

AGREEMENT

This AGREEMENT made and entered into by the State of Nebraska, Department of Transportation, hereinafter referred to as "Department", and the **Lancaster County Lincoln**, hereinafter referred to as "Contractor", is for the purpose of providing partial funding of Contractor's Public Transportation System.

WHEREAS, the Federal Transit Act, permits the Federal Transit Administration, hereinafter FTA, to carry out public transportation projects for public transportation in areas other than urbanized areas, and WHEREAS, the Nebraska Public Transportation Act as provided by Neb.Rev.Stat. §13 1201 through 13-1214 (Reissue 2012), established a public transportation assistance program to provide State financial assistance to qualified eligible recipients, and

WHEREAS, Contractor wishes to provide transportation services in areas other than urbanized areas, and

WHEREAS, the Contractor qualifies as an eligible recipient of public transportation assistance, and

WHEREAS, the Department wishes to assist the Contractor by providing funds available under the Federal Transit Act and the Nebraska Public Transportation Act for the operation of a public transportation project, and

WHEREAS, the funding for the project under this agreement includes pass-through monies from the Federal Transit Administration and are subject to the U.S. Office of Management and Budget, Code of Federal Regulations, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Department and Contractor agree as follows:

1. SCOPE OF PROJECT. "Project" shall mean the undertaking or expansion of transportation services for the benefit of the general public in areas other than urbanized areas. The Contractor shall undertake and complete the Project as described in its application, herewith incorporated by reference, filed with and approved by the Department, and in accordance with the terms and conditions of this Agreement.

2. FEDERAL AWARD IDENTIFICATION. The Department hereby identifies to the Contractor the following provisions of the Federal Funds, as authorized in Section 3:

- (i) Subrecipient name (as registered in DUNS) **Lancaster County Lincoln**
- (ii) Subrecipient's Data Universal Numbering System (DUNS) number **068676535**
- (iii) Federal Award Identification Number (FAIN) **NE-2018-015-00**
- (iv) Federal Award Date **11/15/2018**
- (v) Period of Performance (Agreement) start and end date **11/15/2018- 9/29/2021**
- (vi) Amount of Federal funds obligated by this action (Refer to Section 3)
- (vii) Total amount of Federal funds obligated to the subrecipient (Refer to Section 3)
- (viii) Total amount of the Federal award **\$7,900,998**
- (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA) **5311 FFY2016 apportionment used in SFYs 18_20**
- (x) Name of Federal awarding agency **U.S. Department of Transportation, Federal Transit Administration**, grantee **Nebraska Department of Transportation** and contact information for awarding official **Mark Bechtel, Supervisor**, mark.bechtel@dot.gov
- (xi) Catalog of Federal Domestic Assistance (CFDA) number **20.509**, name **Formula Grants for Rural Areas** and dollar amount (FY 2016 Appropriations Act, PL-114-113) **\$626,810,184**
- (xii) Identification of whether the award is research and development **No**
- (xiii) Indirect cost rate for the Federal award **N/A**

3. FUNDING. The funding period is July 1, 2019 through June 30, 2021. The Federal funding share of the costs of this Project shall not exceed **\$161,726**. The State's share of the costs of this Project after consideration of all revenue and Federal funds shall not exceed **\$41,966**. The fulfillment of either of these dollar amounts will be contingent upon the availability of Federal and State funds during the Agreement period. The Contractor's funding share of **\$41,966** shall be all remaining eligible operating costs not paid by Federal and State funds. Contractor shall fund its share of the Project's operating costs in the manner described in the Contractor's 5311 Funding Application for Public Transportation Operating Assistance for the Agreement's term. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of the project costs at or prior to the time that such funds are needed, or at such time deemed necessary by the Department. The Contractor further agrees that no refund or reduction of the amount so provided will be made unless there is, at the same time, a refund to the Department of a proportionate amount.

Budgeted project revenues and expenses are summarized in the attached "Operating Budget Summary," hereby made a part of this agreement.

4. REDUCED FARES. The Contractor agrees to offer, on city bus systems included in this Project and operating over regularly scheduled routes, a reduced fare to the elderly and the disabled not to exceed one-half of the rates generally applicable to other persons at peak hours for each one-way trip.

5. ADMINISTRATION OF PROJECT. The Department shall be the State agency responsible for administering the Project.

6. FINANCIAL MANAGEMENT. The Project funds referred to in this Agreement are subject to the grants management requirements of the Federal Transit Administration Circular FTA C 5010.1D, Rev.1, August 27, 2012, and specifically, the Financial Management provisions contained in Chapter VI. The Federal Share of the Project funds will be from FTA Grant NE-2017-013-00, Catalog of Federal Domestic Assistance #20.509.

