

Federal Certifications and Assurances

for

WisDOT Grant Applications



Calendar Year 2017

**Prepared by Wisconsin Department of Transportation
Bureau of Transit and Local Roads**

June 14, 2016

Note: This booklet contains certifications and assurances which must be submitted for federal funds.

Background Information

The following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. Each Applicant/Recipient should review each certification and assurance for all programs for which the Applicant/Recipient intends to seek FTA assistance.

The Applicant/Recipient understands and agrees that not every provision of these certifications and assurances will apply to every Applicant/Recipient or every Project or Award for which FTA provides Federal funding. The type of project and the selection of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurance reflect applicable requirements of FTA's enabling legislation currently in effect.

The Certifications and Assurances have been prepared in light of:

- ✓ The Fixing American's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015,
- ✓ The Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, June 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law No 114-41, July 31, 2015 and other authorizing legislation be enacted,
- ✓ FTA's authorizing legislation in effect in FY2012 or a previous fiscal year, except as superseded by the Fast Act cross-cutting requirements that apply,
- ✓ Appropriations Acts or Continuing Resolutions funding the Department of Transportation during Fiscal Year 2015.

The Applicant/Recipient understands and agrees that these Certifications and Assurances are pre-award requirements, generally imposed by Federal law or regulation, and do not include all Federal regulations that may apply to the Applicant/Recipient or its project. The FTA Master Agreement, which can be found at the FTA Web site – <http://www.fta.dot.gov> – contains the current list of most requirements.

Each Applicant/Recipient is ultimately responsible for compliance with the Certifications and Assurances selected on its behalf that apply to its Project or Award, itself, any Subrecipient, or any other Third Party Participant in its Project, except as FTA determines otherwise in writing.

Instructions:

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|------------------------|---|
| <u>Step #1:</u> | Read each Certifications and Assurance. |
| <u>Step #2:</u> | Initial each Certification and Assurance, indicating you have read and understand each one. |
| <u>Step #3:</u> | Sign and date the certification statement. |
| <u>Step #4:</u> | Submit the initialed and signed Certifications and Assurances signature page. |
| <u>Step #5:</u> | Keep a copy of the Certifications and Assurances signature page and booklet for your records. |

2017 FTA Certifications and Assurances

| Certification/ Assurance | Title | Initial Each Applicable Certification/Assurance |
|-----------------------------|---|--|
| A-1 | Standard Assurances | |
| A-2 | Intergovernmental Review Assurance | |
| A-3 | U.S. OMB Assurance | |
| A-4 | Nondiscrimination Assurance | |
| A-5 | Disadvantaged Business Enterprise (DBE) Assurance | |
| A-6 | Lobbying | |
| A-7 | Suspension and Debarment | |
| A-8 | Private Sector Protections | |
| A-9 | Charter Service Agreement | |
| A-10 | School Bus Agreement | |
| A-11 | Demand Responsive Service | |
| A-12 | Procurement Compliance | |
| A-13 | Alcohol Misuse and Prohibited Drug Use | |
| A-14 | Transit Asset Management | |
| A-15 | Public Transportation Agency Safety Plan | |
| A-16 | Public Transportation Emergency Relief Program | |
| A-17 | Labor Protection – <i>Signature Required</i> | |
| B-1 | Acquisition of Capital Assets by Lease | |
| B-2 | Rolling Stock Reviews and Bus Testing | |
| B-3 | Construction Hiring Preference | |

Chief Elected or Administrative Official Statement

The undersigned chief elected or administrative official hereby certifies that the Applicant/Recipient has read and understands the Certifications and Assurances initialed in the table above and further assures that, as a condition to receiving federal financial assistance from the Wisconsin Department of Transportation, the Applicant/Recipient will comply with the requirements as specified in the applicable attached Certifications and Assurances in implementing and managing the project awarded.

The person whose signature appears below is authorized to sign this assurance on behalf of the grant Applicant/Recipient or recipient. While an attorney's signature is not required, the Wisconsin Department of Transportation encourages your counsel to participate in the review and signature of this document.

Grant Program: _____

Grant Applicant/Recipient: _____

Signature of Chief Elected or Administrative Official _____

Printed Name: _____

Date: _____

STANDARD ASSURANCES

The Applicant/Recipient assures that:

1. It has sufficient authority to undertake the following activities on its behalf, in compliance with applicable State, Local, or Indian tribal laws, regulations, and requirements and its by-laws or internal rules:
 - ✓ Execute and file its application for Federal assistance,
 - ✓ Execute and file its Certifications, Assurances, Charter Service Agreement, and School Bus Agreement, as applicable, binding its compliance,
 - ✓ Execute the Grant Agreement, Cooperative Agreement, Loan, Loan Guarantee, or Line of Credit, for which the Applicant is seeking FTA funds,
 - ✓ Comply with applicable Federal laws and regulations, and
 - ✓ Follow applicable Federal guidance.
2. It will comply with all applicable Federal laws, regulations and requirements to in implementing its Award.
3. It is under a continuing obligation to comply with the terms and conditions of its Grant Agreement or Cooperative Agreement with FTA for each Award, including the FTA Master Agreement and other documents incorporated by reference and made part its Grant Agreement or Cooperative Agreement.
4. It recognizes that Federal laws, regulations and requirements may be amended from time to time and those amendments may affect the implementation of its Award.
5. It understands that Presidential executive orders and Federal guidance, including Federal policies and program guidance may be issued concerning matters affecting it or its Award.
6. It agrees that the most recent Federal laws, regulations, and requirements and guidance will apply its Award, excepts as FTA determines otherwise in writing.
7. It agrees that requirements for FTA programs may vary depending on the fiscal year for which the assistance for those programs was appropriated or made available, except as FTA determines otherwise in writing.
 - ✓ Rail Car Procurements, (14) Veterans Preference/Employment, (15) Alcohol and Controlled Substance Testing, and (16) Other provisions as FTA may determine.

