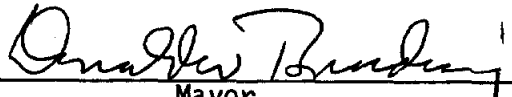


RESOLUTION NO. 2346

BE IT RESOLVED by the Albany City Council that the City Manager and City Recorder are authorized to execute a Capital Assistance Grant Agreement between the State of Oregon by and through its Department of Transportation, Public Transit Division, and the City of Albany, Oregon, for the purchase of a new bus for the Linn-Benton Loop System.

DATED THIS 25TH DAY OF AUGUST, 1982

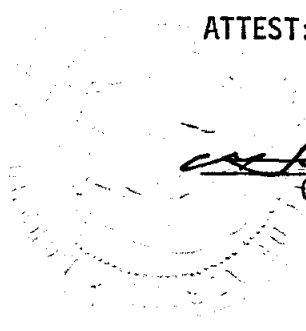


Mayor

ATTEST:



City Recorder



CAPITAL ASSISTANCE

GRANT AGREEMENT

This agreement is made and entered into by and between the State of Oregon by and through its Department of Transportation, Public Transit Division, hereinafter referred to as "Division", and the City of Albany/Linn-Benton Loop, hereinafter referred to as "Contractor".

WHEREAS, pursuant to Chapter 230, Oregon Laws 1977, the Oregon Transportation Commission through Division is authorized to enter into contracts and disburse funds for capital equipment purchases; and,

WHEREAS, the Nonurbanized Area Public Transportation Program (Section 18 of the Urban Mass Transportation Act of 1964, as amended) provides for capital assistance funding in nonurbanized areas; and,

WHEREAS, the Governor of the State of Oregon, in accordance with a request by the Urban Mass Transportation Administration, hereinafter referred to as "UMTA", and the Federal Highway Administration, hereinafter referred to as "FHWA", has designated Division to evaluate and select projects proposed by nonurbanized areas and to coordinate the grant application; and,

WHEREAS, pursuant to Chapter 561, Oregon Laws 1981, the 1981 Legislative Assembly authorized General Fund assistance to transit system; and,

WHEREAS, Contractor has requested assistance with the purchase and improvement of equipment and facilities to provide public transportation service.

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

Section 1. Purpose of Agreement. This Agreement is to provide state and federal financial assistance in the purchase and improvement of public transportation equipment and facilities.

Section 2. Scope of Project. Contractor shall complete the project which was approved by Division, the Oregon Transportation Commission, and FHWA. The project is described in Attachment A which is incorporated into this Agreement.

Section 3. Period of Performance. This Agreement shall become effective upon signature by the Administrator of the Public Transit Division.

Section 4. Contract Limit and Local Matching Requirements.

- a. Division shall reimburse Contractor for up to eighty percent (80%) of approved project cost with federal funds not to exceed \$ 116,000.

- b. Division shall reimburse Contractor for up to ten percent (10%) of approved project cost with state General Funds not to exceed \$ 14,500.
- c. Contractor shall provide local matching funds amounting to at least ten percent of approved project cost. Local matching funds shall be provided from sources other than federal funds.
- d. In the event that actual project cost is below the initial project cost estimate of \$ 145,000, the matching ratios of Division's reimbursement of state and federal funds shall be in the same proportion as participation in the initial project cost estimate. The remainder shall be from local sources of funds.

Section 5. Purchases. Contractor shall make purchases of any equipment, materials, or services pursuant to this agreement through procedures consistent with those outlined in Office of Budget and Management (OMB) Circular A-102, Attachment O, "Procurement Standards", Oregon Public Contract Review Board Administrative Rules (Oregon Administrative Rules, Chapter 127), and state law.

Section 6. Use of Project Property and Equipment.

