

**TERMS AND CONDITIONS**

This Agreement executed on \_\_\_\_\_, 20\_\_ is between \_\_\_\_\_ a corporation having a place of business at \_\_\_\_\_ (hereinafter called: the "Customer") and **Alstom Mass Transit Corporation**, a Massachusetts corporation having a place of business at 71 Wall Street, Plattsburgh, NY 12901 (hereinafter called: the "Supplier").

**WHEREAS** the Customer wishes to retain the services of the Supplier, as described in Attachment 3 - Scope of Services and in accordance with each executed Attachment 1 - MOW/MOS Support Services Request Form issued in accordance with this Agreement.

**WHEREAS** the Supplier desires to provide such services to the Customer.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties mutually covenant and agree as follows:

**1 DEFINITIONS**

When the following terms are used in this Agreement, they shall be construed to have the following meaning:

Agreement: all terms and conditions, and Exhibit duly signed by the Customer and the Supplier, all of them which form part of one instrument.

Consent or Approval: procedure or method given approval by the Customer.

Compensation: the compensation set forth in Section 9 of this Agreement.

Days: unless otherwise designated, calendar days.

Effective Date: the date set forth in Section 4 of this Agreement.

Force Majeure: acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Supplier's control, or for any of the foregoing that affect subcontractors or suppliers.

Goods: any material to be procured by the Supplier which is necessary to perform the Services.

Master Contract: contract between NCTD and the Supplier for the operations and maintenance of NCTD's Sprinter and Coaster lines.

NCTD: the North County Transit District

Notice: a written notice.

Party: the Customer or the Supplier, together the Parties

Exhibit: the flagging request form confirming the work for a specific project.

Services: the scope of work to be rendered by the Supplier pursuant to this Agreement and in accordance with Attachment 3 – Scope of Services and Attachment 1 - MOW/MOS Support Services Request Form, including, but not limited to the performance of flagging services described in this Agreement and the procurement of Goods as applicable.

Supplier: the subcontractor itself, its employees, authorized agents, officers or any other person working under its control and/or supplying Services to the Customer pursuant to this Agreement.

**2 AGREEMENT**

**2.1** Under and subject to the terms, conditions and provisions of this Agreement, the Supplier agrees to perform the Services described in Attachment 3 - Scope of Services, in accordance with each executed Attachment 1 - MOW/MOS Support Services Request Form of this Agreement.

**2.2** The Customer agrees to pay the Supplier the sums of money mentioned in Attachment 2 of this Agreement, at the time, in the manner and subject to the terms and conditions hereinafter set forth.

**3 SERVICES**

**3.1** The Services to be rendered under this Agreement shall comply in all respects with the requirements of this Agreement. The Services are specifically described in Attachment 3 - Scope of Services of this Agreement and shall be executed in accordance with each executed Attachment 1 - MOW/MOS Support Services Request Form.

**4 EFFECTIVE DATE**

**4.1** This Agreement shall become effective as the execution of this Agreement or the commencement of the Service or, whichever occurs first. However, due to the fact that the Supplier may have started to provide the Services before the Effective Date, the parties agree that the obligations resulting from the Services will be retroactive to the date the Supplier started the Services.

**5 REPRESENTATIONS AND OBLIGATIONS**

**5.1** The Supplier represents and warrants to the Customer that it is qualified to perform the Services.

**5.2** The Supplier shall comply with the requirements set forth in this Agreement.

**5.3** The Supplier represents and warrants that it will render the Services in accordance with NCTD approved work plans.

**6 CONFIDENTIALITY**

**6.1** The Supplier acknowledges that each Party is and shall remain the sole and exclusive owner of any of that Party's Confidential Information as hereunder defined.

**6.2** During the term of this Agreement and thereafter, each Party shall keep secret and shall not convert to its own use or the use of others or disclose or convey to any third party any Confidential Information unless duly authorized in writing by the other Party. Such Confidential Information includes but is not limited to information, knowledge, data, document or property designated as secret, proprietary, the Customer or Supplier private, or confidential by the Customer or the Supplier or by any of their respective employees or by any other person, entity or company with which a Party does business, or any information concerning the conduct or details such Party's past, present or future business which the other Party may have or obtain in the exercise of its functions.

**6.3** Upon written request by a Party, or within fifteen (15) Days of the termination or expiration of this Agreement, the other Party shall return all tangible forms of the former's Confidential Information (including any and all copies thereof) in its possession.