INTERGOVERNMENTAL REVIEW ASSURANCE

The Applicant/Recipient will provide the following certification, except if the Applicant/Recipient is an Indian tribe, an Indian organization or a tribal organization that applies for assistance made available for 49 U.S.C. 5311(c)(1), which authorizes FTA's Tribal Transit Programs.

As required by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR Part 17, the Applicant/Recipient assures that it has submitted or will submit each application for Federal assistance to the appropriate State and local agencies for intergovernmental review.

U.S. OMB ASSURANCES

These assurances are consistent with the U.S. OMB assurances required in the U.S. OMB SF-424B and SF-424D, updated as necessary to reflect changes in Federal laws, regulations and requirements.

Administrative Activities. The Applicant/Recipient assures that:

For every project described in any application the Applicant/Recipient submits:

1. It has adequate resources to plan, manage, and complete properly the tasks to implement its Award, including the: legal authority to apply for Federal assistance, institutional capability, managerial capability, and financial capability (including funds sufficient to pay the non-Federal share of the cost incurred under its Award),
2. It will give access and the right to examine materials related to its Award to the following entities or individuals, including, but not limited to: FTA, the Comptroller General of the United States, and the State, through any authorized representative,
3. It will establish a proper accounting system in accordance with generally accepted accounting standards or FTA guidance, and
4. It will establish safeguards to prohibit employees from using their positions for a purpose that results in a personal or organizational conflict of interest, or personal gain, or an appearance of a personal or organizational conflict of interest or personal gain.

Project Specifics. The Applicant/Recipient assures that:

1. It will begin and complete work within the time performance that applies following receipt of an FTA Award.
2. For FTA assisted construction Awards:
 - A. It will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications,
 - B. It will provide and maintain competent and adequate engineering supervision at the construction site to assure that the completed work conforms to the approved plans and specifications,
 - C. It will include a covenant to assure nondiscrimination during the useful life of the real property financed under its Award in its title to that real property,
 - D. To the extent FTA requires, it will record the Federal interest in the title to FTA assisted real property or interests in real property, and
 - E. It will not alter the site of the FTA funded construction Project or facilities without permission or instructions from FTA by:
 - Disposing of the underlying real property or other interest in the site and facilities,
 - Modifying the use of the underlying real property or other interest in the site and facilities, or
 - Changing the terms of the underlying real property title or other interest in the site and facilities, and
3. It will furnish progress reports and other information as FTA or the State may require.

Statutory and Regulatory Requirements. The Applicant/Recipient assures that:

1. It will comply with all Federal statutes relating to nondiscrimination that apply, including, but not limited to:
 - A. The prohibitions against discrimination on the basis of race, color, or national origin, as provided in Title VI of the Civil Rights Act, 42 U.S.C. 2000d,

- B. The prohibitions against discrimination on the basis of sex, as provided in: (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 – 1683, and 1685 – 1687, and (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25,
 - C. The prohibitions against discrimination on the basis of age in federally assisted programs, as provided in the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 – 6107,
 - D. The prohibitions against discrimination on the basis of disability in federally assisted programs, as provided in section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794,
 - E. The prohibitions against discrimination on the basis of disability, as provided in the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*
 - F. The prohibitions against discrimination in the sale, rental, or financing of housing, as provided in Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*,
 - G. The prohibitions against discrimination on the basis of drug abuse, as provided in the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,
 - H. The prohibitions against discrimination on the basis of alcohol abuse, as provided in the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*,
 - I. The confidentiality requirements for the records of alcohol and drug abuse patients, as provided in the Public Health Service Act, as amended, 42 U.S.C. 290dd – 290dd-2, and
 - J. The nondiscrimination provisions of any other statute(s) that may apply to its Award.
2. As provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4601 *et seq.* and 49 U.S.C. 5323(b), regardless of whether Federal assistance has been provided for any of the real property acquired for or improved for purposes of its Award, the Applicant/Recipient will adhere to the following :
- A. It will provide for fair and equitable treatment of displaced persons or any persons whose property is acquired or improved as a result of federally assisted programs, and:
 - B. It has the necessary legal authority under State and local laws, regulations and requirements to comply with: the Uniform Relocation Act. 42 U.S.C. 4601 *et seq.*, as specified by 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR part 24, specifically 49 CFR 24.4, and
 - C. It has complied with or will comply with the Uniform Relocation Act and implementing U.S. DOT regulations, because it will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24, as required by 42 U.S.C. 4622, 4623, and 4624, and 49 CFR part 24, if its Award results in displacement, it will provide fair and reasonable relocation payments and assistance to displaced families or individuals and displaced corporations, associations and partnerships.,
 - D. As provided by 42 U.S.C. 4625 and 49 CFR part 24, it will provide relocation assistance programs offering the services described in the U.S. DOT regulations to such displaced families and individuals, corporations, associations and partnerships,
 - E. As required by 42 U.S.C. 4625(c)(3), within a reasonable time before displacement, it will make available comparable replacement dwellings to families and individuals,
 - F. It will: 1) carry out the relocation process to provide displaced persons with uniform and consistent services, and 2) make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin,
 - G. It will be guided by the real property acquisition policies of 42 U.S.C. 4651 and 4652,
 - H. It will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will provide Federal assistance for its eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631,

