

COPY

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN
THE NORTH COUNTY TRANSIT DISTRICT AND MATTHEW O. TUCKER**

THIS AMENDED AND RESTATED AGREEMENT (herein "Agreement") is made as of the 20th day of May, 2010 (the "Effective Date") by and between the NORTH COUNTY TRANSIT DISTRICT (herein "NCTD") a governmental entity as employer, and MATTHEW O. TUCKER (herein "TUCKER") an individual as employee who hereby agree as follows:

**I.
RECITALS**

A. NCTD is a governmental entity existing pursuant to California Public Utilities Code Section 125,000 et. seq., having the powers and duties therein specified and generally responsible for public transit services within North San Diego County.

B. TUCKER was selected by the NCTD Board of Directors ("BOARD") to serve as NCTD's General Manager, after a nationwide search.

C. The parties entered into an Employment Agreement, effective December 2, 2008, and entered into an Amendment to the Employment Agreement on July 1, 2009.

D. The parties agree that this Agreement has no fixed term, subject to the rights of termination set forth herein.

E. This Amended and Restated Employment Agreement sets forth all of the terms and conditions of their Agreement.

**II.
COMPENSATION**

A. Salary.

Commencing on December 15, 2009 (the anniversary of the Commencement Date), TUCKER's gross salary shall be \$215,250.00, effective until the day preceding subsequent anniversary of the Commencement Date, December 14, 2010. Thereafter, TUCKER's gross salary shall be increased 5% each subsequent year on the anniversary of the Commencement Date as follows:

<u>Anniversary of the Commencement Date</u>	<u>Gross Salary</u>
December 15, 2010	\$226,013.00
December 15, 2011	\$237,313.00
December 15, 2012	\$249,179.00

Thereafter, TUCKER's salary shall be adjusted by NCTD annually as of the anniversary date. TUCKER's salary adjustment in any year may include a bonus, at the discretion of the BOARD. Salary adjustment and bonus shall be at the discretion of the BOARD, based upon TUCKER's performance of goals and objectives, agreed upon in advance by TUCKER and the BOARD. Upon execution of this Agreement, the BOARD grants TUCKER a bonus based upon consideration of TUCKER'S performance of goals and objectives, agreed upon in advance by TUCKER and the BOARD in an amount of \$20,000.00.

B. Expense Reimbursement.

NCTD shall reimburse TUCKER for reasonable and documented expenses for attendance at meetings, for official business related travel, and for other work related activities where expenses are incurred incident to the performance of TUCKER's job and in conformance with NCTD policies on expense reimbursement. Expenses shall include travel to meetings of relevant industry groups and Boards of which TUCKER and/or NCTD is a member. Reimbursable expenses include covered expenses incurred prior to the Effective Date, including transitional cost reimbursements as described in Section C, below. At TUCKER's option, NCTD shall either provide TUCKER with an NCTD cell phone pursuant to NCTD's standard practices for management employees, or pay an allowance of \$75.00 per month in lieu of reimbursement for cell phone expenses.

C. Relocation Expenses.

In addition to salary and benefits otherwise set forth herein, TUCKER shall receive relocation benefits, as follows:

(1) TUCKER shall receive a reimbursement for costs in connection with the purchase of a new home in north San Diego County in an amount equal to closing costs, including title insurance and escrow fees, and fees and costs required to obtain a home loan. Said amount shall not exceed \$10,000.

D. Benefits.

(1) Standard Management Benefits: Except as provided in subparagraph C(2) below, TUCKER shall receive the same benefits package as that offered to NCTD's management employees as the same may from time to time be established by NCTD. The beginning benefits are set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

(2) Exceptions: TUCKER shall receive the following:

(a) Sick Leave: TUCKER shall retain all accrued sick leave which he is entitled. TUCKER shall receive an annual accrual of ninety-six (96) hours per year (12 days).

(b) At TUCKER's option, TUCKER shall either use an NCTD vehicle, or NCTD shall pay TUCKER a vehicle allowance in the amount of \$600.00 per month.