- a. Contractor shall use the real property, facilities, and/or equipment purchased under this Agreement for the provision of transportation services. When said real property, facilities, or equipment is withdrawn from transportation service, Contractor shall immediately notify Division.
- b. Contractor shall keep and maintain records with regard to project property and equipment which meet the requirements of OMB Circular A-102, Attachment N, Property Management Standards.
- c. Contractor shall maintain, in amounts and form satisfactory to Division, such insurance or self-insurance as will be adequate to protect Contractor, vehicle drivers, vehicle occupants, and project real property, facilities or equipment throughout the period of use. The cost of said insurance shall be borne by Contractor.
- d. Contractor shall maintain project facilities and/or equipment at a high level of cleanliness, safety, and mechanical soundness. Division, UMTA, and FHWA shall have the right to conduct periodic inspections for the purpose of confirming proper maintenance.
- e. Contractor agrees that all drivers of equipment shall have a valid driver's license, chauffeur's license, and shall have passed a defensive driver's course or bus driver training course.

Section 7. Disposition of Project Property and Equipment.

- a. Contractor shall transfer, sell, or otherwise dispose of project real property, facilities, or equipment only with the prior written concurrence of Division. Contractor shall follow the procedures outlined in OMB Circular A-102, Attachment N, Property Management Standards.
- b. Contractor shall maintain and account for the federal and state interest in project property and equipment. In the event that disposition of project property or equipment results in a payment to Contractor, Contractor shall remit an amount in proportion to the federal and state interest to Division.

Section 8. Liens on Project Property and Equipment.

- a. Division has an on-going financial interest in any property or equipment purchased under this Agreement. Division's financial interest is in proportion to the federal and state participation in the project.
- b. Division and Contractor shall meet the requirements of OMB Circular A-102, Attachment N, Property Management Standards. In particular,
 - (1) Division shall perfect a security interest in any vehicles or equipment with a unit purchase cost of \$1,000 or greater; and,
 - (2) Title in real property is to be held in such a manner as to meet the requirements of Circular A-102, Attachment N. The methods used may include mortgage, trust deed, deed in escrow, or other methods determined necessary by Division and FHWA. Contractor shall sign any documents necessary to accomplish the purpose of this section.

Section 9. Audit Requirements. Contractor shall submit to Division its annual audit(s) covering the monies expended under this Agreement. Said audit(s) shall meet the standards for audit set out in Attachment P, OMB Circular A-102.

Section 10. Access to Records. Contractor shall permit Division, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, upon reasonable notice, to inspect all vehicles, real property, facilities, and equipment purchased by Contractor as a part of the Project, all services rendered by Contractor by use of such vehicles, facilities and equipment, and all relevant Project data and records. Contractor shall also permit the above named persons to audit the books, records, and accounts of Contractor pertaining to Project.

Section 11. Subcontracts. Contractor shall not execute any contract, amendment, 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 Division.

Section 12. Hold Harmless. Contractor shall save and hold harmless the State of Oregon, including the Oregon Transportation Commission, the Department of Transportation, Public Transit Division, and their members, officers, agents, and employees from all claims, suits, or actions of whatever nature arising out of the performance of this contract including claims made under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, except for claims arising out of the negligent acts or omissions of the State of Oregon, its employees, or representatives.

Section 13. Compliance with Laws, Regulations, Ordinances.

- a. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this agreement. In particular, the Contractor agrees to comply with the following specific regulations:
- (1) Non-discrimination. Contractor will comply with Title VI of the Civil Rights Act of 1964 (78 Stat 252; 42 USC 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A), issued pursuant to this Act. Contractor will exclude no person on the grounds of race, color, sex or national origin from the benefits of aid received under this Agreement.
 - (2) Minority Business Enterprise. Contractor will provide for full and fair utilization of minority business enterprises. Contractor will use its best efforts to ensure that minority business enterprises shall have an equal opportunity to compete for contract and subcontract work under this agreement.

