

FY 2019-20 AGREEMENT BETWEEN THE COUNTY OF SONOMA AND MENDOCINO TRANSIT AUTHORITY

The following is an Agreement, dated as of July 1, 2019 (“Effective Date”), by and between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”), and Mendocino Transit Authority Joint Powers Agency (hereinafter “MTA”). For purposes of this Agreement, County and MTA shall be jointly referred to as “Parties” or “the Parties” and singularly as “Party.”

RECITALS

WHEREAS, California Public Utilities Code section 99288 authorizes the Parties to enter into this Agreement; and

WHEREAS, MTA represents that it operates a bus transit system in compliance with all relevant laws, regulations, and other applicable restrictions; and

WHEREAS, the Transportation Development Act requires that at least 10% of the Operating Cost be obtained from Farebox Revenue for transit operations to qualify for state funding; and

WHEREAS, MTA and County wish to continue providing transit service in the North Coastal area between Point Arena and the city of Santa Rosa, known as MTA Route 95.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT

1. Definitions. For purposes of this Agreement, the terms shall have the following meanings:

- (a) “Day” or “day” means calendar day.
- (b) “Farebox Revenue” means all revenues collected from fare-paying passengers, including in the form of cash and all pass sales revenues.
- (c) “Local Fare” means the passenger fare paid to travel a “local” zone as illustrated in Exhibit “A.”
- (d) “Operating Costs” means total costs of operating a public transit route, including labor, fuel (and other consumable costs), insurance, maintenance, administration and depreciation.
- (e) “Route Costs” means the operating costs of operating a specific route within a transit system’s collection of routes,.
- (f) “Route Deficit” means Operating Cost less all Farebox Revenue.

2. Service to be Provided. MTA agrees to provide general public and disabled-accessible transit service per the route and schedule set forth in Exhibit “A” attached hereto and incorporated herein by reference. MTA shall make available on all route vehicles a printed schedule which indicates that part of the service which is subsidized by County.

MTA shall provide daily round trip services every day, except for the following holidays: Thanksgiving Day (November 28, 2019), Christmas Day (December 25, 2019), and New Year's Day (January 1, 2020).

3. Fares. A minimum Local fare within Sonoma County shall be at least \$1.50 for regular/adult; \$1.25 for youth (18 and under); and \$0.75 for senior and disabled. MTA shall honor transfers from Sonoma County Transit for satisfaction of a Local fare. Sonoma County Transit shall accept MTA transfers for satisfaction of a First-Zone (base) fare. Fares may only be changed by the written, mutual consent of all Parties to this Agreement.

4. Changes in Service. Any Party may propose a change in service. MTA shall review any proposed change in service to determine the estimated cost and compatibility of the proposed change with MTA's overall bus system operation. A change in service will be put into effect only upon the written approval of both Parties; except that MTA may, at its sole discretion, make such temporary changes as are required by conditions beyond the control of MTA or make minor operational changes in service that do not increase County's payment obligation. MTA shall promptly notify County, in writing, of temporary changes or operational changes in service.

5. Route Costs. The total Operating Costs of this service shall be determined by MTA on an actual cost basis in accordance with generally accepted accounting procedures for public transit service. Operating Costs shall not include any expense or charge which is not eligible for reimbursement under the provisions of California Public Utilities Code Section 99400 et seq. and any related rules or regulations.

County shall contribute to these Route Costs based on a residency survey of riders. County will be responsible for conducting the survey within Sonoma County.

6. Fare Distribution and Satisfaction of Farebox Requirement. All Farebox Revenue collected on this service shall be credited to that route.

7. Route Deficit. The Route Deficit shall be equal to the Route Costs less Farebox Revenue. The Parties shall split the Route Deficit as follows: 56% by County and 44% by MTA. The Parties agree that these percentages are based on previous ridership residency surveys and sufficiently reflect each jurisdiction's ridership on the service.