- I. It will execute the necessary implementing amendments to FTA assisted third party contracts and subagreements,
 - J. It will execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement these assurances,
 - K. It will incorporate these assurances by reference into and make them a part of any third party contract or subagreement, or any amendments thereto, related to its Award that involves relocation and land acquisition, ,
 - L. It will provide in any affected document that these relocation and land acquisition provisions must supersede any conflicting provisions,
3. It will comply with the Lead-Based Paint Poisoning Prevention Act, specifically 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures,
 4. It will, to the extent applicable, comply with the protections for human subjects involved in research, development, and related activities supported by Federal funding of the National Research Act, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11,
 5. It will, to the extent applicable, comply with the labor standards and protections for federally assisted Projects of the Davis-Bacon Act, as amended, 40 U.S.C. 3141 – 3144, 3146, and 3147, Sections 1 and 2 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and 40 U.S.C. 3145, respectively, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*,
 6. It will comply with any applicable environmental standards that may be prescribed to implement Federal laws and executive orders, including, but not limited to:
 - A. Complying with the institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 – 4335 and following Executive Order No. 11514, as amended, 42 U.S.C. 4321 note,
 - B. Following the notification of violating facilities provisions of Executive Order No. 11738, 42 U.S.C. 7606 note,
 - C. Following the protection of wetlands provisions of Executive Order No. 11990, 42 U.S.C. 4321 note,
 - D. Following the evaluation of flood hazards in floodplains provisions of Executive Order No. 11988, May 24, 1977, 42 U.S.C. 4321 note and Executive Order No. 13690 "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, January 30, 2015.
 - E. Complying with the assurance of consistency with the approved State management program developed pursuant to the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 – 1465,
 - F. Complying with the Conformity of Federal Actions to State (Clean Air) Implementation Plans requirements under section 176(c) of the Clean Air Act of 1970, as amended, 42 U.S.C. 7401 – 7671q,
 - G. Complying with the protections for underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6,
 - H. Complying with the protections for endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 – 1544,
 - I. Complying with the environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation Award as required by 49 U.S.C. 303,

- J. Complying with the protections for the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 – 1287, and
 - K. Comply and facilitating compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C 300108, the Archaeological and Historic Preservation Act of 1974, as amended, 54 U.S.C 312501, and Executive Order No. 11593 (identification and protection of historic properties), 54 U.S.C. 300101.
7. To the extent applicable, comply with the following Federal requirements for the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance: (1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and (2) U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR subchapter A, parts 1, 2, 3, and 4,
 8. To the extent applicable, obtain a certificate of compliance with the seismic design and construction requirements of U.S. DOT regulations, “Seismic Safety,” 49 CFR part 41, specifically 49 CFR 41.117(d), before accepting delivery of any FTA assisted buildings,
 9. Comply with, and assure that its Subrecipients located in special flood hazard areas comply with, section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), by: (1) Participating in the Federal flood insurance program, and (2) Purchasing flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more,
 10. Comply with:
 - A. The Hatch Act, 5 U.S.C. 1501 – 1508, 7324 – 7326, which limits the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal assistance, including a Federal loan, grant agreement, or cooperative agreement, and
 - B. 49 U.S.C. 5323(l)(2) and 23 U.S.C. 142(g), which provide an exception from Hatch Act restrictions for a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance made available under 49 U.S.C. chapter 53 and 23 U.S.C. 142(a)(2) to whom the Hatch Act does not otherwise apply,
 11. Perform the financial and compliance audits as required by the:
 - A. Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*,
 - B. U.S. DOT Regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200 and
 - C. Most recent applicable U.S. OMB Compliance Supplement, 2 CFR part 200, appendix XI (previously known as the U.S. OMB Circular A-133 Compliance Supplement).
 12. Comply with all other Federal laws, regulations and requirements that apply and follow Federal guidance governing it and its Award, except as FTA has expressly approved otherwise in writing.

NONDISCRIMINATION ASSURANCE

The Applicant/Recipient assures that it will comply with the following laws, regulations and requirements so that no person in the United States will be denied the benefits of, or otherwise be subjected to discrimination in any U.S. DOT or FTA assisted program or activity (particularly in the level and quality of transportation services and transportation-related benefits) on the basis of race, color, national origin, religion, sex, disability, or age including:

- ✓ Federal transit laws, specifically 49 U.S.C. 5332 (prohibiting discrimination on the basis of race, color, religion, national origin, sex (including gender identity), disability, or age, employment or business opportunity
- ✓ Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d,
- ✓ The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*,
- ✓ The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*,
- ✓ U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21,
- ✓ U.S. DOT regulations, specifically 49 CFR parts 27, 37, 38, and 39, and
- ✓ Any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated, issued or federal requirements that may be imposed.

The Applicant/Recipient, as required by 49 CFR 21.7, assures:

1. It will comply with Federal guidance implementing Federal nondiscrimination laws, regulations or requirements, except as FTA determines otherwise in writing,
2. It will comply with 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR Part 21 in the manner it implements its Award, undertakes property acquisitions, and operates all parts of its facilities, as well as its facilities operated in connection with its Award. This assurance applies to its Award and to all parts of its facilities used to implement its Award., as well as its facilities operated to implement its Project,
3. It will promptly take the necessary actions to carry out this assurance, including: notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA, and submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request,
4. If it transfers US DOT FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination: (1) while the property is used for the purpose that the Federal assistance is extended, and (2) while the property is used for another purpose involving the provision of similar services or benefits,
5. It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to comply with Title VI of the Civil Rights Act, 42 U.S.C. 2000d, U.S. DOT regulations, 49 CFR part 21, and Federal transit laws, 49 U.S.C. 5332,
6. It will comply with applicable Federal guidance issued to implement Federal nondiscrimination requirements, except as FTA determines otherwise in writing,
7. It will extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each Third Party Participant, including any: (1) Subrecipient, (2) Transferee, (3) Third Party Contractor or Subcontractor at any tier, (4) Successor in Interest, (5) Lessee, or (6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient),
8. It will include adequate provisions to extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each third party agreement, including each: (1) Subagreement at any tier, (2) Property transfer agreement, (3) Third party contract or subcontract at any tier, (4) Lease, or (5) Participation agreement.