In accordance with 49 CFR 23, all bidders and all contractors shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

MINORITY BUSINESS ENTERPRISE (MBE)

POLICY STATEMENT

MBE POLICY. It is the policy of the United States Department of Transportation (DOT) that minority business enterprises as defined in 49 CFR 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently the MBE requirements of 49 CFR 23 apply to this agreement.

MBE OBLIGATION. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

MBE APPLICABILITY. This applies to all projects and contracts financed by or through the Oregon Department of Transportation (Department) without regard to the funding source. Recipients and contractors shall conform to all applicable civil rights laws, orders, and regulations including Section 504 of the Rehabilitation Act of 1973. Recipients and their contractors shall not discriminate on the basis of race, age, sex, color, religion, national origin, mental or physical handicap, political affiliation, or marital status in the award and performance of Department contracts.

The MBE Policy Statement shall be included in all sub-contracts entered into under this contract. Bidders and contractors include proposers and consultants; bids include proposals.

- (3) Charter Bus Operation. Contractor, or any operator of public transportation service acting on its behalf, will not engage in charter bus operations outside its service area as part of the project. The expenses for such service are not eligible for reimbursement under this agreement. Within its service area, Contractor may operate charter service provided that this service is only incidental to, and does not interfere with its regular service. (49 CFR 604 and 23 CFR 825)
- (4) School Bus Operation. Contractor, or any operator of public transportation service acting on its behalf, will not engage in school bus operations (exclusive transportation of students and school personnel) in competition with private school bus operators as part of this project. The expenses for such service are not eligible for reimbursement under this agreement. (49 CFR 605 and 23 CFR 825)
- (5) Transportation of Elderly and Handicapped Persons. Contractor will provide transportation service to elderly and handicapped persons which they can use effectively. Contractor will exclude no person on the basis of a handicap from the benefits of aid received under this grant. (49 CFR Part 27)
- (6) Labor Protection. Contractor will comply with the regulations issued by the U.S. Department of Transportation and Department of Labor pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. Contractor will comply with the Special 13(c) Warranty, Attachment B of this Agreement which is by this reference incorporated into the Agreement. Contractor will ensure that the condition of Contractor's employees, or of employees of other transportation providers in its area, is not made worse as a result of aid received under this Agreement (29 CFR 215).

- (7) Record Keeping and Management of Funds. Contractor will manage and account for funds and property received under this Agreement in accordance with the provisions of Office of Management and Budget Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments".
- (8) Eligibility of Expense. Contractor will prepare its requisitions of the funds available under this agreement in accordance with the provisions of the Office of Budget and Management Circular A-87, "Cost Principles for State and Local Governments".
- (9) Prohibited Interest. No member, officer, or employee of Contractor during this tenure or one year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof. No member or delegate to the Congress of the United States, or State of Oregon employee shall be admitted to any share or part of this agreement or to any benefit arising therefrom.

Section 14. Supplemental Agreements. This agreement may be revised or amended by a supplemental written agreement between the parties and executed with the same formalities as this agreement.

Section 15. Termination.

- a. For Convenience: The Division or Contractor may terminate the Project and cancel this agreement in whole, or in part, thirty days after written notice to the other party whenever:
 - (1) The requisite state and/or federal funding becomes unavailable through failure of appropriation or otherwise;
 - (2) The requisite local funding to continue this project becomes unavailable to Contractor; or
 - (3) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds.
- b. With Cause: The Division may, by written notice to Contractor, terminate the Project and cancel this agreement effective ten days after notice for any of the following reasons:
 - (1) Contractor takes any action pertaining to this agreement without the approval of Division and which under the procedures of this agreement would have required the approval of Division;
 - (2) The commencement, prosecution, or timely completion of the Project by Contractor is, for any reason, rendered improbable, impossible, or illegal; and

(3) Contractor is in default under any provision of this agreement.

Section 16. Contractor's Authorization. This agreement shall be executed by those officials authorized to execute this agreement on the Contractor's behalf. Contractor shall attach to this agreement a copy of the motion or resolution which authorizes said officials to execute this agreement, and shall also certify its authenticity.