7. INSURANCE. The Contractor shall maintain in amount and form satisfactory to the Department such insurance or, if permitted by law, Contractor shall maintain a self-insurance program as will be adequate to protect it and the subcontractor, if any, in case of accident. As a minimum, the coverage shall consist of not less than the following amounts:

- a. Worker's Compensation - Statutory
- b. Bodily Injury and Property Damage with a combined single limit of liability of \$500,000 each occurrence
or
Bodily Injury
 - General and Automobile \$250,000 each person
 - General and Automobile \$500,000 each occurrenceProperty Damage
 - General and Automobile \$250,000 each occurrence
 - General \$500,000 each aggregate

The insurance referred to in b above shall be written under Comprehensive General and Comprehensive Automobile Liability Policy Forms, including coverage for all owned, hired, and non-owned automobiles. The Contractor may at his option provide the limits of liability as set out above by a combination of the above-described policy forms and excess liability policies.

Contractor shall verify compliance with this section by submitting a current Certificate of Insurance, or if self-insured, a letter to this effect.

8. CONTRACTS UNDER THIS AGREEMENT. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work performed under this Agreement, or execute any contract, amendment or change thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Purchase of service agreements shall be made in accordance with the standards set forth in the OMB Omni Circular.

9. CHANGES TO CONTRACT. The Contractor may make adjustments to the work and services to be performed under this Agreement only after consultation with and approval in writing by the Department. If, during the performance period, a revision in the content of the Agreement or to the total project cost is deemed necessary or desirable, the change shall be made by supplemental agreement.

10. DISPUTES. The Department will, in all cases, decide any and all questions which may arise concerning a question of fact in connection with the work not disposed of by agreement among or between the parties of the contract.

11. SUCCESSORS AND ASSIGNS. It is further understood that this Agreement and all contracts entered into under the provisions of this Agreement, shall be binding upon the Department and the Contractor and their successors and assigns.

12. CLAIMS. The Contractor agrees to indemnify, save and hold harmless the Department, its agents and employees, from any and all claims, demands, actions or causes of action of whatever nature arising out of or by reason of the work to be performed hereunder by the Contractor, and further agrees to defend at its own cost any action or proceeding commenced against the Department for the purpose of asserting any such claim as a result of action taken hereunder by the Contractor.

The Contractor further states and agrees that it is acting as an independent contractor, that its employees and agents shall not be considered employees of the Department, and that any and all claims that may or might arise under the Nebraska Worker's Compensation Act on behalf of said employees or agents while engaged in any of the work or services to be rendered under this agreement shall not be the obligation or responsibility of the Department.

13. RECORDS. The Contractor shall keep and maintain satisfactory records throughout the period of contract performance. The Contractor will retain said records for a period of three (3) years after the completion of the Project. The Contractor shall submit to the Department and FTA, upon request, such information as is required in order to assure compliance with this paragraph.

14. REPORTS. The Contractor shall advise the Department regarding the progress of the Project at such times and in such a manner as the Department may require, including but not limited to meetings and monthly reports.

15. PAYMENT. Payments shall be made once each month and shall be for costs incurred within the scope of this Agreement. The Contractor shall submit monthly invoices, and such invoices, or supplements thereto, shall be the basis of payment. The invoices shall be signed by a responsible representative of the Contractor, certifying that all of the items therein are true and correct. Payment shall be made subject to audit by duly authorized representatives of the Department. The Department, upon receipt of the proper invoices, will make every reasonable effort to provide payment to the Contractor within (15) calendar days.

Project # RPT-C551 (220)
CN 13072L
DUNS # 068676535

16. INSPECTIONS. The Contractor shall permit the Department, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all vehicles, facilities and equipment engaged by the Contractor as part of the Project, all transportation services rendered by the Contractor by the use of such vehicles, facilities and equipment, and all relevant Project data and records. The Contractor shall also permit the above named persons access to view transit records and accounts of the Contractor pertaining to the Project.

17. TERMINATION.

(a) Without Cause. The Contractor may, with the concurrence of the Department, terminate the Project and cancel this Agreement.

