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PLEASE RESPOND TO
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December 6, 2022

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Via Email to nathan.fletcher@sdcountry.ca.gov

Nathan Fletcher, Chair
San Diego Metropolitan Transit System Board of Directors
1600 Pacific Hwy
Room 335
San Diego, CA 92101

Re: Teamsters Local 683 – Union Demand re: Transdev Issue (Restrooms and Meal/Rest Breaks)

Dear Mr. Fletcher:

This firm serves as general counsel for the International Brotherhood of Teamsters, Local 683 (hereafter “Union”). The Union is advised that San Diego Metropolitan Transit System (hereafter “MTS”) is failing to ensure that Transdev Services, Inc. (hereafter “Transdev”), the contractor MTS approved to service the City of San Diego, provide the following basic human necessities to drivers:

- (1) Proper restrooms and/or portable restrooms, as the number of portable restrooms provided by Transdev do not meet the minimum required by the provisions of the Request For Proposals for Fixed Route Services (hereafter “RFP”), including but not limited to Item 10 of Section B.2.1 (Contractor Responsibilities) and Item 22 of Section B.3 (System Operating Standards and Requirements)¹, nor the minimums imposed by Federal and State Law; and regardless, MTS is unlawfully allowing portable restrooms to be a permanent solution.²; AND
- (2) Secure and sanitary shelter (or any safe location at all) necessary³ to shield drivers from the harsh elements during their legally-mandated Meal and Rest Breaks, as required by the RFP provisions, including but not limited to Item 10 of Section B.2.1 (Contractor Responsibilities)⁴ and Items 20 and 22 of Section B.3 (System Operating Standards and Requirements) and, and further required by Federal and State Law.

¹Attached hereto as **Exhibit 1** is the Request For Proposals, MTS Doc. No. B0708.0-20.

²Attached hereto as **Exhibit 2** are photos of just two of Transdev’s deplorable portable restroom conditions.

³Attached hereto as **Exhibit 3** are photos of Transdev’s unsafe and unsanitary portable restroom locations.

⁴ See **Exhibit 1**, p. 52.

Though MTS' industry has continuously evolved (E.g., buses go from diesel to CNG and LNG to Electrical power), the basic necessities (restrooms and meal/break areas) being provided to its drivers are several decades behind. These drivers are the very backbone of the transit industry, yet MTS fails to provide so much as a sanitary bathroom.

The Union demands MTS immediately rectify these unacceptable, inhumane conditions by building adequate restroom and break areas; and in the interim, by ensuring that Transdev is providing at least the minimum required number of portable restrooms in both a safe and sanitary manner, and ensuring that Transdev is providing an adequate number of relief vehicles to act as shelter or to drive to suitable restroom and/or break locations. Not only do the tenets of basic humanity require such from MTS, Federal and State law, as well as the RFP mandate these requirements.

1. The Employer Must Provide All Employees with Sanitary Restroom Facilities, Pursuant to Both Federal and State Law.

MTS and Transdev are unlawfully refusing to provide adequate restrooms for drivers; a human requirement so rudimentary and vital, the Union finds it shocking that its concerns have gone unabated this long.

Pursuant to the terms of the RFP, Transdev is required by MTS to: (1) provide its drivers a minimum of 25 portable restrooms, (2) complying with any and all Federal, State, or Local laws regarding lunch periods and/or breaks (including California Wage Order 9), and (3) provide driver restroom facilities as needed.⁵ Accordingly, Transdev is required to add restrooms as service expands, in compliance with applicable regulations.⁶

The Union has twice now requested the number of portable restrooms Transdev is presently providing its drivers, as well as their respective locations. To date, Transdev has suspiciously failed to provide answers to these very basic questions. Based on the Union's own observations, however, it is abundantly clear that Transdev is failing to comply with said terms of the RFP.

All employers are required by OSHA (Occupational Safety and Health Administration) to provide their workers with sanitary and immediately-available toilet facilities. The Federal sanitation standards⁷ are intended to ensure that workers do not suffer adverse health effects that can result if toilets are not sanitary and/or are not available when needed under California law to make "suitable resting facilities" (separate from restrooms) available to employees during working hours. See generally, <https://www.osha.gov/restrooms-sanitation>.