As required by U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR part 27, specifically 49 CFR 27.9, and consistent with 49 U.S.C. 5322, the Applicant/Recipient assures that:

1. It will comply with the following prohibitions against discrimination on the basis of disability, of which compliance are a condition of approval or extension of any FTA assistance awarded to: (1) Construct any facility, (2) Obtain any rolling stock or other equipment, (3) Undertake studies, (4) Conduct research, or (5) Participate in any benefit or obtain any benefit from any FTA administered program, and
2. In any program or activity receiving or benefiting from Federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of their disability, be: (1) Excluded from participation, (2) Denied benefits, or (3) Otherwise subjected to discrimination.

The United States has a right to seek judicial enforcement of any matter arising under Title VI of the Civil Rights Act, 42 U.S.C. 2000d, U.S. DOT regulations, 49 CFR part 21, or this assurance.

The assurances made will remain in effect as long as FTA determines appropriate, including, for example, as long as: (1) Federal assistance is provided for its Award, (2) its property acquired or improved with federal assistance is used for a purpose for which the Federal assistance is extended or for a purpose involving similar services or benefits, (3) It retains ownership or possession of its property acquired or improved with federal assistance provided for its Award, or (4) FTA may otherwise determine in writing.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCE

The Applicant/Recipient will adhere to the following assurance language:

Disadvantaged Business Enterprise (DBE) provisions apply to U.S. DOT (including FTA) assisted contracts. As a recipient of FTA planning, capital, and/or operating assistance with contracting opportunities in excess of \$250,000 (excluding transit vehicle purchases), WisDOT has a written DBE Program Plan to address the requirements. The WisDOT DBE program addresses FTA funded contracting activities conducted by WisDOT as well as those of its subrecipients. As a subrecipient of FTA assistance, the DBE requirements apply to subrecipients. The following assurance applies to subrecipient grant agreements:

- a) The Wisconsin Department of Transportation shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Wisconsin Department of Transportation of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer to the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

In addition, each contract a subrecipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following clause:

- b) The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - 1) Withholding monthly progress payments;
 - 2) Assessing sanctions;
 - 3) Liquidated damages, and/or;
 - 4) Disqualifying the contractor from future bidding as non-responsible.

LOBBYING

An Applicant/Recipient will provide the following certification if it submits or intends to submit this fiscal year, an application for a Federal Grant or Cooperative Agreement exceeding \$100,000 or a Loan, a Line of Credit, Loan Guarantee, or Loan Insurance exceeding \$150,000, except if you are applying on behalf of an Indian Tribe, Indian Organization or and Indian Tribe Organization exempt from the requirements of 31 U.S.C 1352 or FTA determines otherwise in writing.

As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," specifically 49 CFR 20.110, the Applicant/Recipient understands that the lobbying restrictions of this Certification apply to its requests for \$100,000 or more in Federal assistance for a Grant or Cooperative Agreement and \$150,000 or more in Federal assistance for a Loan, Line of Credit, or Loan Guarantee, or Loan Insurance. This certification covers the lobbying activities of it, its Principals, and its Subrecipients at the first tier.

Therefore, you certify to the best of your knowledge and belief, that:

1. No Federal appropriated funds have been or will be paid by or on its behalf to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an employee of a member of Congress, or an officer or employee of Congress, regarding the award of a Federal Grant or Cooperative Agreement, or Federal Loan, Line of Credit, Loan Guarantee, or Loan Insurance.
2. It will submit a complete OMB Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities" consistent with its instructions on that form, if any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence: an officer or employee of any Federal agency, a Member of Congress, an employee of a Member of Congress, or an officer or employee of Congress, regarding the award of a federal grant or cooperative agreement, federal loan, line of credit, loan guarantee, or loan insurance.

It will include the language of this certification in the award documents under a federal grant, cooperative agreement, loan, line of credit, or loan insurance including but not limited to each Third Party Contract, Third Party Subcontracts, each Subagreement, and each Third party agreement.

3. It also understands that any person who does not file a required certification will incur a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SUSPENSION AND DEBARMENT

The Applicant/Recipient certifies compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180.

The Applicant/Recipient certifies to the best of its knowledge and belief that, it, its Principals and Subrecipients at the first tier:

- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified.
- b. Within a three-year period preceding its latest application or proposal its management has not been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction, violation of any Federal or State antitrust statute, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property.
- c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding Section 'b' of this certification.
- d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this certification.
- e. If, at a later time, it receives any information that contradicts the statements above, it will provide that information to FTA.
- f. It will treat each lower tier contract or subcontract under its Award as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it equals or exceeds \$25,000, is for audit services, or requires the consent of a Federal official.
- g. It will require that each covered lower tier contractor and subcontractor comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and assure that each lower tier participant in its Award is not presently declared by any Federal department or agency to be:
 - ✓ Debarred from participation in its federally assisted Award,
 - ✓ Suspended from participation in its federally assisted Award,
 - ✓ Proposed for debarment from participation in its federally assisted Award,
 - ✓ Declared ineligible to participate in its federally assisted Award,
 - ✓ Voluntarily excluded from participation in its federally assisted Award, or
 - ✓ Disqualified from participation in its federally assisted Award.

The Applicant/Recipient will provide a written explanation to WisDOT if it or any of its principals, including any of its first tier Subrecipients or Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this certification.

PRIVATE SECTOR PROTECTIONS

Each Applicant/Recipient that is a State, local government or Indian tribal government that seeks FTA assistance to acquire the property of a private transit operator or operate public transportation in competition with or in addition to a public transportation operator must provide the following certification.