8. Payment Obligation; Funding Contingency. Subject to the funding contingency indicated below, County shall pay County's portion of the Route Deficit, in an amount as provided above. Notwithstanding, County's payment obligation shall not exceed 56% of the Route Deficit, and shall not exceed \$172,200 ("Maximum Obligation").

County will apply to Metropolitan Transportation Commission (MTC) for \$172,200 in Transportation Development Act (TDA) or State Transit Assistance (STA) funds for payment for services under this Agreement. County will notify MTA if County's TDA/STA request is denied by MTC.

Payment by County under this Agreement is **contingent** upon MTC's approval of County's TDA/STA claim and the availability of TDA/STA funds for this service. County shall incur no liability for or related to any failure to obtain TDA/STA or any other funding in support of this Agreement.

9. Reporting and Information Requirements. MTA shall provide a written report to County every month for the previous month. This report shall include the financial and operating data for all services provided under this Agreement and a detailed itemization of operating data, expenses, and revenues on the form shown as Exhibit “B.” MTA shall also provide applicable back-up data as requested. MTA shall provide this report to County within twenty (20) days following the end of each month. If MTA fails to timely file a monthly report or reports, County may, in its sole discretion, withhold any payment or payments required by this Agreement.

MTA shall also provide any other information or documents that may be required to comply with National Transit Database reporting requirements or the Transportation Development Act(as amended) or any related rules or regulations, including Title 21, Division 3, of the California Code of Regulations (as amended), to County within twenty (20) days of any County request.

10. Payment. County shall pay MTA as provided herein on or before the 15th day of each month, beginning July 2019 through June 2020. County’s monthly payment shall not exceed \$14,350 and County’s aggregate annual payment under this Agreement shall not exceed \$172,200. All County payments shall comport with Sonoma County Board of Supervisors’ Resolution No. 62627, dated December 19, 1978.

11. Term. The term of this Agreement is July 1, 2019, through June 30, 2020. This Agreement shall automatically terminate at midnight on June 30, 2020.

12. Insurance. MTA shall maintain and shall require all its subcontractors to maintain insurance as described below:

A. Worker's Compensation Insurance. Worker's compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

“This policy shall not be canceled or materially changed without first giving thirty (30) days’ prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

B. General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$5,000,000 combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

(1) “The County of Sonoma, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.”

(2) “The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.”

(3) “The insurance provided herein is primary coverage to the County of Sonoma with respect to any insurance or self-insurance programs maintained by County.”

(4) “This policy shall not be canceled or materially changed without first giving thirty (30) days’ prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

C. Automobile Liability Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

“The County of Sonoma, its officers and employees, is named as additional insured for liability arising out of the ownership, maintenance, use, loading or unloading of an automobile in the performance of this agreement.

The insurance provided to County is primary and non-contributory with respect to any insurance or self-insurance program maintained by County.

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Sonoma, Department of Transportation and Public Works.”

D. Documentation. The following documentation shall be submitted to the County:

(1) Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.

(2) Signed copies of specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

(3) Upon County’s written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of County’s request.

(4) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

E. Policy Obligations. MTA's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

F. Material Breach. If MTA, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. County, in its sole option, may terminate this Agreement and obtain damages from MTA resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to MTA, County may deduct from sums due to MTA any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

13. Statutory Compliance/Living Wage Ordinance. MTA agrees to comply, and to ensure compliance by its sub-consultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, MTA expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

14. Substitute Vehicle(s). The County will not provide any substitute vehicles to MTA for services provided under this Agreement. .

15. Indemnification. County agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release MTA, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including County, arising out of or in connection with the performance of County hereunder, but excluding liability due to the sole active negligence or sole willful misconduct of MTA. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for County or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

MTA agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including MTA, arising out of or in connection with the performance of MTA hereunder, but excluding liability due to the sole active negligence or sole willful misconduct of County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for MTA or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

16. Assignment. No Party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other Parties shall have so consented in writing.

MTA offers and agrees and shall assign to County, and agrees to require its subcontractors to offer and agree to assign to County, all rights, title, and interest in and to all causes of actions it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Agreement or any subcontracts entered into hereunder. This assignment shall be made and become effective at the time County tenders final payment to MTA, without further acknowledgement of the Parties.

17. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills and payments shall be addressed as follows:

MTA:	Mendocino Transit Authority Attention: General Manager 241 Plant Road Ukiah, CA 95482	PHONE: 707-462-5765 FAX: 707-462-1760
County:	Sonoma County Transit Attention: Transit Systems Manager 355 West Robles Avenue Santa Rosa, CA 95407	PHONE: 707-585-7516 FAX: 707-585-7713

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. Notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section.

18. Merger. This writing is intended both as the final expression of the Agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

19. Nondiscrimination. MTA shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by reference.

MTA shall not engage in, tolerate or practice any form of discrimination in determining the grant of services to eligible patrons. The system shall operate on a first-come, first-served basis without preference to the type of trip (i.e., medical, social, work, or other). County residents as well as non-residents shall be equally eligible for service. No restrictions or priorities based on trip purpose will be permitted.

20. Right to Monitor and Audit. County and its agents and the regional governments shall have the right to monitor and audit all performance under this Agreement.

County will notify MTA in writing within thirty (30) days of any potential exception(s) discovered during such examination. Where such findings indicate that program requirements are not being met and funding agency participation in this program may be imperiled, such written notification will constitute the County's intent to terminate this Agreement in the event that corrections are not accomplished by MTA within sixty (60) days.

21. Compliance with Laws and Regulations. MTA shall comply with all federal, state, and local laws, and all regulations or requirements of funding agencies, such as alcohol/drug testing, DMV Pull-Notice System for Drivers, and any other matters that impact eligibility for funding, risk exposure, safety, or other relevant area.

MTA shall indemnify, protect, defend, and hold harmless County and its officers, agents, and employees from all fines, penalties, and liabilities imposed or threatened to be imposed upon County under any such laws, rules, or regulations by any public agency, authority, or court having jurisdiction, when the imposition or threat of same relates to the failure of MTA to keep fully informed and/or to comply with such laws, rules, or regulations.

22. Senior and Disabled Certification. MTA shall offer reduced fares to senior citizens and disabled persons. Fares for senior citizens and disabled persons shall not exceed 50% of the regular adult fare. MTA shall honor the federal Medicare identification card, the DMV senior citizen identification card, and the Regional Connection Discount Card.

23. Status of MTA. The Parties intend that MTA, in performing the services hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. MTA is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees.

24. Right to Adequate Assurance of Performance. Each Party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either Party, the other may, in writing, demand adequate assurance of due performance and until it receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a Party with respect to performance under this Agreement, but also conduct of a Party with respect to other Agreements with Parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved Party's right to demand adequate assurance of future performance. Nothing in this Section 24 limits County's right to terminate this Agreement pursuant to Section 33.

25. Retention of Records. MTA and County agree to retain all documents relating to this Agreement for four years from the date of termination or until all federal/state audits are complete for this fiscal year, whichever is later, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case MTA agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). Upon request, MTA shall make available these records to County, state, or federal government personnel.

26. Conflict of Interest. MTA covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. MTA further covenants that in the performance of this Agreement no person having any such interests will be employed. In addition, if requested to do so by County, MTA shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Sonoma County Clerk disclosing MTA's or such other person's financial interests.

27. Conflict of Transportation Interest. MTA shall not divert any revenues, passengers, or other business from services (Route 95) under this Agreement to any other transportation operation of MTA.

28. Americans with Disabilities Act (ADA) Compliance. MTA shall assume full responsibility and liability associated with ADA compliance associated with provision of this contracted service. It is the understanding of both Parties that this service is a limited intercity commute route, not requiring complementary paratransit services.

MTA shall provide a fully-accessible fixed-route service including well-maintained wheelchair devices, tiedowns, communication systems, training, and related requirements identified by the Federal Transit Administration. County will assume no liability for failure by MTA to satisfy these requirements. County has entered this Agreement with the understanding that MTA will fully comply with the ADA.