Section 17. Regulations. This agreement is based upon and is subject to the emergency regulations issued by FHWA and UMTA pursuant to Section 18 of the Urban Mass Transportation Act of 1964, as amended. At such time as FHWA and UMTA may issue final regulations, Division reserves the right to modify those portions of this agreement affected by differences between the emergency and final regulations, in particular the matching of ratios specified for operating expense and administrative cost. Division will provide thirty (30) days notice of impending changes and will prepare a supplemental agreement incorporating the changes to be executed by the parties to this agreement.

This agreement was approved by the Oregon Transportation Commission on April 20, 1982, at which time the Administrator was authorized and directed to sign said agreement for and on behalf of the Commission. Said authority is set forth in Volume _____, page 4558, Minute Book of the Oregon Transportation Commission.

Signed this _____ day of _____, 1982.

APPROVED AS TO LEGAL SUFFICIENCY

STATE OF OREGON BY AND THROUGH
ITS DEPARTMENT OF TRANSPORTATION,
PUBLIC TRANSIT DIVISION

Matthew J. Rice
Assistant Attorney General
June 24, 1982

Administrator, Public Transit Division

CONTRACTOR

Mark P. Kary
Contractor's Legal Counsel
July 7, 1982

William S. Barron
Title: City Manager

A. J. Holladay
Title: City Recorder

Attachment A
City of Albany/Linn-Benton Loop
Project Description

Purchase of one (1) large transit coach and ancillary equipment.

Estimated Cost: \$145,000

ATTACHMENT B
Special Section 13(c) Warranty
for Application to the Small Urban
and Rural Program

A. General Application

The Public Transit Division, 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 Contractor, and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Transit Division, Department of Transportation 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 contractors 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.

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 Contractor and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Contractor and any other legally responsible party designated by the Public Transit Division, Department of Transportation, 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 economics 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 provision of substitute comparable arrangements.

(2)(a) Where employees or a Contractor are represented for collective bargaining purposes, all Project services provided by that Contractor shall be provided under and in accordance with an collective bargaining agreement applicable to such employees which is then in effect.

(2)(b) The Contractor or legally responsible party shall provide to all affected employees sixty (60) days' 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 Contractor'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 Contractor or the representative 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 the 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 Section 13(c) of the Act¹, the Public Transit Division, Department of Transportation 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) Section 13(c) Agreement executed July 23, 1975, identified below², provided that other comparable arrangements may be substituted therefore, if approved by the Secretary of Labor and certified for inclusion in these conditions.

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 the 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 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 Section 13(c) Agreement, executed July 23, 1975 are to omitted.

(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 any 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 Contractor 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 Contractor or other legally responsible party designated by the Public Transit Division, Department of Transportation 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 Contractor 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 Contractor 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 Contractor or other legally responsible party designated by the Public Transit Division, Department of Transportation shall provide or provide for such training or retraining at no cost to the employee.

(8) The Contractor will post, in a prominent and accessible place, a notice stating that the Contractor has received federal assistance under the Urban Mass Transportation Act and has agreed to comply with the provision of Section 13(c) of the Act. This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Contractor 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 part to these arrangements by serving written notice of its desire to do so upon the Contractor 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 Act, the foregoing terms and conditions shall be made part of the Public Transit Division, Department of Transportation or Recipient (Contractor) 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.

C. Waiver

As a part of the grant approval process, either the Contractor or other legally responsible party designated by the Public Transit Division, Department of Transportation may in writing seek from the Secretary of Labor a waiver of the statutory required protections. Secretary will waive these protections in cases, where at the time of the requested waiver, the Secretary determines that there are not employees of the Contractor or of any other surface public transportation providers in the transportation service area who could be potentially affected by the Project. A 30-day notice of proposed waiver will be given by the Department of Labor and in the absence of timely objection, the waiver will become final at the end of the 30-day notice period. In the event of timely objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of waiver, these protections shall apply to the Project.