The Applicant/Recipient is ultimately responsible for compliance with this certification selected on its behalf that apply to its Project, itself, any Subrecipient, or any other Third Party Participant in its Project, except as FTA determines otherwise in writing. For this reason, the Applicant/Recipient is strongly encouraged to take appropriate measures, including, but not limited to, obtaining sufficient documentation from each Subrecipient and any other Third Party Participant to assure the validity of this Certification.

To facilitate FTA's ability to make the findings required by 49 U.S.C. 5323(a)(1), the Applicant/Recipient certifies that:

1. It has or will have:
 - A. Determined that the federal assistance is essential to carrying out its Program of Projects as required by 49 U.S.C. 5303, 5304, and 5306;
 - B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
 - C. Paid just compensation under State or local law to the company for any franchise or property acquired.
2. It has completed the actions described before it:
 - A. Acquires the property or an interest in the property of a private provider of public transportation, or
 - B. Operates public transportation equipment or facilities: 1) In competition with transportation service provided by an existing public transportation operator or 2) In addition to transportation service provided by an existing public transportation operator.

CHARTER SERVICE AGREEMENT

An Applicant/Recipient is required to provide the following certification if it applies for funding to acquire or operate transit facilities and equipment, except as FTA determines otherwise in writing.

To comply with 49 U.S.C. 5323(d) and (g) and FTA regulations, "Charter Service," 49 CFR part 604, specifically 49 CFR 604.4, the Applicant/Recipient enters into the following "Charter Service Agreement":

1. FTA's "Charter Service" regulations apply as follows:
 - A. FTA's Charter Service regulations restrict transportation by charter service using facilities and equipment acquired or improved under its Award from FTA financed with Federal assistance derived from: Federal transit laws, 49 U.S.C. chapter 53, 23 U.S.C. 133 or 142, or any other Act that provides Federal public transportation, unless otherwise excepted,
 - B. FTA's Charter Service restrictions extend to:
 - i. The Applicant, when it becomes a Recipient of Federal funding appropriated or made available for: Federal transit laws, 49 U.S.C. Chapter 53, 23 U.S.C. 133 or 142, or any other Act that provides Federal public transportation assistance, unless otherwise excepted, and
 - ii. Any Third Party Participant that receives Federal funding derived from: Federal transit laws, 49 U.S.C. Chapter 53, 23 U.S.C. 133 or 142, or any other Act that provides Federal public transportation assistance, unless otherwise excepted.
 - C. A Third Party Participant includes any: Subrecipient at any tier, Lessee, Third Party Contractor or Subcontractor at any Tier, and Other Third Party Participant in its Project,
 - D. The Applicant agrees that neither it nor any governmental authority or publicly owned operator that receives Federal public transportation assistance appropriated or made available or authorized in its Project will engage in charter service operations, except as permitted under Federal transit laws, specifically 49 U.S.C. 5323(d) and (g), FTA regulations, "Charter Service," 49 CFR. Part 604, to the extent consistent with U.S.C. 5323(d) and (g), any other Federal Charter Service regulations, or Federal guidance, except as FTA determines otherwise in writing.
 - E. The Applicant agrees that the latest Charter Service Agreement selected in its latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying its Award of federal assistance from FTA.
 - F. The Applicant agrees that:
 - i. FTA may require corrective measures or impose remedies on it or any governmental authority or publicly owned operator that receives FTA assistance from FTA appropriated or made available for its Award that has engaged in a pattern of violations of FTA's Charter Service regulations by:
 - Conducting charter operations prohibited by Federal transit laws and FTA's Charter Service regulations, or
 - Otherwise violating its Charter Service Agreement selected in its latest annual Certifications and Assurances.

- ii. These corrective measures and remedies may include:
 - Barring it or any Third Party Participant operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA, ,
 - Withholding an amount of Federal assistance as provided by Appendix D to FTA's Charter Service regulations, or
 - Any other appropriate remedy that may apply.
- 2. In addition to the charter service restrictions in FTA's Charter Service Regulations, FTA has established the following additional exceptions to those restrictions:
 - A. FTA Charter Restrictions do not apply to the Applicant if it seeks federal assistance appropriated or made available under 49 U.S.C. 5307 and 5311, to be used for Job Access and Reverse Commute (JARC) activities that would have been eligible for assistance under former 49 U.S.C. 5316 in effect in FY 2012 or a previous fiscal year, provided that it uses that federal assistance from FTA for those program purposes only,
 - B. FTA Charter Service Restrictions do not apply to the Applicant if it seeks funding appropriated or made available for 49 U.S.C. 5310, to be used for New Freedom activities that would have been eligible for assistance under repealed 49 U.S.C. 5317 in effect in FY 2012 or a previous fiscal year, provided it uses that FTA funding for those program purposes only, and
 - C. An Applicant/Recipient for assistance under 49 U.S.C. chapter 53 will not be determined to have violated the FTA Charter Service regulations if that Recipient provides a private intercity or charter transportation operator reasonable access to that Recipient's federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes as provided in 49 U.S.C. 5323(r).

SCHOOL BUS AGREEMENT

An Applicant/Recipient that is seeking Federal assistance to acquire or operate transit facilities or equipment must provide the following certification, except as FTA determines otherwise in writing.