29. Public Information Services. MTA shall provide public telephone services Monday through Friday, between 8:00 AM and 5:00 PM in accessible formats. MTA shall also provide a telephone answering system to record messages on weekends and off-hours and to provide recorded information.

30. Emergency Procedures. In the event of a declared local emergency, upon the request of County's Director of the Office of Emergency Services, MTA shall make transportation and communication resources available to the degree possible for emergency assistance. MTA shall follow instructions of the County's Director of the Office of Emergency Services and inform County, as directed, of actions being taken. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. MTA shall be reimbursed on the basis of fair, equitable, and prompt reimbursement of MTA's actual costs. Reimbursement for such emergency services shall be permitted to exceed the "Maximum Obligation" of this Agreement. Immediately after the emergency ceases, MTA shall reinstitute normal transportation services. It is understood that operational funding provided in this Agreement cannot be expended to support emergency services.

31. Additional Services. Additional services outside the description and level of services indicated in this Agreement may be considered. Any additional services shall be authorized in writing and in advance of service delivery by MTA and County. Additional services will then be paid for by County on an individual occurrence (i.e., case-by-case) basis. The estimated number of service hours and related costs associated with any requested additional services shall be mutually determined prior to service performance and not be exceeded by MTA.

County's Transit Systems Manager is authorized to obtain additional services up to an aggregate of 10% of this Agreement's Maximum Obligation. Otherwise, an Agreement amendment must be approved by the Sonoma County Board of Supervisors. It is understood that County is free to obtain additional services from sources other than MTA, but only after consultation and negotiation with MTA.

32. Disputes. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the County Transportation and Public Works Director ("Director") or the Director's designee.

The Director shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to MTA. The Director's decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal or administrative or judicial proceeding under this clause, MTA shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, MTA shall proceed diligently with the performance of this Agreement and in accordance with the Director's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Agreement shall be construed as making final the decision of administrative official, representative, or board on a question of law.

33. Termination.

A. Termination Without Cause. County shall have the right, in its sole discretion, to terminate this Agreement at any time and without cause, by giving ninety (90) days' written notice to MTA. In the event of termination without cause, County shall pay MTA for services rendered to that date.

B. Termination for Default. If MTA fails to deliver or perform services or to comply with any provision of this Agreement, County may terminate this Agreement. County shall serve a written notice of termination for cause on MTA, setting forth the MTA default. MTA will only be paid for services and supplies delivered and accepted as performed in the manner set forth in this Agreement, and in accordance with the Route Deficit and Maximum Obligation provisions herein.

If County subsequently determines that MTA had an excusable reason for not performing, such as a strike, fire, or other events not the fault of or are beyond the control of MTA, County, after setting up a new delivery of performance schedule, may allow MTA to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure. In the case of a termination for breach or default, County, in its sole discretion, may allow MTA a period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If a satisfactory remedy is not reached within the time period, County shall have the right to terminate without further obligation to MTA. Any such termination for default shall not in any way operate to preclude County from also pursuing all available remedies against MTA and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach. In the event that County elects to waive its remedies for any breach or default by MTA of any covenant, term, or condition of this Agreement, such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

34. 13(c) Obligations. MTA agrees to comply with the labor protection obligations of County pursuant to Section 13(c) of the Federal Transit Act (49 U.S.C. Section 5333(b)), as set forth in the 13(c) protective conditions attached to this Agreement as Exhibit "C." MTA shall be liable for

any 13(c) claims or obligations that are created by acts or omissions of MTA that are not specifically directed by County. County will be responsible for 13(c) claims resulting from its acts or omissions, or actions taken by MTA pursuant to County's specific direction. MTA shall cooperate with County in the resolution or defense of 13(c) claims or disputes for which County has responsibility related to this Agreement and services.

MTA shall not take any action which is contrary to the interests of County under 13(c) or its 13(c) protective conditions relating to the termination of services under this Agreement, any future transition to another service provider, or any other action or event relating to this Agreement. If MTA fails to comply with this obligation, MTA shall be liable for any costs incurred by County associated with any 13(c) claims or disputes.