**7 TERM**

**7.1** This Agreement is effective starting from the Effective Date and shall continue for a period of five (5) years after which the initial term may be extended by an additional three (3) year term.

**8 COMPENSATION**

**8.1** The hourly rate for flagging is \$US 74.12 and the hourly rate for signal is \$US 78.47. Rates will be escalated on an annual basis at the beginning of each financial year pursuant to the Master Contract. The escalation rate shall be the BLS Consumer Price Index for San Diego. The adjustment amount shall not exceed 3%.

Additional fees may apply for Services performed in overtime or if no lunch time is provided, as stated in greater detail in Attachment 2 of this Agreement.

**8.2** The Compensation mentioned above does not include any federal, provincial (state) or any other applicable taxes.

**8.3** Payment of the Compensation is as follows:

The Supplier shall submit a monthly invoice to the Customer.

- (a) This invoice shall itemize the hours worked per person per day during the preceding month, in connection with the Services rendered by the Supplier;
- (b) This invoice shall clearly indicate where the Services were rendered; and
- (c) Any amount of tax applicable on the Services rendered by the Supplier shall be indicated separately on the invoice.

**8.4** The Customer shall pay the invoice submitted by the Supplier no more than thirty (30) Days following its receipt by the Customer.

**8.5** A minimum of 4 hours will be charged to the Customer for Services performed for which the duration of the Services is less than 4 hours.

**8.6** A minimum of 8 hours will be charged to the Customer for Services performed for which the duration of the Services is more than 4 hours but less than 8 hours.

**8.7** Customer acknowledges that Supplier has the right to correct and reissue an invoice, in the event an invoice previously issued contained an error.

**9 DEFAULT OF SUPPLIER**

**9.1** If the Supplier fails to provide the Services or if the Supplier violates any material term of this Agreement, the Customer may give Notice to the Supplier of such default, specifying the same and, if the Supplier fails to remedy said default within a period of thirty (30) days of such Notice, or where such default is not susceptible of remedy within thirty (30) days the Supplier fails to take steps to remedy such default within the thirty (30) period, the Customer shall notify NCTD.

**10 CUSTOMER'S RESPONSIBILITIES**

**10.1** The Customer agrees to cooperate with the Supplier, so that the Supplier is able to assume its responsibilities effectively.

**11 TERMINATION OF AGREEMENT**

**11.1** The Customer may terminate this Agreement or any Exhibit at any time upon a Notice of thirty (30) days. The Customer's shall pay the Supplier in accordance with

Section 9 for the hours worked and expenses incurred by the Supplier together with all costs incurred by the Supplier as a result of such termination.

**11.2** Upon receipt of the said Notice, the Supplier shall take the necessary measures to end the Services in an orderly, rapid and cost-efficient manner.

**11.3** The Supplier may at any time after the effective date terminate this Agreement if the Master Contract is terminated.

**12 CANCELLATION**

**12.1** The Customer may cancel any or all part of the Services scheduled to be performed in accordance with an NCTD approved work plan by giving a notice of no less than 72 hours to the Supplier. Any Services cancelled with less than 72 hours' notice shall be invoiced as Services provided and paid in accordance with Section in 9.

**13 NOTICES**

**13.1** All Notices required in accordance with this Agreement, shall be submitted in writing and shall be sent by certified mail to the following recipient:

Supplier: Alstom Mass Transit Corporation  
3700 Maritime Way  
Oceanside, CA 92056  
Attention: General Manager, San Diego  
Tel.: +1 (760) 754-0778

copy to: Alstom Transport Canada Participation Inc.  
Alstom Transport USA Inc.  
1101 Parent Street  
Saint-Bruno, Quebec, Canada J3V6E6  
Attention: Contracts & Legal Affairs  
Tel.: +1 (619) 733-9228

Customer: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

or to another address given by either party in writing.

**14 GOVERNING LAW**

**14.1** This Agreement shall be construed and interpreted according to the laws of the State of California and is specifically excluding from application to this Agreement the United Nations Convention on the International Sale of Goods.

**15 INDEMNIFICATION**

**15.1** To the extent not arising out of or in consequence of the Customer's negligence, gross negligence or willful misconduct, the Supplier shall indemnify, defend and hold harmless the Customer and its officers, agents and/or employees against all suits, claims, or liability of every name and nature, for or due to any breach of contract, injuries to persons including death or damage to property arising out of or in consequence of the Supplier's negligence, gross negligence and willful misconduct in the performance of the Services covered by this Agreement.

**15.2** In no event shall the liability incurred by the Supplier to the Customer in connection with any and all contractual remedies provided to the Customer hereunder exceed the total annual value of this Agreement; provided,

however, that such limitation on liability shall in no event include damages payable or liability incurred as a result of third party claims. Furthermore, under no circumstance shall the Supplier be liable for remote, indirect, special, punitive, exemplary, incidental, speculative or consequential damages (including without limitation loss of revenue and lost profit, lost opportunity, economic loss, overhead expenses, business interruption, loss of use, loss of productivity, downtime or damage to reputation or goodwill) irrespective of the nature of the claim asserted.

## 16 APPROVAL OF WORK

16.1 The Services are subject to approval by the Customer. Such approval shall not relieve the Supplier of its obligations under this Agreement.

## 17 MODIFICATION

17.1 Amy modification to the Services or this Agreement shall be subject to agreement between the Parties and formalized in an Amendment executed by both Parties.

17.2 The Customer shall provide a schedule adjustment or additional compensation to the Supplier via the process described in section 20.1 in the event a change in federal, state and local laws, ordinances, rules, regulations and orders following the date of the submittal of the Supplier's quote, impacts the scope of the Services to be performed or the project schedule of this Agreement.

## 18 DISPUTE

### 18.1 Dispute Resolution

18.1.1 Any claim or dispute of any nature by the Supplier, including any technical or commercial issue related to the Services and the extent of Supplier's obligations under this Agreement, must be brought to the attention of the Customer in writing, within ten (10) Days of the event which gave rise to the claim or dispute, unless otherwise requested earlier pursuant to this Agreement. Furthermore, within twenty (20) Days after asserting a claim or dispute against the Customer, the Supplier shall provide the Customer with all of the relevant information and documentation in support of its position and referencing the specific clauses and/or sections of the Agreement backing up their claim.

18.1.2 Any claim or dispute arising at any time under this Agreement, including without limitation any differing opinion that Parties may have in relation to the interpretation of the Agreement, which is not disposed of by agreement of the Parties, shall be decided in the first instance by the Customer, which shall reduce its decision to writing. The decision of the Customer in relation to any claim or dispute shall be final and binding unless, within thirty (10) Days from date of notification of the decision, or in any longer period of time confirmed by the Customer in writing, the Supplier delivers to the Customer a written notice of rejection of such decision, stating that it considers the matter as a claim or dispute that must be resolved accordingly with clause 21.1.3

18.1.3 Any dispute or claim arising out of or relating to the Agreement, or the breach thereof, shall be finally settled by arbitration administered by the American Arbitrators Association in accordance with its Commercial Arbitration Rules, including the Emergency Interim Relief Procedure, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The location of the arbitration will be in the State of California unless otherwise agreed by the Parties. Decision of the arbitrator shall be final and binding. It is however expressly agreed and understood that any arbitration or court proceeding arising out of a dispute under this

Agreement may be joined with arbitration or court proceeding brought under the Master Contract, in accordance with the rules set by it. Nothing in the present clause precludes the Parties from informally resolving a claim or dispute or prevents a negotiated settlement of a claim or dispute prior to resolution in accordance with the above procedure.

18.1.4 Notwithstanding any other clause of the Agreement, any disputes between the Supplier and the Customer in which NCTD may be impacted or which may impact the Customer's obligations or the Supplier's obligations towards NCTD will be heard according to the process detailed in the Master Contract.

### 18.2 Performance of Obligations during Dispute

18.2.1 Notwithstanding the pending of a final settlement of any dispute, without prejudice to any Party's rights, both Parties shall proceed diligently with the performance of this Agreement.

## 19 MISCELLANEOUS

19.1 Interpretation. Titles, subtitles, headings, subheadings and running headers, printed herein are merely for the convenience of the parties and shall not be deemed to define, limit or describe the scope or the purpose of any part of this Agreement.

19.2 Renunciation. Failure by one of the parties to require the implementation of any provision of this Agreement shall not constitute a renunciation or relinquishment of any of the provisions in this Agreement, and the said provisions shall remain effective at all times.

19.3 Validity. Each of the provisions of this Agreement applies insofar as permitted by law and the nullity or non-application of a provision in part or in its entirety shall not modify the application of the remaining part of that or any other provision.