Pursuant to 29 CFR 1910.141(c)(1)(i), toilet facilities, in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with table J-1:

Table J-1

⁵ See **Exhibit 1**, pp. 52, 59.

⁶ See *Id.*

⁷ Found in 29 CFR 1910.141, 29 CFR 1926.51 and 29 CFR 1928.110.

Number of employees	Minimum number of water closets ⁸
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	(⁹)

The State of California also follows the Federal guidelines for minimum number of restrooms for employees. The table in §3364 of California’s General Industry Safety Orders (Sanitary Facilities) requires separate toilet facilities for each sex as indicate below:

Number of employees	Minimum number of water closets ¹⁰
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	1 additional for each additional 40 employees or fraction hereof.

Lavatories shall be made available in all places of employment, and must be provided with running water, hand soap or similar cleansing agent, and clean individual sections of continuous cloth or paper toweling or air blowers convenient to the lavatories. See generally, <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>.

Not only must the employer provide at least the minimum number of toilet facilities, the employer must also provide prompt access to the facilities when needed. Employers with mobile workers must provide readily available transportation that provides prompt access (i.e., less than 10 mins) to restrooms if they are not available at the work location. See generally, <https://www.osha.gov/restrooms-sanitation>.

While Transdev has allowed drivers to use its relief cars to drive back to Transdev’s hub, Transdev does not currently have enough relief cars for drivers to take from one relief area to the other. As stated above, the employer must provide prompt access to facilities when needed; Transdev continually fails to do so.

⁸ Where toilet facilities will not be used by women, urinals may be provided instead of water closets, except that the number of water closets in such cases shall not be reduced to less than 2/3 of the minimum specified.

⁹ 1 additional fixture for each additional 40 employees.

¹⁰ Urinals may be installed instead of water closets in toilet rooms to be used only by men provided that the number of water closets shall not be less than two-thirds of the minimum number of toilet facilities specified.

The employer must also ensure that toilet facilities be kept clean, maintained in good working order and be accessible to the employees at all times. See generally, <https://www.dir.ca.gov/title8/3364.html>. Indeed, §8397.4 of California's General Industry Safety Orders (Health and Sanitation) places the duty on the employer to "to ensure that each sewer and portable toilet is maintained in a clean, sanitary, and serviceable condition."

As is clearly shown in the appalling photographs of Transdev's portable restrooms, these requirements are not being met by any stretch of the imagination. Nonetheless, San Diego Metropolitan Transit System is allowing a permanent problem to be inappropriately addressed with a temporary and inadequate solution. In this day and age, the Union would like to think that we are past the days of requiring employees to pass their bowel movements in oversized plastic containers (portable bathrooms).

In fact, the legislative intent is clear that portable toilets are not meant to be used permanently, as §8397.4(d)(3) (Toilets) states that the employer shall provide portable toilets "only when the employer demonstrates that it is not feasible to provide sewer and toilets, or when there is a temporary increase in the number of employees for a short duration of time." Given the ongoing costly projects, lack of feasibility does not seem to apply. Additionally, there is no indication that the increase in drivers is temporary. Accordingly, the employer must provide sewer and toilets.

Practically speaking - would you want to do any of your personal toileting business in these disgusting, filthy portable restrooms? How about on a hot summer day when the feces are mere inches from the top of the toilet? When answering these questions, keep in mind that women also have to address their monthly cycles and/or express milk for nursing their babies in these abhorrent conditions. No human being should be required to do so, let alone Transdev's very own employees. The Union demands that MTS immediately rectify these intolerable conditions.

2. The Employer Must Provide All Employees with Adequate Shelter During their Legally-Mandated Meal and Rest Breaks

Transdev is also refusing to provide adequate shelter, or any shelter at all, for its drivers' Meal and Rest Breaks. Pursuant to the terms of the RFP, Transdev is "responsible for complying with any federal, state, or local laws regarding employee lunch periods or required breaks including the Industrial Welfare Commission's (hereafter "IWC") Wage Order 9."¹¹ Transdev is further required by the terms of the RFP to provide driver break facilities as needed.¹²

The State of California requires the employer to provide suitable resting facilities at a temperature of no less than 68 degrees, which must be available for employees during working hours in an area separate from the toilet rooms. Allowing employees to use toilet facilities during working hours does not meet the employer's obligation to provide rest periods as required by the IWC Orders. California law further requires the employer to provide a suitable place for drivers to eat when they are required to eat on the premises. See generally, https://www.dir.ca.gov/dlse/faq_restperiods.htm; https://www.dir.ca.gov/dlse/faq_mealperiods.htm.