To comply with 49 U.S.C. 5323(f) and (g), and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) and (g), the Applicant/Recipient understands and agrees that:

1. FTA's "School Bus Operations" regulations restrict school bus operations using facilities and equipment acquired or improved with Federal assistance derived from Federal transit laws, 49 U.S.C. chapter 53, or 23 U.S.C. Sec.133 or 142, or any Act that provides Federal public transportation assistance, unless otherwise expected,
2. FTA's school bus operations restrictions extend to:
 - A. The Applicant/Recipient when it becomes a Recipient of Federal assistance appropriated or made available for Federal transit laws, 49 U.S.C. chapter 53, 23 U.S.C. Sec. 133 or 142, or any other Act that provides Federal public transportation assistance, unless otherwise excepted, and
 - B. Any Third Party Participant that receives Federal assistance derived from Federal transit laws, 49 U.S.C. chapter 53, 23 U.S.C. Sec. 133 or 142, or any other Act that provides Federal public transportation assistance, unless otherwise excepted,
 - C. A Third Party Participant includes any: Subrecipient at any tier, Lessee, Third Party Contractor or Subcontractor at any tier, and Other Third Party Participant in the Project.
3. It will obtain the agreement of any Third Party Participant involved in the Applicant/Recipient's Award, that it will not engage in school bus operations in competition with private operators of school buses, except as permitted under Federal transit laws, specifically 49 U.S.C. Sec. 5323(f) and (g), FTA regulations, "School Bus Operations," 49 Part 605, to the extent consistent with 49 U.S.C. Sec. 5323(f) and (g), any other Federal School Bus regulations, or Federal guidance, except as FTA determines otherwise in writing.
4. The latest School Bus Agreement it has selected on its behalf in FTA's latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying an award of federal assistance.
5. The Applicant agrees that after it is a Recipient, if it or any Third Party Participant has violated this School Bus Agreement, FTA may bar the Applicant/Recipient or any Third Party Participant from receiving further Federal assistance for public transportation or or require the Applicant/Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate.

DEMAND RESPONSIVE SERVICE

An Applicant/Recipient that is a public entity, operates demand responsive service to acquire a non-rail vehicle that is not accessible, must provide the following certification, except as FTA determines otherwise in writing.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37, specifically 49 CFR 37.77(d), the Applicant/Recipient certifies that the following public transportation services it offers are equivalent in level and quality of service to individuals with disabilities, including individuals who use wheelchairs and individuals without disabilities.

Viewed in its entirety, its service for individuals with disabilities is provided in the most integrated setting feasible and equivalent to the service it offers individuals without disabilities with respect to:

1. Response time
2. Fares
3. Geographic service area
4. Hours and days of service
5. Restrictions on priorities based on trip purpose
6. Availability of information and reservation capability, and
7. Constraints on capacity or service availability.

PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant/Recipient that is a State, local or Indian tribal government seeking Federal assistance to acquire property or services in support of its project must provide the following certification.

The Applicant/Recipient certifies that its procurements and its procurement system will comply with all Federal laws, regulations and requirements in accordance with applicable Federal guidance, except to the extent FTA has approved otherwise in writing.

ALCOHOL AND CONTROLLED SUBSTANCES TESTING

An Applicant/Recipient that seeks federal assistance to operate transit service must comply with the alcohol and controlled substance testing requirements of 49 U.S.C. 5331 and its implementing regulation and provide the following certification, except as FTA may determine otherwise in writing.

Note:

WisDOT requires Applicant/Recipient to join the statewide Drug and Alcohol Testing Consortium. Contact the WisDOT Transit Section for more information..

As required by 49 U.S.C 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655, subpart I, specifically 49 CFR 655.83 the Applicant/Recipient certifies:

1. The Applicant/Recipient, its Subrecipients and Third Party Contractors to which these testing requirements apply have established and implemented an alcohol misuse testing program and a controlled substance testing program
2. The Applicant/Recipient, its Subrecipients and Third Party Contractors to which these testing requirements apply have complied or will comply with all applicable requirements of 49 CFR part 655 to the extent those regulations are consistent with 49 U.S.C. 5331, and
3. Consistent with U.S. DOT Office of Drug and Alcohol Policy and Compliance Notice, issued October 22, 2009, if the Applicant/Recipient, its Subrecipients or its Third Party Contractors to which these testing requirements apply reside in a State that permits marijuana use for medical or recreational purposes, the Applicant/Recipient, its Subrecipients and its Third Party Contractors to which these testing requirements apply have complied or will comply with the Federal controlled substance testing requirements of 49 CFR part 655.

TRANSIT ASSET MANAGEMENT

The Applicant/Recipient will provide the following certification if it applies for funding made available or appropriated for 49 U.S.C chapter 53, except as FTA determines otherwise in writing.

The Applicant/Recipient certifies it will:

1. Follow Federal guidance that when issued, will implement the transit asset management system provisions of 49 U.S.C. 5326, except as FTA determines otherwise in writing, and
2. Comply with the final Federal regulations when issued, will implement the transit asset management provisions of 49 U.S.C. 5326.

PUBLIC TRANSPORTATION AGENCY SAFETY PLAN

The Applicant/Recipient will provide the following certification if it applies for funding made available or appropriated for 49 U.S.C chapter 53, except as FTA determines otherwise in writing.

The Applicant/Recipient certifies it will:

1. Follow the Federal guidance, when issued, that will implement the safety plan provisions of 49 U.S.C. § 5329(d), except as FTA determines otherwise in writing, and
2. Comply with the final Federal regulations, when issued, that implement the safety plan requirements of 49 U.S.C. § 5329(d).

PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM

Before FTA provides funding made available or appropriated for a Public Transportation Emergency Relief Project, the Applicant/Recipient must provide the following certification, except as FTA determines otherwise in writing.

As required by 49 U.S.C. 5324(d), the Applicant/Recipient assures it will comply with the requirements of the Certifications and Assurances as FTA determines for federal assistance appropriated or made available for the Public Transportation Emergency Relief Program and comply with FTA regulations, "Emergency Relief," 49 CFR, part 602.

