use, or other records pertaining to that vehicle."
- (4) California Health and Safety Code section 43008.6(b) states, "The state board may collect a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code. Any penalties shall be paid to the Treasurer for deposit in the Air Pollution Control Fund."
- (5) Between January 1, 2011 and December 9, 2011, Yellow Cab/Keolis, violated the provisions of Health and Safety Code 43008.6 and Vehicle Code 27156 by tampering with the catalytic converter in taxi cab vehicles owned and operated in the Keolis Yellow Cab fleet (aka Pomona maintenance facility). ARB confirmed these violations through inspections

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at the Pomona maintenance facility on August 24, 2011, on smog records obtained from the Bureau of Automotive Repair and records obtained from the Department of Motor Vehicles. Inspections were also conducted at Creative Bus in Chino on August 24, 2011, and Yellow Cab of Greater Orange County (YCGOC) on February 27, 2012.

- (6) 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).
- (7) 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 excess smoke emissions.
- (8) CCR, title 13, sections 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.
- (9) CCR, title 13, sections 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds 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.
- (10) CCR, title 13, 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."
- (11) 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 violation there is not provided in this part any

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

- (12) ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (13) ARB contends Yellow Cab/Keolis failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for years 2010 and 2011 in violation of CCR, title 13, sections 2190 *et seq.*
- (14) Yellow Cab/Keolis stipulates to the facts and the violations of Health and Safety Code sections 43008.6(b), Vehicle Code section 27156, and CCR, title 13, sections 2190 *et seq.* described above.

## II. TERMS AND CONDITIONS

In consideration of ARB not filing a legal action for the violations referred to above, ARB and Yellow Cab/Keolis agree as follows:

- (1) Yellow Cab/Keolis shall pay the sum of eighty thousand five hundred dollars (\$80,500). Payment shall be made in certified check as described below and is due immediately upon execution of the Settlement Agreement.
  - **\$66,750.00** made out to **California Air Pollution Control Fund**
  - **\$13,750.00** made out to **Peralta Community College District**

All payments shall be sent to the attention of:

Martina Diaz  
Air Resources Board  
Enforcement Division  
Vehicle, Parts and Consumer Products Enforcement Branch  
Vehicle Enforcement Section  
9480 Telstar Ave., Suite 4  
El Monte, California 91731

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All documents shall be sent to the attention of:

Heather Brown  
Air Resources Board  
Enforcement Division  
Diesel Program Enforcement Branch  
Statewide Truck and Bus Enforcement Section  
9480 Telstar Ave., Suite 4  
El Monte, California 91731

- (2) Yellow Cab/Keolis represents that it understands the legal requirements applicable to selling modified vehicles in California and agrees that it will not assist in the marketing or sale of modified vehicles unless the vehicles have been transferred to an ultimate purchaser. Yellow Cab/Keolis agrees that it will not acquire, modify, offer for sale or sell new, uncertified vehicles for use or registration in California and Yellow Cab/Keolis promises that any vehicles in its possession not certified to California emission standards will be removed from California.
- (3) Yellow Cab/Keolis shall not violate HSC sections 43701 *et seq.* and 44011.6 *et seq.*, and CCR, title 13, sections 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (4) Yellow Cab/Keolis 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) Yellow Cab/Keolis 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 Yellow Cab/Keolis 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, Yellow Cab/Keolis 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

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by this Agreement and be maintained with the annual PSIP records.

- (5) Yellow Cab/Keolis shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of exhaust after treatment systems (EATS).
  - (a) Yellow Cab/Keolis shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS 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 Yellow Cab/Keolis uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, Yellow Cab/Keolis shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by Yellow Cab/Keolis to the ARB within six months of the date of this settlement and be maintained with the EATS installation and maintenance records.
- (6) Yellow Cab/Keolis shall submit copies of all PSIP compliance records for years 2012 and 2013 to the ARB by January 31st of the following year. Copies shall be addressed to the attention of Ms. Heather Brown at the California Air Resources Board, Enforcement Division, 9480 Telstar Ave. No. 4, El Monte, CA 91731. The ARB reserves the right to visit any Yellow Cab/Keolis fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.
- (7) Yellow Cab/Keolis 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.
- (8) Each 1974 or newer diesel powered heavy-duty vehicle in the Yellow Cab/Keolis fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, title 13, section 2183(c) within 45 days of this agreement.

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- (9) Yellow Cab/Keolis shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in CCR, title 13, section 2485, within 45 days of this Agreement.
- (10) This Agreement shall apply to and be binding upon Yellow Cab/Keolis, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (11) This Agreement constitutes the entire agreement and understanding between ARB and Yellow Cab/Keolis, concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Yellow Cab/Keolis, concerning the subject matter hereof.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.

### (1) **SB 1402 Statement**

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

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circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per vehicle penalty for the tampering violations involved in this case is a maximum of \$1,500 per unit per strict liability violation. The penalty obtained for the tampering violations involved in this case is approximately \$1,500 per vehicle for seventeen vehicles for a total of \$25,500.

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500 per vehicle per violation. The penalty obtained for the PSIP violations involved in this case is \$55,000.00 for 133 vehicles, or \$500.00 per vehicle per violation.

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

The penalty provision being applied to the tampering violations in this case is section 43008.6(b) because Yellow Cab/Keolis tampered with the vehicle's catalytic converters in violation of Health and Safety Code section 43008.6 and Vehicle Code section 27156 described above.

The penalty provision being applied to the PSIP violations is HSC section 43016 because Yellow Cab/Keolis failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for the years 2010 and 2011 in violation of the PSIP regulation in CCR, title 13, sections 2190 *et seq.*, for 133 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC section 43016 is the applicable penalty provision.

### **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 tampering provisions cited above do not prohibit emissions above a specified level. However, since the vehicles were not certified for sale in California, emissions attributable to them are illegal. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available.

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

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- (2) Yellow Cab/Keolis acknowledges that ARB has complied with SB 1402 in prosecuting and 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 not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (3) 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.
- (4) The penalty was also based on confidential business information provided by Yellow Cab/Keolis that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and Yellow Cab/Keolis that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and Yellow Cab/Keolis and reflects ARB's assessment of the relative strength of its case against Yellow Cab/Keolis, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Yellow Cab/Keolis may have secured from its actions.
- (5) Yellow Cab/Keolis represents that it understands the legal requirements applicable to fleets and the PSIP program in California.
- (6) Now therefore, in consideration of the payment by Yellow Cab/Keolis in the amount of eighty thousand five hundred dollars (\$80,500), ARB hereby releases Yellow Cab/Keolis and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (1) through (14) hereinabove, including claims under Health and Safety Code sections 43008.6, Vehicle Code section 27156 and CCR, title 13, sections 2190 *et seq.* The undersigned represent that they have the authority to enter into this Agreement.




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California Air Resources Board

COO Keolis Transit America

By:   
Name: Ellen M. Peter  
Title: Chief Counsel  
Date: 8/16/2012

By:   
Name: John Buskohl  
Title: Chief Operating Officer  
Date: