

PGA: SECTION 5339 FEDERAL- BUS AND BUS FACILITIES PROGRAM
TRANSIT PROVIDER: **Webb County Community Action Agency**
FTA GRANT #: **TX-34-0018**
CFDA #: **20.526**
TXDOT PROJECT #: **VCR 1602 (22) 18**
PROJECT GRANT AGREEMENT #: **8465**
MASTER GRANT AGREEMENT #: **512XXF7144**
FEDERAL TRANSIT ADMINISTRATION
NOT RESEARCH AND DEVELOPMENT
URBANIZED AREA: N/A

STATE OF TEXAS §

COUNTY OF TRAVIS §

**FEDERAL BUS AND BUS FACILITIES PUBLIC TRANSPORTATION
FISCAL YEAR 2016
PROJECT GRANT AGREEMENT**

THIS PROJECT GRANT AGREEMENT (PGA) is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State," and **Webb County Community Action Agency**, called the "Transit Provider."

WITNESSETH

WHEREAS, 49 U. S. Code, Section 5339 provides that eligible recipients may receive federal funds through the Bus and Bus Facilities Public Transportation Grant Program, a federal assistance program administered by the Federal Transit Administration to provide capital funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities; and

WHEREAS, Texas Transportation Code Chapter 455 authorizes the State to assist the Transit Provider in procuring aid for the purpose of establishing and maintaining public and mass transportation projects and to administer funds appropriated for public transportation under Texas Transportation Code Chapter 456; and

WHEREAS, the U.S. Secretary of Transportation approved the State's request for funding; and

WHEREAS, the Governor of the State of Texas has designated the Texas Department of Transportation to receive federal funds under the Section 5339 grant program; and

WHEREAS, the Transit Provider submitted a Fiscal Year 2015 Grant Application for state financial assistance and the Texas Transportation Commission approved the application by Minute Order Number **114311**; and

WHEREAS, the Transit Provider must execute a Grant Application and a FTA Certifications and Assurances for each fiscal year grant period for consideration for new state and federal grants; and

WHEREAS, a Master Grant Agreement (MGA) between the Transit Provider and the State has been adopted and states the general terms and conditions for grant projects developed through this PGA;

NOW THEREFORE, the State and the Transit Provider agree as follows:

AGREEMENT

ARTICLE 1. GRANT TIME PERIOD

This PGA becomes effective when fully executed by both parties. This PGA shall remain in effect until **August 31, 2017**, unless terminated or otherwise modified in an amendment. This PGA will not be considered fully executed until both parties have executed a MGA, and the Transit Provider has submitted the Grant Application and the FTA Certifications and Assurances (federal funds only) to the State. The time period of this PGA cannot be extended past the MGA, without exception. Any cost incurred before or after the contract period shall be ineligible for reimbursement.

ARTICLE 2. PROJECT DESCRIPTION

- A.** The Transit Provider shall complete the public transportation project described in the Grant Application, Attachment A - Approved Project Description and Project Budget. Attachment A and B – Employee Protections, are attached to and made a part of this agreement. The Transit Provider shall complete the project in accordance with all of the documents associated with the MGA and with all applicable federal and state laws and regulations.
- B.** If applicable, the Transit Provider shall begin competitive procurement procedures by issuing an invitation for bids or a request for proposals no later than sixty (60) days after the effective date of this grant agreement for the purchase of the approved line item(s) referenced in Attachment A. No later than sixty (60) days after the issuance of public notification, the Transit Provider shall publicly open all bids or privately review proposals. The Transit Provider shall enter into a binding agreement with a supplier no later than thirty (30) days after the opening of an acceptable bid or proposal. The Transit Provider shall notify the department in writing when it is necessary to exceed these deadlines.

ARTICLE 3. COMPENSATION

The maximum amount payable under this PGA without modification is **\$ 7,396 and 1,480** Transportation Development Credits, provided that expenditures are made in accordance with the amounts and for the purposes authorized in the Grant Application and Attachment A.

The original and one copy of the invoice are to be submitted to the following address:

**Texas Department of Transportation
Attn: Bolivar Bolanos
Public Transportation Coordinator
P.O. Box 29928
San Antonio, Texas 78229**

ARTICLE 4. AMENDMENTS

Except as noted in the MGA, changes in the scope, objectives, cost or duration of the project authorized in the agreement shall be enacted by written amendment approved by the parties

before additional work may be performed or additional costs incurred. Any amendment must be executed by both parties within the grant period specified in Article 1, Grant Time Period.

ARTICLE 5. INCORPORATION OF MGA PROVISIONS

This PGA incorporates all of the governing provisions of the MGA in effect on the date of final execution of this PGA, unless an exception has been made in this agreement.

ARTICLE 6. SIGNATORY WARRANTY

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Transit Provider in duplicate.

THE TRANSIT PROVIDER

Signature

Typed, Printed, or Stamped Name

Title

Date

THE STATE OF TEXAS

Signature

Bolivar Bolanos

Typed, Printed, or Stamped Name

Public Transportation Coordinator

Title

Date

List of Attachments

A - Approved Project Description and Project Budget

B - Employee Protections

**ATTACHMENT A
APPROVED PROJECT DESCRIPTION AND PROJECT BUDGET**

The application for State and Federal assistance, as submitted to the State, is hereby incorporated into this agreement as the project description.

TRANSIT PROVIDER: **Webb County Community Action Agency**
 TXDOT PROJECT #: **VCR 1602 (22) 18**
 URBANIZED AREA: **N/A**

ALI	DESCRIPTION	QUANTITY	FUEL TYPE	FEDERAL AMOUNT	TDC
11.32.07	SECURITY EQUIP.			7,396	1,480

Transit provider shall comply with Article 13 of the master grant agreement requiring procurement milestone / quarterly progress reports, including but not limited to providing:

- upon execution of the PGA, a procurement plan describing the expected procurement methodology for each commodity or service to be purchased and the estimated date of initiation of the procurement process(es) (in this context, the "initiation of procurement" milestone means the date of formal solicitation issuance, requests for quotes, or similar milestone based on the appropriate methodology);
- within 90 days of PGA execution, actual dates of initiation of the procurement process(es) and expected dates to enter into a contract with supplier(s) and/or maintenance / construction contractor(s);
- in subsequent reports, depending on the commodity or service, actual dates of entering into a contract with supplier(s) and/or maintenance / construction contractor(s), and estimated dates of delivery or contract completion, and;
- in subsequent reports, actual dates of delivery or contract completion.

Transit provider shall comply with TAC rule 31.55 requiring transit provider to record a lien naming the Texas Department of Transportation, Public Transportation Division, as the lienholder when vehicles and real property are purchased through this PGA. TAC defines "real property" as "Land, including improvements, structures, and appurtenances..." For real property projects, transit provider shall file a lien with the property records or file a deed of trust in favor of TXDOT.

Attachment B – Employee Protections

U.S. Department of Labor

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



September 4, 2015

Robert C. Patrick, Regional Administrator
Federal Transit Administration, Region VI
819 Taylor Street, Room 8A36
Ft. Worth, Texas 76102

Re: FTA Application
Texas Department of Transportation *On Behalf of*: Various Subrecipients
TX-34-0018

Dear Regional Administrator:

This is in reply to your request for certification of employee protective provisions for the above-referenced grant application under 49 U.S.C. § 5333. Revisions and/or amendments to this grant may be subject to additional certification in accordance with 29 C.F.R. § 215.

City of Amarillo

In connection with a previous grant application, the City Commission of the City of Amarillo passed Resolution No. 12-23-75-6, dated December 23, 1975. Resolution No. 12-23-75-6 and a side letter to the Department of Labor from City Manager John Stiff dated April 8, 1976 provide to the employees represented by the Amalgamated Transit Union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

The parties have agreed that the terms and conditions of the Resolution No. 12-23-75-6 and the side letter dated April 8, 1976, shall be made applicable to the instant project.

Brazos Transit District/Bryan

In connection with a previous grant application, the Brazos Transit District (as the successor to the Brazos Valley Community Action Agency), and Amalgamated Transit Union Local 1700 (as successor to the former Amalgamated Council of Greyhound Local Unions) executed an agreement dated March 29, 1989, which provides to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

The parties have agreed that the terms and conditions of the agreement dated March 29, 1989, shall be made applicable to the instant project.

Beaumont Transit Company

The Beaumont Transit Company and the Amalgamated Transit Union Local 1031 have agreed that the terms and conditions of their agreement dated October 30, 1974, as supplemented by the side letters dated October 30, 1974 and February 24, 1976, shall be made applicable to the instant project. This agreement, executed in connection with a previous grant application, provides to employees represented by the union protections satisfying the requirements of the statute.