**LABOR PROTECTION - ASSURANCE OF COMPLIANCE WITH
SPECIAL SECTION 5333(b), FORMERLY SECTION 13(c), WARRANTY**

The Applicant/Recipient must comply with the labor protection provisions of 49 U.S.C. Section 5333(b), formerly Section 13(c). The requirements of 49 U.S.C. Section 5333(b) can be met by assuring compliance with a special Warranty arrangement developed exclusively for application to the Section 5311 program. The Warranty binds the recipient to certain specified terms and conditions of the National (model) Section 5333(b) Agreement executed July 23, 1975, which are incorporated into the Warranty by reference. The special Section 5333(b) Warranty is contained in this document as well as the applicable provisions of the National (model) Section 5333(b) Agreement.

The Applicant/Recipient HEREBY AGREES THAT as a condition to receiving federal financial assistance from the Department of Transportation, as authorized under Section 5311 of the Federal Transit Act, it will comply with the terms and conditions of the Special Section 5333(b) Warranty and assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

| |
|---|
| Name of Applicant/Recipient: _____ |
| Date: _____ |
| By: _____ <i>(signature of chief elected or administrative official)</i> |

Instructions: Identify a list of all existing providers of “public transportation” operating in the transportation service area of the recipient and all labor organizations representing the employees of such providers. The term "public transportation" means any transportation by bus, rail, or other conveyance, which provides either general or special service to the general public on a regular and continuing basis. "Public transportation" does not include the following: (1) school bus, sightseeing, or charter service; (2) exclusive ride taxi service; and (3) service to individuals or groups which excludes use by the general public.

| Provider | Labor Union (if applicable) or specify N/A |
|----------|--|
| | |
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**Special Section 5333(b) Warranty
for Application to the Small Urban
and Rural Program**

The following language shall be made part of the contract of assistance with the State or other public body charged with allocation and administration of funds provided under 49 U.S.C. Section 5311.

Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of a surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees.

The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided.

The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

The term "service area," as used herein, includes the geographic area, over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project.

The term "Union," as used herein, shall refer to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant.

The term "employee," as used herein, shall include individual who may or may not be represented by a Union.

The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant.

The term "Grantee," as used herein, shall refer to the Applicant/Recipient for assistance; a Grantee which receives assistance is also a Recipient.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to 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.

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/or the preservation or continuation of the collective bargaining rights of such employees.

(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 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 deemed 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.

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 agreements 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) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacement or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through 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 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 (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees 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. 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 (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either: (1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached; 2) the decision of the arbitrator has been rendered pursuant to this subparagraph (b); or 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph(b), any involved party may immediately submit that issue to arbitration under paragraph (15) of this arrangement. In any such arbitration, the arbitrator shall rely upon standards and criteria utilized by the surface Transportation Board (and its predecessor agency, in the Interstate Commerce Commission) to address the "preconsummation" issue in cases involving employee protections pursuant to 40 U.S.C Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such arbitration, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement.

If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such arbitration, the time period within which the parties are to respond to the list of potential arbitrators submitted by the American Arbitration Association Service shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, the award of the arbitrator shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days for mailing if posthearing briefs are required by either party. The intended change shall not be instituted during the pendency of any arbitration proceedings under this subparagraph (c).

(5)(d) If any intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final arbitration decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final arbitration decision rendered pursuant to the subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final arbitration decision shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final arbitration decision pursuant to subparagraph (b).

(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, the employee shall be considered a “displaced employee”, and shall be paid a monthly “displaced allowance” to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments were provided for.

(6)(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/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee’s normal work schedule, immediately preceding the date of his/her 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 were provided for. If the displaced employee’s compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee 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/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(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

(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/her employment, the employee 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 the employee is “dismissed” and shall continue during the protective period, as follow:

| | |
|--------------------------------|-----------------------------|
| Employee’s length of service | |
| <u>prior to adverse effect</u> | <u>Period of Protection</u> |
| 1 day to 6 years | Equivalent period |
| 6 years or more | 6 years |

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee’s normal work schedule to the date on which the employee 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.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee 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 the employee’s 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/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

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

(7)(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 the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee 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 the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer; notification shall be in accordance with the terms of the then-existing collective bargaining agreement if the employee is represented by a union. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee 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.

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

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her 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 the employee's former employer, including self-employment, and the benefits received.

(7)(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 the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving dismissal allowance shall actively seek and not refuse other reasonable comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's 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/her 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 purpose of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employment were continuing to perform services in his/her 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, as some future time, the employee could have bid, been transferred or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under an 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 the employee may be entitled under the same conditions as so long as such benefits continue to be accorded to the 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/her 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/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her 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 ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the 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.

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

(11)(d) Except as otherwise provided in subparagraph (b), changes in places 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/her employment as a result of the Project, and his thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's 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/her conventional fees and closing costs.

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

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

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

(12)(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/her 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 and 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.

(12)(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.

(12)(e) "Change of 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 the employee's residence than was his/her former work location, or (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her 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:

| Length of Service | Separation Allowance |
|--------------------------------|----------------------|
| 1 year and less than 2 years | 3 months pay |
| 2 year and less than 3 years | 6 months pay |
| 3 year and less than 5 years | 9 months pay |
| 5 year and less than 10 years | 12 months pay |
| 10 year and less than 15 years | 12 months pay |
| 15 year and over | 12 months pay |

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 payment(s) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

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 the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee 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 instance 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, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(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 the employee's 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, provide however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date the employee's displacement or dismissal.

(15)(a) In the event that employee(s) are represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c), the Labor-Management Relations Act, as amended, the 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, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties.

In the event they cannot agree upon such procedure, the dispute, claim or grievance may be submitted at the written request of the Recipient or the Union to final and binding arbitration. Should the parties be unable to agree upon the selection of a neutral arbitrator within ten (10) days, any party may request the American Arbitration Association to furnish, from among arbitrators who are then available to serve, five (5) arbitrators from which a neutral arbitrator shall be selected. 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. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (f) of this arrangement, the arbitration shall commence within fifteen (15) days after selection or appointment of the neutral arbitrator, and the decision shall be rendered within forty-five (45) days after

the hearing of the dispute has been concluded and the record closed. The decision shall be final and binding. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(15)(b) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient, and all other expense shall be paid by the party incurring them.