(b) For Cause. The Department may, without liability, by written notice to the Contractor, terminate the project and cancel this Agreement for any of the following reasons:

(1) The Contractor discontinues providing the transportation services as agreed;

(2) The Contractor takes any action pertaining to this Agreement without the approval of the Department and which under the procedures of this Agreement would have required the approval of the Department;

(3) The Commencement, prosecution or timely completion of the Project by the Contractor is, for any reason, rendered improbable, impossible or illegal;

(4) The Contractor shall be in default under any provision of this Agreement;

(5) The Contractor fails to provide sufficient matching funds as defined in its project application.

18. MEMBERS OF/OR DELEGATES TO CONGRESS. No member of/or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

19. PROHIBITED INTEREST. No member, officer, or employees of the Contractor during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

20. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff, or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

21. LABOR PROTECTION. The Contractor agrees to undertake, carry out, and complete the Project under the terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and meeting the requirements of Section 5333(b) of the Federal Transit Act.

These terms and conditions are identified in Attachments "A" and "B," and hereby made a part of this Agreement. Any documents cited in the attachments are incorporated by reference into this Agreement.

22. FAIR EMPLOYMENT PRACTICES ACT. The Contractor agrees to abide by the provisions of the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. §48-1101 through 48-1126 (Reissue 2010).

23. DISADVANTAGED BUSINESS ENTERPRISES The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate.

24. FEDERAL CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE. The Contractor will comply with all the requirements identified in the Federal Certifications and Assurances for FTA Assistance, hereby made a part of this agreement.

25. FTA MASTER AGREEMENT. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between the Department and FTA. As this agreement meets the criteria of an FTA-Assisted third-party contract, the following sections of the current Master Agreement are identified by reference.

<u>Section</u>	<u>Requirement</u>
§3.g	Application of federal, state and local laws, regulations and guidance.
§3.l	No Federal government commitment or liability to third parties.
§4.d	Lobbying (if federal share is greater than \$100,000).
§4.f	False or fraudulent statements or claims.
§9.c	Access to recipient and third party contract records.
§12	Civil Rights (EEO, DBE, Title VI & ADA).
§16	Procurement
§24.d	Public transportation employee protective arrangements (refer also to Attachment A).
§26.j	Energy conservation.
§28	Charter service.
§29	School bus operations.
§35.	Substance abuse.

Contractor's failure to so comply shall constitute a material breach of this Agreement. The link to the Master agreement is

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/sample-fta-agreements/114766/fta-master-agreement-fy2018.pdf>

26. PUBLICATION PROVISIONS. Papers, interim reports, forms or other material which are a part of the work to be performed under this Agreement will not be copyrighted without written approval of the Department and FTA. The Department and FTA reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Governmental purposes. Either party to the Agreement or the FTA may initiate a request for publication of final or interim reports or other portions thereof.

The parties of this Agreement reserve the right to review and approve prior to publication, any papers, reports, forms or other material which are a part of the work to be performed under this Agreement.

Publication by either party shall give credit to the other party and to FTA unless upon failure of agreement on any report of the study, FTA or either of the contracting parties requests that its credit acknowledgement be omitted and then the following statement shall be added:

"The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Department, Contractor, or the FTA. This report does not constitute a standard, specification or regulation."

Either party which in response to a specific request makes known results of the work under contract herein contemplated shall notify the other party at the time of release. After publication of reports, the Contractor, Department and FTA are free to use the data and results without restriction.

27. SUBCONTRACT PROVISIONS. The Contractor shall include in all subcontracts entered into pursuant to this Agreement all of the above-required clauses. In addition, the following required provision shall be included in any advertisement or invitation to bid for any procurement under this Agreement.

Statement of Financial Assistance

"This contract is subject to a financial assistance contract between the State of Nebraska and the U.S. Department of Transportation."

28. DRIVER TRAINING. The Nebraska Department of Transportation (NDOT) has established Nebraska Transit Driver Training Requirements (NTDTR) on the Nebraska [Transit website](#). NDOT requires Contractors to participate in NTDTR as a condition for Contractor's receiving federal and State funding for transportation projects. Contractor's full, part time, substitute, and volunteer drivers of all vehicles funded under an applicable agreement must participate in NTDTR.

29. COORDINATION. NDOT is committed to the efficient provision of public transportation in the rural areas of the state. As such, NDOT has engaged in a statewide mobility management project to identify coordination opportunities and enhance transportation across the state. NDOT requires Section 5311 subrecipients to participate in coordination efforts with other private, for-profit and public transportation entities. This participation could include transit staff attending regional coordinating committee meetings (either on site or via go to meeting), meeting with NDOT and extended staff to discuss coordination opportunities and participating in round table discussions at the annual transit managers' workshop.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the Lancaster County Lincoln this ____ day of _____, 2019.