¹¹ See **Exhibit 1**, p. 59.

¹² See **Exhibit 1**, pp. 52, 59.

Additionally, where meal periods occur during shifts beginning or ending at or between the hours of 10 p.m. and 6 a.m., Wage Order 9 requires facilities to be made available for securing hot food and drink or for heating food or drink, and a suitable sheltered place must be provided in which to consume such food or drink. See generally, https://www.dir.ca.gov/dlse/faq_mealperiods.htm.

The IWC requires these suitable resting facilities be in an area "separate from toilet rooms." The IWC's intent is clear: the rest period is not to be confused with breaks taken by employees to use toilet facilities. IWC Orders, Section 12 (Rest Periods), read in conjunction with Section 13(B) (Change Rooms and Resting Facilities), requires suitable resting facilities be provided in an area separate from the toilet rooms and shall be available to employees during work hours." See generally, https://www.dir.ca.gov/dlse/faq_restperiods.htm.

As stated above, the employer must make these resting facilities available to its workers. This brings us back to the issue of Transdev's relief cars. Though Transdev allows drivers to use the relief cars as shelters for their Meal and Rest Breaks, or as a means to travel to and/or from relief points and Transdev's hub, there are simply not enough relief vehicles for the number of current drivers. Rather, Transdev is asking drivers to take the bus or trolley to their next relief point and/or hub.

Not only is Transdev failing to provide any sheltered location, as exemplified in the attached photos of the portable restroom locations,¹³ the areas in which the Transdev drivers stop are unsafe and unsanitary. Rather than at least provide an adequate number of relief vehicles to keep the drivers safe and shielded from the hot and/or cold weather, Transdev pushes drivers to wait outside for a bus or trolley. This further exposes the drivers to the unsafe and unsanitary conditions allowed by Transdev to persist in these areas.

Further, as no adequate break facilities exist for the drivers to change their clothes, drivers on breaks will necessarily be mistaken for on-duty drivers on the bus or trolley. As such, the patrons of the transit system will look to these off-duty drivers with their questions and/or concerns. In order for Break or Meal Periods to be such, the drivers must be relieved of all work duties. Thus, none of these drivers will effectively be on break or lunch while riding the bus or trolley in uniform.

This is obviously an illogical and ineffective solution. MTS must, at the very least, require Transdev to maintain an appropriate number of relief vehicles until adequate facilities have been constructed. Please note, however, this does not remove the burden on the employer to construct adequate facilities for the drivers' Meal and Rest Breaks.

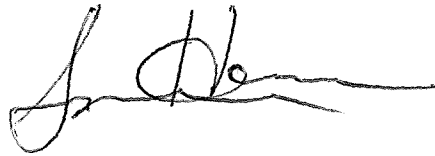
¹³See **Exhibit 3** are photos of Transdev's unsafe and unsanitary portable restroom locations.

If MTS does not take immediate action, the Union will be forced to take all appropriate legal action, including, but not limited to, filing charges with the National Labor Relations Board and/or Labor Commissioner, and seeking all available protection of Federal, State, and Local agencies tasked with safeguarding California employees, in addition to any private right of action. Please advise at your very earliest convenience, and in any event, not later than Monday December 12th, 2022, what the MTS Board and the Contractor (Employer) intends to provide as solutions to the aforementioned transgressions.

Very truly yours,

HAYES, ORTEGA & SÁNCHEZ, LLP

By:

A handwritten signature in black ink, appearing to read 'Suzanna R. Harman', with a long horizontal flourish extending to the right.

Suzanna R. Harman

SRH/sh

cc: Jose Puga, Business Representative
Teamsters Local 683
Krista Alvarez, Office Manager
Teamsters Local 683