(c) Vacation: TUCKER shall be entitled to 200 hours (25 days) annual vacation, which shall be fully vested on the Commencement Date of this Agreement. Said amount is based upon his 16 years of service in the industry, as of the Commencement Date. He shall be entitled to increased vacation, pursuant to the Standard Management Benefits, consistent with his service to the District. His vacation shall accrue, and either be paid in accordance with Standard Management Benefits, or accrued at his discretion. TUCKER shall also receive the 10 days management leave provided as "Standard Management Benefits."

(d) Deferred Compensation:

(i) NCTD shall contribute to TUCKER's account in the 401(a) Retirement Plan each year, in the sum of \$20,000.00. In addition, for calendar year 2010, NCTD shall contribute an additional \$5,000.00 to TUCKER's account in the 401(a) Retirement Plan. Each such contribution shall be made in addition to any contribution made by TUCKER to NCTD's 457 Deferred Compensation Plan.

(e) Health Insurance Benefits:

(i) TUCKER shall be entitled to receive health benefits for himself and his family at the level of PERS Choice/Medical PPO Plan, or equivalent, and Family Vision Insurance and Dental Insurance.

E. Term.

This Agreement shall have a term of five years from the Commencement Date. The Commencement date shall be December 15, 2008. The term shall be automatically extended by one year at each Anniversary Date of the Commencement Date.

III.
DUTIES AND RESTRICTIONS

A. Duties.

Overall Management: TUCKER is the Executive Director and Chief Executive Officer for NCTD, its highest staff position, and shall be responsible for management of all aspects of NCTD operations on a day to day basis, subject only to the policy direction of the BOARD. TUCKER's duties and responsibilities shall include:

- (1) Supervision of all department heads, departments and employees¹, including sole authority, except as TUCKER may delegate to staff, to hire and terminate NCTD employees in accordance with applicable law and NCTD policies, rules and regulations;
- (2) Responsibility for overall management of employee relations matters;
- (3) Establishment of a proposed set of short range goals and a proposed action plan for developing and implementing medium and longer term goals for the organization, to be presented to the BOARD for review and consideration annually.
- (4) Assisting the BOARD in community and public relations matters;
- (5) Monitoring, managing, and overseeing the District budget and the District's revenues and expenses;
- (6) Overseeing timely development and presentation to the BOARD of annual proposed budgets;
- (7) Assuming overall responsibility for management of staff and in guiding NCTD towards its BOARD approved goals;
- (8) Assuring that NCTD's financial affairs are properly managed, accounted for; and audited, and that appropriate reports thereon are made to the BOARD and to others as required by law;
- (9) Conferring with legislative liaisons regarding legislative matters, monitoring, report on, and making recommendations on legislative activities;
- (10) Attending all regular and special meetings of the BOARD and of BOARD committees and subcommittees as requested, assuming overall responsibility for preparation and presentation of all agendas and staff reports;
- (11) Meeting with the City Councils and managers of each of the member agencies of NCTD, and with the County Board of Supervisors and its Chief Administrative Officer;
- (12) Representing the BOARD and staff in contacts and communications with the public, member agencies, and other outside agencies and organizations with respect to transit matters and NCTD issues, within the scope of BOARD policies and programs;

¹ Except for general counsel who reports directly to the BOARD.

(13) Such other and further activities as the BOARD may from time to time direct;
and

(14) Such other and further activities as TUCKER determines necessary to competently and professionally carry out his job.

B. Restrictions.

(1) Outside Employment and Activities: TUCKER shall not accept any other employment during the term of this Agreement and shall devote his full time to his NCTD position. TUCKER shall not engage in any outside activities during the term of this Agreement that generate financial or other conflict of interest with his position as NCTD Executive Director, or the appearance thereof. If TUCKER is not certain whether or not a particular proposed outside activity is permitted under this Agreement, he shall ask the BOARD for a determination thereon before engaging in the activity, and the BOARD shall within thirty (30) days make a determination thereon. Failure to act on the part of the BOARD within said thirty (30) day period shall be deemed approval.