BY _____

TITLE _____

EXECUTED by the State of Nebraska Department of Transportation this ____ day of _____, 2019.

BY _____

Ryan Huff, P.E.
Intermodal Planning Engineer

ATTACHMENT "A"
Special Section 5333(b)
Warranty for Application to the Small Urban and Rural Program

A. General Application

The Public Body (State of Nebraska, Department of Transportation) agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project ("Recipient"), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Body shall provide to the Department of Labor and maintain at all times during the Project an accurate up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by the Public Body to the Department of Labor that the designated Recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of 5311 funding in the absence of a finding of noncompliance by the Department of Labor.

B. Standard Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient and any other legally responsible party designated by the Public Body to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise which are a result of the assistance provided. The phrase "as a result of the Project," shall when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of the Model agreement or applicable provisions of substitute comparable arrangements.

(2) (a) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreements applicable to such employees which are then in effect.

(2) (b) The Recipient or legally responsible party shall provide to all affected employees sixty (60) day's notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces. In the case of employees represented by a union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number of classifications of any jobs in the Recipient's employment available to be filled by such affected employees.

(2) (c) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (4) of this warranty. The foregoing procedures shall be complied with and carried out prior to the institution of the intended action.

(3) For the purpose of providing the statutory required protections including those specifically mandated by 49 U.S.C. Section 5333(b)1, the Public Body will assure as a condition of the release of funds that the Recipient Agrees to be bound by the terms and conditions of the National (Model)3 Section 5333(b) Agreement executed July 23, 1975, identified below, provided that other comparable arrangements may be substituted therefor, if approved by the Secretary of Labor and certified for inclusion in these conditions.

(4) Any dispute or controversy arising regarding the application, interpretation, or enforcement of any of the provisions of this arrangement which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

(5) The Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these arrangements, or the union representative of such employee, may file claim of violation of these arrangements with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim.

(6) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor shall this arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(7) In the event any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient or other legally responsible party designated by the Public Body shall provide or provide for such training or retraining at no cost to the employee.

(8) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under 49 U.S.C. Chapter 53 and has agreed to comply with the provisions of 49 U.S.C. Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of these arrangements and to the proper determination of any claims arising thereunder.

(9) Any labor organization which is the collective bargaining representative of employees covered by these arrangements may become a party to these arrangements by serving written notice of its desire to do so upon the Recipient and the Department of Labor. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party to these arrangements, as applied to the Project, the dispute as to whether such organization shall participate shall be determined by the Secretary of Labor.

(10) In the event the Project is approved for assistance under the 49 U.S.C. Chapter 53, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Public Body or Recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his representative, in accordance with its terms nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(1) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training and retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to 49 U.S.C. Section 11347 [the codified citation of Section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended].

(2) For purposes of this warranty arrangement, paragraphs (1); (2); (5); (15); (22); (23); (24); (26); (27); (28); and (29) of the Model 5333(b) Agreement, executed July 23, 1975 are to be omitted.

ATTACHMENT "B"

Provisions of the National (Model) Agreement for Incorporation in the Special Warranty

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and check-off arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. * Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

(6) (a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced", and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided.

* As an addendum to this agreement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7) (a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follows:

<u>Employee's length of service prior to adverse effect</u>	<u>Period of protection</u>
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement: Prior to such call to return to work by his employer, he may be required by the Recipient to accept reasonably comparable employment for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him or which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this agreement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or replacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or replacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11) (a) Any employee covered by this agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects; for the traveling expenses for himself and members of his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(12) (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him at his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other questions in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: One (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third

appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this agreement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 month's pay
2 years and less than 3 years	6 month's pay
3 years and less than 5 years	9 month's pay
5 years and less than 10 years	12 month's pay
10 years and less than 15 years	12 month's pay
15 years and over	12 month's pay

In the case of an employee with less than one year's service, five day's pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7 (b) of the Washington Job Protection Agreement, as follows:

For the purposes of this agreement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date of which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(16) Nothing in this agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P.L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the agreement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefore. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual material as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, reasonably comparable to that which he held when dismissed, for which he is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or retraining to fill such vacant position, the Recipient shall provide for such training or retraining at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this agreement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any such person, enterprise, body, or agency, publicly or privately owned, which undertakes the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(20) The employees covered by this agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Worker's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, state, or local law, in the context of a particular Project, the remaining provisions of this agreement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and interested union representatives of the employees involved for purpose of adequate replacement under paragraph 13 (c) of this Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this agreement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this agreement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.