City/County Transportation (Cleburne)

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the **and City/County Transportation (Cleburne)**, represented by IBT Local 997, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

Lower Rio Grande Valley Development Council/City of Harlingen South Padre Island

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). The employees in the service area of the **Lower Rio Grande Valley Development Council/City of Harlingen, South Padre Island** represented by the International Brotherhood of Teamsters (IBT) Local 657 and the United Transportation Union (UTU), shall be considered third party beneficiaries in accordance with condition (4) below.

TAPS

The January 3, 2011 Unified Protective Arrangement (UPA), as supplemented by the side letter agreement executed on May 11, 2011, between the Texoma Area Paratransit System, Inc. (TAPS Public Transit) and the United Food and Commercial Workers Local 1000 (UFCW), provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees represented by the UFCW shall be considered third party beneficiaries in accordance with condition (3) below for application to the instant grant.

The Department determined in its certification of May 11, 2011 that due diligence shall be paid to paragraph (4) of the UPA concerning TAPS' responsibility to arrange for the continuation of collective bargaining, including the negotiation of a collective bargaining agreement between a private operator of the transit system and the UFCW. TAPS was directed to expeditiously enter into a contract with a private entity for the operation of the transit system and comply with the requirements of paragraph (21) of the UPA by binding such contract operator to the terms and conditions of the protective arrangements in writing, as a condition precedent to its contractual arrangements with TAPS. Both TAPS and such private contractor accept responsibility for full performance of the protective arrangements.

In addition, the UPA also provides transportation related employees of the Dallas Area Rapid Transit, represented by the Amalgamated Transit Union, the United Transportation Union and the Rail Employees Association which are considered in the service area of TAPS, protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees represented by the ATU, UTU and REA shall also be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

Rolling Plains Management Corporation (RPMC)
Sherman
McKinney

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the **Rolling Plains Management Corporation, Sherman and McKinney**, represented by United Food and Commercial Workers (UFCW) Local 1000, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

SPAN
PTS

The Special Programs for Aging Needs (SPAN) and Public Transit Services (PTS) have previously agreed to the terms and conditions of the Section 18 Warranty dated May 31, 1979 (Project TX-03-0200), which provide protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Pursuant to Paragraph (9) of the Section 18 Warranty, the Amalgamated Transit Union (ATU), on behalf of Local 1700 became party to the Section 18 Warranty for PTS grants.

Pursuant to Paragraph (9) of the Section 18 Warranty, the IBT became party to the Section 18 Warranty for SPAN and PTS. The IBT did not specify recipients in their requests to become party to the Warranty. The Department has determined, however, that the IBT would appropriately be party to the Warranty for SPAN and PTS grants.

The terms and conditions contained in the Section 18 Warranty shall be made applicable to the instant project for SPAN and PTS and employees represented by ATU L. 1700 and IBT.

In addition, the January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service areas of SPAN and PTS, protections satisfying the requirements of 49 U.S.C., Section 5333(b). The employees in the service area of the project, represented by the Amalgamated Transit Union (ATU) Local 1338, the Rail Employees Association, and the United Transportation Union, shall be considered third party beneficiaries in accordance with condition (4) below.

**STAR Transit
Community Transit Services, Inc.**

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the **STAR and Community Transit, Inc.**, represented by ATU Local 1338, REA and the UTU, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

East Texas Council of Governments

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the **East Texas Council of Governments (ETCOG)**, represented by ATU Local 1700, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

Hill Country Transit District/Temple

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the **Hill Country Transit District/Temple**, represented by the American Federation of State, County, and Municipal Employees (AFSCME), the ATU Local 1091, the IBT, and the TWU, shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

City of Tyler

In connection with a previous grant application, the City of Tyler signed protective arrangements as contained under Resolution R-92-10 dated February 18, 1992, which provide to the employees represented by the American Federation of State, County and Municipal Employees (AFSCME) protections satisfying the requirements of 49 U.S.C., Section 5333(b).

The City and the AFSCME have agreed that the terms and conditions contained in the Resolution dated February 18, 1992, shall be made applicable to the instant project.

City of Wichita Falls

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b). Accordingly, the employees in the service area of the City of Wichita Falls, represented by the Amalgamated Transit Union (ATU) Local 1700, United Transportation Union (UTU), and the United Food and Commercial Workers (UFCW) shall be considered third party beneficiaries in accordance with condition (4) below for application to the instant grant.

