

**STARTRAN TRANSPORTATION AGREEMENT**  
**between Board of Regents of the University of Nebraska**  
**and City of Lincoln, Nebraska**

This Agreement is dated this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA on behalf of the University of Nebraska-Lincoln, a public body corporate, hereinafter referred to as “UNL”, and the CITY OF LINCOLN, NEBRASKA, a municipal corporation and political subdivision of the State of Nebraska, by and through the Department of Public Works and Utilities, StarTran Division, hereinafter referred to as “StarTran.”

RECITALS

WHEREAS, StarTran has provided bus service to the faculty, students, and staff of UNL in conjunction with the UNL transportation program since 1994; and

WHEREAS, the current agreement will expire in August, 2012; and

WHEREAS, both parties desire to continue this service for an extended period of time.

NOW, THEREFORE, UNL and StarTran do hereby agree as follows:

1. Administration. For StarTran, this Agreement shall be administered by the StarTran Transit Manager. For UNL, this Agreement shall be administered by the Vice Chancellor for Business and Finance.
2. FTA Compliance. This Agreement is subject to compliance with all applicable statutes, rules, and regulations of the Federal Transit Administration, including compliance with the Americans With Disabilities Act, as amended, and all related regulations.
3. Service. StarTran agrees to provide to UNL and UNL agrees to accept transit service on StarTran’s fixed Route 24 for the term of this Agreement. StarTran shall provide the number of buses specified below of not less than 35 feet, according to the schedule set forth below. In addition, StarTran shall, at StarTran’s sole cost and expense, provide for repair and maintenance services to said buses and shall ensure that all buses are functioning in a safe, secure, clean and sightly manner for the passengers. StarTran shall also provide a sufficient number of trained and qualified bus operators to ensure professional operation of the buses at all times. Costs, service hours, and rates are set forth below:

<u>Dates of Service</u>	<u>Service Hours (Mon-Fri Only)</u>	<u>No. of Buses</u>
08/20/2012 - 12/21/2012		
Academic Term days only	7:00 a.m. - 6:00 p.m.	4
01/02/2013 - 08/20/2017		
Academic Term (daytime)	7:00 a.m. - 6:00 p.m.	8
Academic Term (evening)	6:00 p.m. - 9:00 p.m.	4
Summer and days between Academic Terms	7:00 a.m. - 6:00 p.m.	4

Each Academic Term shall be designated by UNL, in UNL’s sole and absolute discretion, and shall be provided to StarTran at least thirty (30) days prior to the commencement of such Academic Term. UNL reserves the right to make changes to the Academic Term, in UNL’s sole and absolute discretion, and, in such event, UNL shall provide reasonable notice to StarTran of any such changes affecting StarTran’s services under this Agreement. In the event UNL cancels all classes for any reason, StarTran shall be relieved of service and no adjustments in the Cost of Service will be made; provided, however, in the event classes are cancelled for more than two (2) consecutive days, the Cost of Service shall be equitably adjusted by the parties.

4. Cost of Service. UNL shall pay to StarTran an amount necessary to cover the cost of the service delivered by StarTran (the “Cost of Service”). Cost of Service, as set forth in the table below, includes all operating, repair, maintenance, fuel, installed equipment, capital, finance, administration, and all other costs related to operation of buses on Route No. 24. For the purposes of this Agreement, Cost of Service shall be according to the following table:

Service Year	Dates of Service	Estimated Service Hours	Rate	Capital Equipment Cost*	Total Cost Of Service
1	08/20/2012 - 12/21/2012	3,539	\$ 80.557	\$ 74,167	\$ 285,091
1	01/02/2013 - 08/25/2013	12,055	\$ 82.904	\$269,167	\$ 999,403
2	08/26/2013 - 08/24/2014	20,572	\$ 95.520	\$617,917	\$1,965,034
3	08/25/2014 - 08/23/2015	20,572	\$ 97.484	\$617,917	\$2,005,448
4	08/24/2015 - 08/21/2016	20,572	\$ 99.508	\$617,917	\$2,047,070
5	08/22/2016 - 08/20/2017	20,572	\$101.592	\$617,947	\$2,089,945

\* Capital Equipment Cost is included in the Total Cost figures.