35. Standard of Care. County has relied upon MTA's representations regarding its professional ability and training as a material inducement to enter into this Agreement. MTA hereby warrants that all its services will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that County's acceptance of MTA's services shall not operate as a waiver or release.

36. School Bus Operations. Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 205, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally-funded equipment, vehicles, or facilities.

37. Drug and Alcohol Testing. MTA agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. MTA agrees further to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to County Transit Systems Manager and FTA Office of Safety and Security. To certify compliance, MTA shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

38. Binding Agreement. All Parties hereto acknowledge that it or they are represented by an attorney; that it or they have had an opportunity to discuss this Agreement with their attorney; and it or they are fully aware of the contents of this Agreement and acknowledge that it is a legal and binding agreement.

39. Further Acts. The Parties shall execute and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

40. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

41. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation or law. The Parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. MTA and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. MTA and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

42. No Waiver. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

43. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

44. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

45. Counterparts. This Agreement may be executed in counterparts or by facsimile.

46. Recitals. The Recitals set forth above are true and correct.

47. Incorporation of Exhibits. All Exhibits hereto are incorporated as if fully set forth herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

MENDOCINO TRANSIT AUTHORITY
JOINT POWERS AGENCY

By:_____

Name:_____

Title:_____

APPROVED AS TO FORM FOR MTA:

By:_____

COUNTY OF SONOMA

By:_____

Chair, Board of Supervisors

ATTEST:

By:_____

County Clerk

CERTIFICATES OF INSURANCE
ON FILE WITH AN APPROVED AS
TO SUBSTANCE FOR COUNTY:

By:_____

Director of Transportation and
Public Works Head

APPROVED AS TO FORM FOR
COUNTY:

By:_____

County Counsel

Exhibit "A"

Route 95 Schedule

ROUTE (95) Southbound**Monday - Saturday****Sunday**

Point Arena (Theater)	8:00	10:00
Anchor Bay	8:15	10:15
Gualala (Sundstrom Mall)	8:30	10:30
Sea Ranch Apts.	8:35	10:35
Sea Ranch (Lodge)	8:45	10:45
Stewarts Point (Store)	8:50	10:50
Fort Ross Store	9:10	11:10
Jenner (Post Office)	9:40	11:40
Bodega Bay (Spud Point Marina)	10:15	12:15
Bodega Bay (Post Office)	10:20	12:20
Bodega (Post Office)	10:25	12:25
Freestone (Turnoff)	10:35	12:35
Sebastopol (Transit Stop at Main & Bodega)	10:45	12:45
2nd St. Transit Mall	11:00	1:00
(Connections with Greyhound, Golden Gate & Santa Rosa Transit)		
Amtrak Bus (Edward & Cleveland)	by req.	by req.
Coddington (Library)	by req.	by req.
SMART Train	by req.	by req.
Sonoma Co. Airport	by req.	by req.
(Connections w/Sonoma County Airport Express)	by req.	by req.

ROUTE (95) Northbound**Mon-Sun**

Sonoma Co. Airport	3:45
(Connections w/Sonoma County Airport Express)	
SMART Train	3:47
Coddington (Library)	4:00
Amtrak Bus	4:05
(Edward & Cleveland)	
2nd St. Transit Mall	4:15
(Connections with Greyhound,	
Golden Gate & Santa Rosa Transit)	
Sebastopol	4:35
(Transit Stop at Main & Bodega)	
Freestone (Turnoff)	4:45
Bodega (Bodega Store)	4:50
Bodega Bay (Hwy 1 & Tides Inn)	5:00
Spud Point Marina	by req.
Jenner (Store)	5:30
Fort Ross Store	6:00
Stewarts Point (Store)	6:20
Sea Ranch (Lodge)	by req.
Sea Ranch Apts.	by req.
Gualala (Sundstrom Mall)	6:45
Anchor Bay	6:50
Point Arena (Pharmacy)	7:05

Exhibit “B”

Monthly Report Format

Exhibit "B"