(2) Direction from BOARD: TUCKER shall take direction as to matters of NCTD business only from the BOARD as a whole, from the Chair, or from a duly authorized BOARD committees which has been granted the power by the BOARD to give direction to TUCKER.

IV.
TERMINATION OF AGREEMENT

This Agreement may be terminated at any time as follows:

A. By NCTD.

NCTD may terminate this Agreement at any time, either with or without cause, by majority vote of the total authorized membership of its BOARD. Termination shall be under one or more of the following paragraphs:

(1) For Cause:

(a) Misconduct. In the event that NCTD has determined, based on an evaluation of facts and circumstances, that there is good cause to terminate this Agreement due to (1) malfeasance, (2) gross negligence, (3) fraud, (4) serious misconduct, or (5) conviction of a felony on the part of TUCKER, NCTD shall give TUCKER notice of termination, which at the option of the BOARD shall either be

effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, TUCKER shall have the right to present any rebuttal information to the BOARD, in writing, no later than ten (10) calendar days after the termination. In the event that the BOARD gives notice of an intent to terminate at a future date, TUCKER shall have the right to present any rebuttal information to the BOARD, in writing, prior to the effective date of the termination. In either case, TUCKER shall have the right to a hearing before the BOARD, in open or closed session as authorized by the Brown Act, within fourteen (14) days following termination. The BOARD shall review any rebuttal information provided by TUCKER and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The BOARD's decision shall be final.

(b) **Material Uncorrected Failure to Perform:** In the event that NCTD has determined, based on an evaluation of facts and circumstances, that there is a good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in subparagraph VII(A)(1)(a), such as (1) a repeated material failure to meet stated, reasonable performance objectives that is within TUCKER's control to correct but as to which is not corrected in spite of notice of necessary corrective action, (2) uncorrected, repeated, material failure to present a positive public and media image on behalf of NCTD, in spite of notice and opportunity to correct the deficiency, (3) or other uncorrected material failure in performance. NCTD may terminate the Agreement for cause provided NCTD (1) first gives notice to TUCKER in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives TUCKER a reasonable opportunity to present evidence to the BOARD in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of TUCKER, and (3) NCTD will not terminate for cause under this subparagraph VII(b) unless it determines that TUCKER is either incapable or unwilling to correct the perceived problem in spite of having had warnings and a reasonable opportunity to cure the problem, and that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the BOARD, including any evidence presented by TUCKER.

(c) **No Severance Benefits:** In the event that this Agreement is terminated by NCTD pursuant to this Paragraph IV(A)(1)(a) TUCKER shall not be entitled to any severance benefits under this Agreement or under any other provision of law or NCTD policy or procedure, unless it is subsequently determined that such termination was not for just cause, consistent with the requirement specified in Paragraph VI of this Agreement.

B. TUCKER.

TUCKER may terminate this Agreement at any time, with or without cause, by (1) giving NCTD sixty (60) days advance written notice of his intent to terminate, or sooner by mutual agreement. In the event that TUCKER exercises his right to terminate, or sooner by mutual agreement. In the event that TUCKER exercises his right to terminate under this subparagraph IV(B) he shall not be entitled to the severance benefits set forth above under Paragraph V or to any other similar termination benefits under law or NCTD rules and regulations, provided however, that TUCKER shall be entitled to payment for any unused vacation and sick leave earned and unused at the time his notice of termination is effective.

V.

SEVERANCE PAY: EARLY TERMINATION

NCTD shall have the right to terminate TUCKER's employment at any time during the term of this Agreement, with or without cause. In the event that TUCKER's employment is terminated by NCTD without cause, TUCKER shall be entitled to the severance benefits stated in this Paragraph V, as follows:

A. Computation: Items Included.

Severance benefits under this paragraph V shall be computed based upon (1) TUCKER's monthly salary in effect at the time of termination (2) continued payment by NCTD, or the cash equivalent value, at NCTD's option of health and dental benefits in favor of TUCKER and his family at the rate paid by NCTD at the time of termination.