Included in the above annual Cost of Service amounts are payments to StarTran for the cost of acquiring additional transit equipment (the “Additional Equipment”). These payments are amortized over the life of the Agreement. Acquisition (lease or purchase) and finance costs (the “Additional Equipment Costs”) for the Additional Equipment, including five buses, radios, fare boxes, and other equipment necessary to operate a fixed route service with the new buses, are estimated to be \$2,370,000.00 as of the Effective Date of this Agreement. In the event the Additional Equipment Costs exceed \$2,370,000.00, then, and in that event, the excess over \$2,370,000.00 shall be added to the annual payments for years 3, 4, and 5 with one-third of the excess paid in each of the final three years of this Agreement. In the event the Additional Equipment Costs do not reach \$2,370,000.00, then any savings shall be credited to UNL and the

payments for years 3, 4, and 5 shall be reduced each year to reflect one-third of the savings. Notwithstanding anything herein to the contrary, in the event the actual Additional Equipment Costs are anticipated to exceed \$2,370,000.00, StarTran shall provide notice of such increased Additional Equipment Costs to UNL prior to executing a purchase order or otherwise agreeing to expend such funds and UNL shall have the option to (i) request amendment of this Agreement to address alternate numbers of buses, hours of service, etc., or (ii) terminate this Agreement within thirty (30) days after receipt of such notice.

StarTran will use its best efforts to obtain new funding for the exclusive purpose of acquiring the Additional Equipment through the Federal Transit Administration, Congestion Mitigation and Air Quality, Federal Highway Administration or other federal and state funding that may be available. StarTran will document such efforts to secure other new sources of funding for the Additional Equipment and present those results to UNL within three (3) months of the execution of this contract and prior to execution of a purchase order.

5. Payment. Payment of the Cost of Service for the period of 8/20/2012-12/21/2012 (in Service Year 1) shall be made on or before 10/31/2012. Payment of the Cost of Service for the period of 01/02/2013-08/25/2013 (in Service Year 1) shall be made in three (3) equal installments, with the first due on or before 01/31/2013, the second due on or before 04/30/2013, and the third due on or before 07/31/2013. For all other Service Years as shown above, payments of the Cost of Service shall be in four (4) equal installments for each Service Year, with installments due on October 31, January 31, April 30 and July 31 of each Service Year.

6. Fares. During the term of this Agreement, StarTran shall charge no fares for passengers that are students, faculty, or staff of UNL for any StarTran fixed route. StarTran will examine the Bus Pass presented by students, faculty or staff upon boarding to verify their eligibility for the no-cost fare. Bus Passes will be issued by UNL to UNL students, faculty and staff.

7. Route and Schedule Coordination. StarTran will work closely with UNL to assure that the fixed route for Route 24 and time schedules therefore are coordinated with class schedules and other needs of UNL. This would include, but not necessarily be limited to, allowing UNL to review and comment on fixed Route 24 printed and on-line route and schedule information prior to publication by StarTran, however, StarTran shall have all final decisions on routes.

8. Performance. StarTran shall operate Route 24 in compliance with the StarTran on-time performance standard as defined in the annual "StarTran Surveillance Report" (the "Report") submitted to the Federal Transit Administration. Monthly reports shall be provided to UNL within ten (10) days after the last day of each month. In the event StarTran fails to meet the performance standard in the Report for two (2) consecutive months, representatives from StarTran and UNL, including students, will promptly meet to investigate causes of on-time performance issues and jointly take actions to bring performance back to compliance levels.

9. Term. This Agreement shall run for five (5) years from the Effective Date of this Agreement.

10. Effective Date. The effective date of this Agreement shall be August 20, 2012.

11. Buses and Other Equipment. StarTran and UNL mutually agree and understand that the Cost of Service paid by UNL includes funding for the purchase of the Additional Equipment. The Additional Equipment will not be for the exclusive use of Route 24, will be owned by StarTran and will be ordered no later than September 15, 2012. The parties hereto further agree and acknowledge that pending delivery of the Additional Equipment, StarTran shall provide other appropriate and well-maintained buses and related equipment for the service.

12. End of Term Bus Cost Rebate. In the event that StarTran and UNL fail to develop a successor agreement before this Agreement expires, StarTran will rebate to UNL the residual value of the Additional Equipment discussed in Section 11 determined by applying straight-line depreciation and a twelve-year service life to the amounts paid by UNL for the Additional Equipment pursuant to Section 4. Straight-line depreciation shall begin on the date that each purchased new bus is placed in service.

13. Emergency Operations Assistance. UNL has developed an Emergency Operations Plan that includes transportation components in addressing emergency medical, evacuation and relocation needs that are created by the event or circumstances. Upon UNL's request, StarTran agrees to immediately make available no fewer than nine (9) buses from its fleet for up to 72 hours after the request to assist in emergency operations transport for the injured, critical response staff, resources, supplies or members of the public impacted by the situation.

14. Management Meetings. To assure that StarTran and UNL have regular communication concerning the service described herein, representatives from StarTran and UNL, including students, will hold management review meetings not less frequent than one meeting each Fall and Spring academic terms.

15. Independent Contractor. StarTran has sole and exclusive charge and control of the manner and means of providing the transit service. StarTran shall perform the service as an independent contractor and it is expressly understood and agreed that StarTran is not a division of or in any other way an entity of or created by UNL. This Agreement shall not be deemed to give rise to a partnership or joint venture relation. Neither party shall be deemed an agent or representative of the other and neither party has permission or authority to bind or commit the other party to any agreements or other obligations.