Summary of Operating Data

Mendocino Transit Authority - Route 95

Year	Month	Operating Data			Costs			Sonoma County Share 56%
		Revenue Miles	Revenue Hours	Passenger Trips	Administration	Operations	Maintenance	Total Costs
2019	July							\$0
	August							0
	September							0
	October							0
	November							0
2020	December							0
	January							0
	February							0
	March							0
	April							0
	May							0
	June							0
Totals		0	0	0	\$0	\$0	\$0	\$0

Exhibit "C"

13(c) Obligations

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

July 25, 2003

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street, Suite 2210
San Francisco, California 94105

Re: FTA Application
Sonoma County Transit
Capitalized Preventive Maintenance, Non-
Fixed Route ADA Paratransit Service
CA-90-Y204 Revised

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Since there were no previously certified protective arrangements that could appropriately be applied to this grant, the Department of Labor proposed the attached arrangements for certification pursuant to Section 5333(b). Sonoma County Transit and the Service Employees International Union (SEIU), the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the International Association of Machinists (IAM), which represent transportation related employees in the service area of the project, have accepted the terms of the attached Operating Assistance Protective Arrangements dated July 25, 2003, and shall each be deemed a party to the Arrangements. These Arrangements provide to employees represented by the unions, protections satisfying the requirements of 49 U.S.C.. Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached *OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53*, For Sonoma County Transit and the SEIU, the ATU Locals 1575 and 1700 and the IAM, July 25, 2003, FTA Grant CA-90-Y204 Revised, shall be made applicable to the preventive maintenance and the non-fixed route ADA paratransit service portion of the instant project and made part of the contract of assistance, by reference;
2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant project;
3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and
4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above-referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a

neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

A black rectangular redaction box covering the signature area.

Kelley Andrews, Director
Division of Statutory Programs

Enclosure

cc: Donald Durkee/FTA
Steven Schmitz/Sonoma County Transit
Leo E. Wetzel/ATU
Thomas Buffenbarger/IAM
Andrew Stern/SEIU

**OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT
PURSUANT TO SECTION 5333(b) OF
TITLE 49 OF THE U.S. CODE, CHAPTER 53**

For

**Sonoma County Transit and the Service Employees International Union (SEIU),
the Amalgamated Transit Union (ATU) Locals 1575 and 1700 and the
International Association of Machinists (IAM)**

July 25, 2003

FTA GRANT

CA-90-Y204

The following terms and conditions shall apply and shall be specified in any contract governing federal operating assistance to the recipient(s) referenced in the title of this arrangement ("Recipient"):

- (1) The term "Project", as used in this arrangement, 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 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 solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.**
- (2) The Project, as defined in paragraph (1) shall be performed and carried out in full compliance with the protective conditions described herein.**
- (3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (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 arrangement 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 arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff 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.

In the event that the Recipient and the union(s) referenced in the title to this protective arrangement have an established collective bargaining relationship, 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 arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5) (a) In the event the Recipient contemplates any change in the organization or operation of its system which may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by this arrangement, as a result of the Project, the Recipient shall do so only in accordance with the provisions of subparagraph (b) hereof. Provided, however, that changes which are not a result of the Project, but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement, shall not be considered within the purview of this paragraph.

(b) The Recipient shall give to the unions representing the employees affected thereby, at least sixty (60) days' written notice of each proposed change, which may result in the dismissal or displacement of such employees or rearrangement of the working forces as a result of the Project, by sending

* As an addendum to this arrangement, 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.

certified mail notice to the union representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, available to be filled by such affected employees.

At the request of either the Recipient or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit it to arbitration in accordance with the procedures contained in paragraph (15) hereof. In any such arbitration, final decision must be reached within sixty (60) days after selection or appointment of the neutral arbitrator. In any such arbitration, the terms of this arrangement are to be interpreted and applied in favor of providing employee projections and benefits no less than those established pursuant to §11347 of Title 49 of the U.S. Code.

(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 for. 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 follow:

Employee's length of service

prior to adverse effect

1 day to 6 years

6 years or more

Period of protection

equivalent period

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 month 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 arrangement 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 arrangement 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 for 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 arrangement 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 arrangement, 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 displacement 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 displacement 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 arrangement 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 arrangement, 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, including living expenses for himself and 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.

(b) If any such employee is laid off within three (3) years after changing

(c) Nothing in this arrangement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or

is point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), 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.

(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 as 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 question 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 the 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 arrangement 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 arrangement) 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 months' pay
2	"	"	3	6 " "
3	"		5	9 " "
5	"	"	10	12 "
10	"	"	15	12
15	"	over		12

In the case of an employee with less than one year's service, five days' 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 arrangement, 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 on 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.

(15) (a) In the event there arises any labor dispute with respect to the protection afforded by this arrangement, or with respect to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by Section (12)(c) hereof, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, it may be submitted at the written request of the Recipient or the union to a board of arbitration to be selected as hereinafter provided. One arbitrator is to be chosen by each interested party, and the arbitrators thus selected shall endeavor to select a neutral arbitrator who shall serve as chairman. Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. Should the arbitrators selected by the parties be unable to agree upon the selection of the neutral arbitrator within ten (10) days after notice of submission to arbitration has been given, then the arbitrator selected by any party may request the American Arbitration Association to furnish, from among members of the National Academy of Arbitrators who are then available to serve, five (5) arbitrators from which the neutral arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. If any party fails to select its arbitrator within the prescribed time limit, the highest officer of the Union or of the Recipient or their nominees, as the case may be, shall be deemed to be the selected arbitrator, and the board of arbitration shall then function and its decision shall have the same force and effect as though all parties had selected their arbitrators. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this arrangement, the board of arbitration shall meet within fifteen (15) days after selection or appointment of the neutral arbitrator and shall render its decision within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision by majority vote of the arbitration board shall be final and binding as the decision of the arbitration board, except as provided in subparagraph (b)

below. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(b) In the case of any labor dispute otherwise covered by subparagraph (a) but involving multiple parties, or employees of urban mass transportation employers other than those of the Recipient, which cannot be settled by collective bargaining, such labor dispute may be submitted, at the written request of any of the parties to this arrangement involved in the dispute, to a single arbitrator who is mutually acceptable to the parties. Failing mutual agreement within ten (10) days as to the selection of an arbitrator, any of the parties involved may request the American Arbitration Association to furnish an impartial arbitrator from among members of the National Academy of Arbitrators who is then available to serve. Unless otherwise provided, in the case of arbitration proceedings under paragraph (5) of this arrangement, the arbitrator thus appointed shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed. The decision of the neutral arbitrator shall be conclusive upon all parties to the dispute. All the conditions of the arrangement shall continue to be effective during the arbitration proceeding. Authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions of this arrangement. The arbitrator shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any collective bargaining agreement.

(c) The compensation and expenses of the neutral arbitrator, 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.

(d) 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 Recipient's burden to prove that factors other than the Project affected the employee. 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 (Hodgson's Affidavit in Civil Action No. 825-71).

(e) Nothing in this arrangement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or

in conflict with applicable laws or this arrangement.

(16) Nothing in this arrangement 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 arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefits.

(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 therefor. 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 materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as herein above 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, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19) hereof, which is 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 related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training 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 arrangement.

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 upon 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 arrangement 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 person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

(20) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen'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 arrangement 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 arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). 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 arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(22) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services,

have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

(23) 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 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 this arrangement.

(24) If any employer of the employees covered by this arrangement 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 arrangement, the provisions of this arrangement shall apply to such employee as of the date when he was so affected.

(25) In the context of a particular Project, the Recipient and any union which is referenced in the title of this arrangement shall be deemed a party to this arrangement as applied to the Project.

(26) In the event any project to which this arrangement applies is approved for assistance, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds and between the applicant and any 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, in accordance with its terms, nor shall any other employee protective arrangement nor any collective bargaining agreement merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.