B. Amount of Severance.

The amount of severance benefits shall be a lump sum equal to the value of TUCKER's monthly salary and benefits as they existed at the time of termination times twelve (12) months.

C. Separately Negotiated: Waiver.

The parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance at the time of termination by TUCKER of the severance pay benefits provided by this Section shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which TUCKER may have, or have had, at any time, in the past or in the future, arising out of TUCKER's employment by NCTD, including but not limited to claims for wrongful termination. If TUCKER wishes to retain any such rights, TUCKER must decline to accept the severance benefits provided by this paragraph.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of TUCKER as to all claims, known or unknown, and TUCKER specifically waives the

provisions of California Civil Code Section 1542 which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIS MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

VI. DISPUTE RESOLUTION

A. Informal Meet and Confer.

The parties agree to meet and confer informally as the first step towards resolution of any dispute. The BOARD may be represented by a representative of its choosing, and TUCKER may be represented as well.

B. BOARD Resolution.

If the parties are unable to resolve the matter informally through meet and confer, the matter shall be submitted to the BOARD for final resolution at a meeting to be held by the BOARD within thirty (30) days of submittal, and shall make a final decision within forty-five (45) days of the initial meet and confer session, unless TUCKER and the BOARD mutually agree to a longer period.

C. Litigation.

As to matters not covered by Section VI above, neither party shall commence any litigation, arbitration, or other formal dispute resolution process until the process described in Section VI (A) and (B) have been completed.

VII. INDEMNIFICATION

A. In Favor of TUCKER.

NCTD shall to the fullest extent permitted by law indemnify and hold harmless TUCKER from and against any and all claims, actions, or causes of action of any kind for which TUCKER may be held liable and which arise out of or relate to TUCKER's performance of his job duties at NCTD provided (1) TUCKER acted in good faith at all times and (2) TUCKER's actions, or failures to act, giving rise to liability occurred within the course and scope of his employment at NCTD

In addition NCTD shall defend, at NCTD expense and with counsel of NCTD's choosing any

action, claim, or proceeding in which TUCKER is named and which alleges actions on the part of TUCKER, or failures to act, within the scope of the above-referenced indemnity obligation even if such action, claim, or proceeding is ultimately proved groundless.

VIII.
MISCELLANEOUS PROVISIONS

A. Governing Law.

This Agreement shall be interpreted and enforced in conformance with California law.

B. Entire Agreement.

This Agreement together with the exhibits represents the entire agreement between the parties and supersedes any prior agreements, written or oral, any and representations, written or oral, not expressly included herein.

C. Venue.

The venue for any litigation to interpret or enforce this Agreement shall be the San Diego Superior Court, Vista Division.

D. Integration Clause.

If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement then the entire Agreement shall be voided.

E. Independent Review: Interpretation.

TUCKER and NCTD affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement, and to have it reviewed and to receive advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. TUCKER and NCTD further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

F. Public Record.

TUCKER acknowledges that this Agreement, upon final execution, will become a public

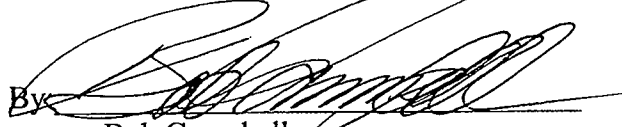
record under California law available for public inspection and copying.

G. Counterparts.

This Agreement may be signed in counterparts.

DATED: June 3, 2010

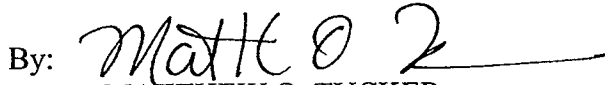
NORTH COUNTY TRANSIT DISTRICT

By: 

Bob Campbell
Chair of the Board

APPROVED BY BOARD ACTION DATED _____

DATED: May 20, 2010

By: 
MATTHEW O. TUCKER