19.4 Modification. No modification or addition to the present Agreement shall be valid unless it is submitted in writing and duly signed by an authorized representative of both parties.

19.5 Employer-employee relationship. Notwithstanding any provision herein no employer-employee relation is created between the Customer and the Supplier. It is not the intention of the parties to create a partnership or a joint agreement with a third party, or to contract obligations or liabilities in the name of the other party.

19.6 Compliance with Laws. The Supplier shall observe and comply and shall remain fully informed with all applicable federal, state and local laws, ordinances and regulations that affect its performance of the Services under this Agreement

19.7 Successors. This Agreement is binding upon the parties hereto and their respective successors and permitted assigns, as the case may be.

19.8 Consideration. Time is of the essence in this Agreement.

19.9 Assignment. This Agreement and the interest and obligations contained herein shall not be assigned or transferred by the Supplier without the prior written consent of the Customer, which consent shall not be unreasonably

withheld. Notwithstanding the foregoing, an assignment or transfer to any of the Suppliers Group Companies may be undertaken upon written notice to the Customer.

**19.10 Survival of obligations.** Representations, guarantees and promises of each party herein contained, or in any document or deed delivered in virtue of this Agreement, shall remain in effect even though the transactions herein contained have been completed. Furthermore, the provisions as set forth in Sections 5, 6, 11, 16, 17, 18 and 20 shall remain in effect despite the termination of this Agreement.

**19.11 Insurance.** Without prejudice to the right of the Customer to be indemnified by the Supplier, the Supplier shall maintain, at its own cost, during the entire term of this Agreement, the following insurance coverage:

Worker's Compensation as per statutory amounts prescribed by the State of California and employer's liability insurance with coverage of at least \$1,000,000 for each accident, injury, or illness. The Supplier shall provide Worker's Compensation Insurance in accordance with the laws of the State of California and in amounts sufficient to secure the benefits of the California Worker's Compensation law for all employees. If subletting any of the work, the Supplier shall ensure that the employees of the subcontractors are covered by similar insurance. The Supplier shall also ensure that any equipment rental agreements that include operators who are employees of independent contractors, sole proprietorships or partners are covered by similar insurance.

Commercial General Liability Insurance with limits of not less than \$5,000,000 in the aggregate, for any one occurrence with respect to loss or damage to property and death, or injury to persons arising out of bodily injury and property damage, including contractual liability. The Supplier shall provide confirmation the policy does not contain an exclusion for work being done within fifty feet (50') of the right of way.

Commercial Automobile Liability Insurance covering the ownership, maintenance or use of all owned, non-owned and hired vehicles used in the performance of this Agreement, with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage liability.

**19.12 Force Majeure.** The Supplier will not be responsible of the non-performance of the Services under this

Agreement due to event of the nature of a Force Majeure. However, it is understood that in the event that the Supplier foresees any impediment to the execution of the Services, it shall immediately advise the Customer in writing of such impediment.

**19.13 Communication.** Neither party shall release material relating to this Agreement or its subject matter, including but without limitation news releases, photographs, films, advertisements, public announcements and denials or confirmation of such public announcements, without the other's prior written consent.

**19.14 Trademarks.** Supplier shall not, without the prior written consent of the Customer which shall be at the Customer's sole discretion, use any trademarks or trade names of the Customer or any of its affiliates. The Customer shall not, without the prior written consent of the Supplier which shall be at the Supplier's sole discretion, use any trademarks or trade names of the Supplier or any of its affiliates. All requests for permission to use a Party's trademarks and trade names shall be accompanied by the proposed text or document in which the other Party desires to use same.

**19.15 Precedence.** In the event of conflict between the Exhibit and the terms and conditions of this Agreement, the precedence of documents shall be:  
1- The terms and conditions set forth herein; and  
2- the Exhibit.

**19.16 Previous agreements.** This Agreement supersedes and replaces all previous proposal, negotiation, memorandum of understanding, correspondence and agreements executed between the parties concerning the subject matter of this Agreement.

**19.17 Counterparts.** This Agreement may be signed in counterparts, and each counterpart, once signed and delivered, is deemed to be an original; however, all of the counterparts constitute one single deed.

**IN WITNESS WHEREOF,** the parties have signed this Agreement as of the date set forth herein.

**Customer's Full Legal Name:** \_\_\_\_\_

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Alstom Mass Transit Corporation**

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_