**Ark-Tex Council of Governments
Colorado Valley Transit, Inc.
Concho Valley Transit District
Golden Crescent Regional Planning Commission
Heart of Texas Council of Governments
Panhandle Community Services
Rural Economic Assistance League, Inc.
South East Texas Regional Planning Commission
South Plains Community Action Association
Southwest Area Regional Transit District
West Texas Opportunities**

In addition, the recipients identified in Attachment A to this certification have previously agreed to the terms and conditions of the Section 18 Warranty, which provide to the employees represented by the Amalgamated Transit Union (ATU), the United Transportation Union (UTU), the American Federation of State County and Municipal Employees (AFSCME), and the Texas Conference of Teamsters, affiliated with the International Brotherhood of Teamsters (IBT), and the Transport Workers Union (TWU) protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Pursuant to Paragraph (9) of the Section 18 Warranty, the ATU, on behalf of Locals 694, 1091 and 1700, the UTU, and the IBT became party to the Section 18 Warranty for the recipients listed respectively in Attachment A. The UTU, IBT and the TWU did not specify recipients in their requests to become party to the Warranty. The Department has determined, however, that these unions, along with AFSCME, would also appropriately be party to the Warranty for respective recipients in Attachment A.

**Aspermont Small Business Development Center
Midland-Odessa Urban Transit District
City of Abilene
Senior Center Resources and Public Transit
City of Del Rio
Webb County Community Action Agency
Central Texas Council of Governments
Galveston County Transit District
Gulf Coast Center/ Lake Jackson-Angleton/ Texas City
McLennan County Transit District
City of Texarkana
City of Port Arthur
The Transit System, Inc.**

In addition, pursuant to 29 C.F.R. § 215.4, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that the terms and conditions attached "*Nonunion Protective Arrangement*" are made applicable to the **Aspermont Small Business Development Center, Midland-Odessa Urban Transit District, City of Abilene, East Texas Council of Governments, Gulf Coast Center/Texas City/ Lake Jackson-Angleton,**

City of Longview, Senior Center Resources and Public Transit, City of Del Rio, Webb County Community Action Agency, Central Texas Council of Governments, Galveston County Transit District, McLennan County Transit District, City of Texarkana, City of Port Arthur, and The Transit System, Inc. This certification letter shall be made part of the contract of assistance between the Grantee and the U.S. Department of Transportation, by reference.

In addition, the Department of Labor makes the certification called for under the statute on condition that the Texas Department of Transportation, as a precondition to the release of assistance to any Recipient under the grant, ensures that such Recipient agrees to the respective terms and conditions referenced herein. This certification letter, and the corresponding protective arrangements, shall be incorporated into the contract of assistance between the Texas Department of Transportation, and the U.S. Department of Transportation (DOT), by reference. The Texas Department of Transportation shall incorporate the terms of this certification into a contract with Recipients of funds under the grant, if any, as a precondition to the release of assistance to any Recipient. These terms and conditions provide to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C., Section 5333(b).

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

1. This letter and the terms and conditions of the above protective arrangements, shall be made applicable to the instant project and made part of the contract of assistance between the Texas Department of Transportation and DOT, by reference;
2. As a precondition to the release of assistance to any Recipient, this letter and the terms and conditions of the respective protective arrangements referenced above, shall be incorporated into the contract of assistance between the Texas Department of Transportation and such Recipient, by reference;

Any dispute or controversy arising regarding the application, interpretation, or enforcement of this provision which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any party to any final and binding dispute settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for a final and binding determination;

3. The term "project" as used in each of the above employee protective arrangements shall be deemed to cover and refer to those portions of the instant project to which they have been applied;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the Texas Department of Transportation, and the parties to the contract so signify by executing that contract. Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s). Employees not represented by any labor organization, or if so represented through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;
5. Disputes over the interpretation, application and enforcement of the terms and conditions of the certified protective arrangements, including those disputes arising out of this letter of certification, except for any disputes arising out of enumerated paragraph 2 above, shall be resolved in accordance with the procedures specified in the aforementioned certified arrangements; and
6. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not

represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Sincerely,



Ann Comer, Chief
Division of Statutory Programs

cc: Scheryl Portee/FTA
Paul Moon/TX DOT
Owetta Walton-Bost/Ark-Tex COG/Texarkana
James Oliver/City of Abilene
Lisa Cortinas/Victoria
John McBeth/Brazos Transit District
Stefani Jimenez/Bryan
Dr. John Meyers/East TX COG
Rob W. Stephens/Midland-Odessa Urban Transit District
Jenny Gibson/West TX Opportunities, Inc.
D'Juana Davillier/Southeast TX Regional Planning Commission
James Hollis/Texas City
Scott Lewis/City of Longview
John Austin Stokes/Concho Valley
Sarah Hidalgo-Cook/Southwest Area Regional Transit District
Danny Allembaugh/Senior Center Resources and Public Transit, Inc.
Robert Ator/Hill Country Transit District
Daniel Edwards, Sr./Community Services, Inc.
Elsa Reyes/City of Del Rio
William Munson/Beaumont
Vastene Olier/Colorado Valley Transit
Robert Martinez/Webb County
J.R. Salazar/Central TX COG
Judy Phelps/Amarillo Transit System
Dennis Burket/Wichita Falls Transit
Angie Brockway/Tyler Transit System
Lezlie Carroll/Rolling Plains Management Corp.
Jesse Arriaga/South Padre Island
Mike Worthy/Galveston RTD
Ricky Ake/Aspermont Small Business Development Center, Inc.
John Hendrickson/McLennan County RTD
Grady Easdon/City of Cleburne
Ronald K. McElhose/Port Arthur Transit
Lylene Springer/Panhandle Community Services, Inc.

Reta Brooks/Public Transit Services, Inc.
Gloria Ramos/Rural Economic Assistance
Derinda Long/The Transit System, Inc.
Brian Baker/South Plains Community Action Association
Rodney Gomez/Rio Metro-Lower Rio Grande
Jessica M. Chu/ATU
John Gardner/REA
C. Studivant/SMART-UTU
James P. Hoffa/IBT Richard Hanna/UFCW
Brad Underwood/TAPS
Rep Pledger/Heart of TX COG
Omega Hawkins/STAR
Deborah Robertson/SPAN

Attachment A
Small Urban and Rural Recipients

Ark-Tex Council of Governments – ATU

CARTS/San Marcos – ATU, IBT, AFSCME

Colorado Valley Transit, Inc. – ATU

Concho Valley Transit District/San Angelo – IBT

Golden Crescent Regional Planning Commission/Victoria - ATU

Heart of Texas Council of Governments – TWU

Panhandle Community Services – ATU, UTU

Rural Economic Assistance League, Inc. – ATU

South East Texas Regional Planning Commission - ATU

South Plains Community Action Association – UTU

Southwest Area Regional Transit District – ATU, IBT

West Texas Opportunities, Inc. – ATU

NONUNION PROTECTIVE ARRANGEMENT
PURSUANT TO SECTION 5333(B) OF TITLE 49 OF THE U.S. CODE

October 17, 2014
TX-34-0018

The term "Grantee" refers to the applicant for assistance; a "Recipient" as used herein, shall refer to **Aspermont Small Business Development Center, Midland-Odessa Urban Transit District, City of Abilene, Gulf Coast Center/Texas City/ Lake Jackson-Angleton, City of Longview, Senior Center Resources and Public Transit, City of Del Rio, Webb County Community Action Agency, Central Texas Council of Governments, Galveston County Transit District, , McLennan County Transit District, City of Texarkana, City of Port Arthur, and The Transit System, Inc.** The term "project" shall be deemed to cover and refer to the activities funded under the grant.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements incorporated by reference in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Transit employees are also third-party beneficiaries to the protective arrangements incorporated in subsequent contracts of assistance, pursuant to the Department's certification, between the Grantee and any Recipient. Employees may assert claims through their representative with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

(1) The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "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;

(2) All rights, privileges, and benefits (including collective bargaining rights and pension rights and benefits) of employees (including employees already retired) shall be preserved and continued. 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;

(3) The Recipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;

(4) In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the Recipient shall provide or provide for such training or retraining at no cost to the employee;

(5) Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971.¹ An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project;

(6) In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the Recipient, the employees and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions;

(7) The Recipient agrees that any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of these terms and conditions which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of any party to the dispute to the Secretary of Labor who may appoint a staff member to serve as arbitrator and render a final and binding determination or may direct the parties to proceed to arbitration administered by the Federal Mediation and Conciliation Service, or a comparable private sector neutral arbitration organization. The arbitrator's award will be final and binding.

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation 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 (Hodgson's Affidavit in Civil Action No. 825-71)²;

(8) 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 making of the decisions called for in the preceding paragraph;

(9) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C. § 5333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees.

¹ See Appendix C-1 http://www.dol.gov/olms/regs/compliance/transit/9_AppendixC1.pdf

² http://www.dol.gov/olms/regs/compliance/transit/10_Hodgson_Affadavit.pdf