(15)(c) In the event that employee(s) are not represented by a Union, any dispute claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement which cannot be settled by the Recipient and the employee(s) within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding dispute settlement procedure acceptable to the parties or in the event the parties cannot agree upon such a procedure, the dispute or controversy may be referred to the Secretary of Labor for a final binding determination.

(15)(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the obligation of the employee or the representative of the employee to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient 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. (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by this arrangement may file a written claim of its violation, through the Union, or directly if the employee is outside the bargaining unit with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to his/her 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. 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 the claim.

The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant or his/her representative on the basis for denying or modifying such claim, giving reasons therefore. If the Recipient fails to honor such claim, the Union or non-bargaining unit employee may invoke the following procedures for further joint investigation of the claim by giving notice in writing. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as it 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 Recipient rejects the claim, the claim may be processed to arbitration as hereinabove provided by paragraph (15).

(17) 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 or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not 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.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, included those in the employment of any entity bound by this arrangement pursuant to paragraph (21) herein, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining arrangements related thereto. In the event such employee requests such training or retraining to fill such a vacant position, the Recipient shall provide for such training or retraining at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the personnel policies or practices for such position, plus any displacement allowance to which the employee may otherwise be 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 the employee held when dismissed for which the employee was qualified, or for which the employee has satisfactorily completed such training, the employee 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 or 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) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising thereunder.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Applicant/Recipient for federal funds and between the Applicant/Recipient and any recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but all be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and not provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangement 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.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part of portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or federal law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/or any applicable collective bargaining agreements.

(23) 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 benefits be worsened as a result of the Project.

(24) 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, if any, 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.

(25) 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 the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.

ACQUISITION OF CAPITAL ASSETS BY LEASE

An Applicant/Recipient that intends to request the use of Federal funding authorized under 49 U.S.C. Chapter 53 to acquire capital assets (other than rolling stock or related equipment) through a lease is required to provide the following certification.

As required by FTA regulations, "Capital Leases," 49 CRF part 639, to the extent consistent with the FAST Act, if the Applicant/Recipient acquires any capital asset (other than rolling stock or related equipment) through a lease financed with Federal assistance appropriated or made available under 49 U.S.C. Chapter 53, the Applicant/Recipient certifies as follows: It will not enter into a capital lease for which FTA can provide only incremental Federal funding unless it has adequate financial resources to meet its future lease obligations if Federal funding is not available.

ROLLING STOCK REVIEWS AND BUS TESTING

An Applicant/Recipient that intends to seek funds to acquire rolling stock for use in revenue service or acquire a new bus model is required to provide the following certification.

A. Rolling Stock Reviews

The Applicant/Recipient certifies that when procuring rolling stock for use in revenue service,

1. It will comply with Federal transit law, specifically 49 U.S.C. 5323(m), and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663, and
2. As provided in 49 CFR 663.7, it will conduct or cause to be conducted the required pre-award and post-delivery reviews of that rolling stock, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

B. Bus Testing

The Applicant/Recipient certifies that:

1. Bus Testing requirements apply to all acquisitions of new buses and new bus models that require bus testing as defined in FTA's Bus Testing regulations and it will comply with 49 U.S.C. 5318 and FTA regulations, "Bus Testing," 49 CFR part 665, to the extent these regulations are consistent with 49 U.S.C. 5318.
2. As required by 49 CFR 665.7, when acquiring the first bus of any new bus model or a bus model with a major change in components or configuration:
 - a. It will not spend any Federal assistance appropriated under 49 U.S.C. chapter 53 to acquire that new bus or new bus model until (1) The new bus or new bus model has been tested at FTA's bus testing facility, and (2) It has received a copy of the test report prepared on that new bus or new bus model, and
 - b. It will not authorize final acceptance of that new bus or new bus model until: (1) The new bus or new bus model has been tested at FTA's bus testing facility, and (2) It has received a copy of the test report prepared for that new bus or new bus model,
3. It will ensure that the new bus or new bus model that is tested has met the performance standards consistent with those regulations, including:
 - a. Performance standards for: (1) Maintainability, (2) Reliability, (3) Performance (including braking performance), (4) Structural integrity, (5) Fuel economy, (6) Emissions, and (7) Noise, and
 - b. Minimum safety performance standards established under 49 U.S.C. 5329.
4. After FTA regulations authorized by 49 U.S.C. 5318(e)(2), are in effect, it will ensure that the new bus or new bus model that is tested has received a passing aggregate test score under the "Pass/Fail" standard established by regulation.

CONSTRUCTION HIRING PREFERENCE

An Applicant/Recipient that intends to provide federal assistance for a third party contract for construction hiring financed under title 49 U.S.C or title 23 U.S.C using a geographic, economic, or any other hiring preference not otherwise authorized by federal law or regulation must provide the following certification, except as FTA determines otherwise in writing.

As provided by section 192 of division L, title I of the Consolidated Appropriations Act, 2016, Pub. L. 114-113, the Applicant/Recipient certifies that if, in connection with any third party contract for construction hiring financed under title 49 U.S.C. or title 23 U.S.C., it uses a geographic, economic, or any other hiring preference not otherwise authorized by law or prohibited under 2 CFR § 200.319(b):

1. Except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the third party contract requires resides in the jurisdiction where the work will be performed;
2. It will include appropriate provisions in its bid document ensuring that its third party contractor(s) do not displace any of its existing employees in order to satisfy such hiring preference; and
3. That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.