16. Indemnification by UNL. To the fullest extent permitted by law, UNL shall indemnify and hold harmless StarTran, its elected officials (City of Lincoln), officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from UNL's performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by UNL or anyone directly or indirectly employed by UNL or anyone for whose acts any of

them may be liable. This section will not require UNL to indemnify or hold harmless StarTran for any losses, claims, damages, and expenses arising out of or resulting from the negligence or willful misconduct of StarTran, its elected officials (City of Lincoln), employees, or agents. StarTran does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

17. Indemnification by StarTran. To the fullest extent permitted by law, StarTran shall indemnify and hold harmless UNL, its elected officials, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from StarTran's performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by StarTran or anyone directly or indirectly employed by StarTran or anyone for whose acts any of them may be liable. This section will not require StarTran to indemnify or hold harmless UNL for any losses, claims, damages, and expenses arising out of or resulting from the negligence or willful misconduct of UNL, its elected officials, faculty, staff, agents, or students. UNL does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

18. Use of UNL Roads and Facilities. UNL hereby grants to StarTran permission and authority to use UNL's streets, roadways, and other facilities of UNL as may be necessary to provide the service described herein. UNL shall notify StarTran in writing of any such street, roadway, or other facility that shall be prohibited for use by StarTran. To the extent that such streets, roadways, and other street related facilities, including but not limited to manholes and covers, storm drains, curbs and other structures in, on, or attached to the traveled surface of any UNL street or roadway are used with the consent and permission of UNL, UNL agrees to release, discharge, indemnify and hold harmless StarTran, its elected officials (City of Lincoln), employees, or agents from any and all liability for damage to said streets, roadways, or other facilities due to the operation of the transit service by StarTran, except to the extent such damage is due to the negligence or willful misconduct of StarTran. StarTran agrees to comply with all rules and regulations of UNL and any applicable state or local laws, rules and regulations during StarTran's use of UNL's streets, roadways and other facilities

19. Termination by UNL. UNL shall have the right to terminate this Agreement for its own convenience upon not less than sixty (60) days written notice to StarTran. UNL may also terminate this Agreement if StarTran commits a substantial breach of the Agreement and such breach is not cured within thirty (30) days after StarTran's receipt of written notice of the same from UNL. In the event of any termination herein, StarTran and UNL shall negotiate in good faith to jointly determine amounts due and owing to StarTran or to UNL, if any, up to the point of termination. Such amounts due and owing shall include unpaid Cost of Service less the Residual Equipment Value, as defined below. Any such monies due StarTran or UNL shall be paid within sixty (60) days of the agreement concerning termination costs. This section shall survive termination of the agreement.

20. Termination by StarTran. StarTran may terminate this Agreement for its own convenience upon not less than 120 days written notice to UNL. StarTran may also terminate this Agreement if UNL commits a substantial breach of this Agreement and such breach is not cured within thirty (30) days after UNL's receipt of written notice of the same from StarTran. In the event of any termination herein, StarTran and UNL shall negotiate in good faith to jointly determine amounts due and owing to StarTran or UNL, if any, up to the point of termination. Such amounts due and owing shall include unpaid Cost of Service less the Residual Equipment Value, as defined below. Any such monies due StarTran or UNL shall be paid within sixty (60) days of the agreement concerning termination costs.

21. Bus Cost Rebate in Event of Termination. In the event that this Agreement is terminated pursuant to Section 19 or Section 20, StarTran will rebate to UNL the residual value of the Additional Equipment, determined by applying the formula in Section 12 (the "Residual Equipment Value").

22. Federal Immigration Verification. StarTran agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. StarTran shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. StarTran shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).

23. No Discrimination. The parties hereto agree to abide by Title 11 of the Lincoln Municipal Code and all other applicable federal and state statutes and regulations prohibiting discrimination in providing transit service.

24. Notices. Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

City of Lincoln, Nebraska  
Public Works and Utilities Department  
StarTran Division  
Attention: Transit Manager  
710 J Street  
Lincoln, NE 68508

University of Nebraska-Lincoln  
Vice-Chancellor for Business and Finance  
307 Canfield Administration Building  
Lincoln, NE 68588-0425

25. Nebraska Law. This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

26. Integration, Amendments, and Assignment. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

27. Audits. For purposes of audits, each party hereto agrees to make available to the other party, or its designated auditor, copies of all financial and performance related records and materials germane or relevant to this Agreement, as allowed by law.

28. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

29. Waiver of Contract Rights. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA**

Attest: \_\_\_\_\_  
Carmen K. Maurer  
Interim Corporation Secretary

By: \_\_\_\_\_  
James B. Milliken  
President

**CITY OF LINCOLN, NEBRASKA**

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Chris Beutler, Mayor