

**RTO Grant Agreement: SmartTrips, Smart Cities**

THIS GRANT AGREEMENT is between the City of Portland and Asian Pacific American Network of Oregon (APANO)

**A. Recitals**

1. The City of Portland is the recipient of funding passed through Metro from the Federal Transit Administration ("FTA") Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Program (STP) grant funds, and wishes to enter into this Agreement with the Grantee, utilizing these federal funds.
2. The City of Portland considers the Grantee to be a subrecipient of federal funds. Funding for this project is obtained from a Grant Agreement between the City of Portland and Metro. The funds are a pass through Metro from the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) or Surface Transportation Program (STP) funds, CFDA No. 20.507. As federal funds are involved in the Agreement, Exhibit C - Federal Clauses, and Exhibit D - Department of Labor Clauses are attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments and non-profit agencies in managing demand on the transportation system and increasing use of travel options. The PBOT Active Transportation and Safety Division program, SmartTrips, Smart City will develop, implement, and analyze an individualized marketing initiative, a series of guided walks and bike rides and clinic, and an open streets program to bring robust active transportation opportunities to community-led events. PBOT Active Transportation and Safety Division program, SmartTrips, Smart City will build upon the success of Portland's Welcome SmartTrips program with a priority focus on equitably serving communities that are less engaged in regional active transportation programs.

A key component of the SmartTrips, Smart City project is partnerships with five community-based organizations, the Community Cycling Center, the Asian Pacific American Network of Oregon (APANO), Oregon Walks, Organizing People/Activating Leaders (OPAL), and AARP Oregon. These partnerships dramatically increase the project's ability to reach traditionally under-represented groups that the City of Portland is striving to provide opportunities to engage in active transportation. By combining City of Portland's demonstrated success in transportation demand management programs and the Community Cycling Center, APANO, Oregon Walks, OPAL, and AARP Oregon's skills engaging underserved communities, the project will equitably provide opportunities for active transportation throughout the city.

4. Metro selected Grantee, through a competitive process, to receive partial funding for the purpose of supporting The City of Portland's SmartTrips, Smart Cities program. Portland SmartTrips, Smart Cities is a multi-faceted demand management project that will maximize area investments in active transportation and propel Portland to a 20% bicycling and walking mode split by 2020. The project includes targeted individualized marketing; comprehensive transportation demand management (TDM) for new capital projects; and

support for encouragement events. This program is expected to further the RTO effort toward accomplishing the Regional Transportation Plan modal target of 40% non-SOV trips or higher, by the year 2040.

#### **B. Effective Date and Duration**

The beginning date of this Agreement is July 1, 2017, and shall remain in effect until and including December 31, 2019 unless terminated or extended as provided in this Agreement. Costs incurred on or after July 1, 2017 which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and the City of Portland has been presented with the appropriate invoice and documentation.

#### **C. Scope of Work**

Grantee shall provide all services and materials specified in the attached "Exhibit A- Scope of Work," which is incorporated into this Agreement by this reference as if set forth in full. Grantee in accordance with the Scope of Work shall provide all services and materials, in a competent and professional manner. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

#### **D. Compensation**

The total Agreement amount is AMOUNT (\$20,302.00).

#### **E. Payment**

1. All invoice payments are conditional upon the City of Portland's Project Manager's approval of the Quarterly Progress Reports. Grantee shall present cost reports, reimbursement requests and progress reports to the City of Portland's Project Manager on a quarterly basis.
2. Qualified costs are direct project costs, incurred by the Grantee and personal services contractor(s) during the term of this Agreement that are eligible for federal funds. The City of Portland shall reimburse Grantee for qualified costs for work described in Exhibit A, in accordance with:
  - 2 CFR 200 - Uniform Guidance – Super Circular
3. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. If the City of Portland requests documentation, including without limitation copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense, Grantee must provide the documentation before the City of Portland makes payment.

#### **F. Subcontracts**

1. Grantee shall not enter into any subcontract for any of the Services required by this

Agreement without the City of Portland's prior written consent. Upon approval by the City of Portland of a subcontract, the parties will amend the Agreement to include provisions related to the subcontract.

2. The City of Portland's consent to any subcontract shall not relieve Grantee of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Grantee and subcontractors have no right to payment directly from the City of Portland.
3. Grantee is solely responsible for paying Grantee's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor and the City of Portland.

#### **G. Records Maintenance- Access**

1. Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Grantee shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Grantee's performance.
2. Grantee acknowledges and agrees that the City of Portland, Metro, the FTA, the Comptroller General of the United States and/or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Grantee that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.
3. Grantee shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit controversy or litigation arising out of or related to this Agreement, whichever date is later.

#### **H. Indemnity**

Grantee is an independent contractor and assumes full responsibility for the performance of the Scope of Work and the content of its work and performance. Grantee agrees to indemnify and defend City and Metro and hold City and Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees at trial and on appeal, arising out of or in any way connected with its performance of this Agreement.

#### **I. Termination**

The City of Portland may terminate this Agreement after providing Grantee seven (7) days' written notice. In the event of termination, Grantee shall be entitled to payment for qualified costs incurred before the date of termination. City of Portland shall not be liable for indirect or consequential damages. Termination by the City of Portland shall



not waive any claim or remedies it may have against Grantee.

#### **J. Insurance**

1. Grantee shall obtain and maintain in full force at its expense, throughout the term of the Agreement and any extension periods, a self-insurance program or the following types of insurance, covering Grantee, its employees, and agents. The City of Portland reserves the right to require additional insurance coverage as may be required by statutory changes during the term.
  - Workers' Compensation Insurance. Grantee, its contractors and all employers working under the Contract shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, Grantee, its contractors and any employers working under the Contract shall maintain coverage for all subject workers.
  - Commercial General Liability Insurance: Grantee shall have commercial general liability insurance covering bodily injury, personal injury, property damage, premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.
  - Automobile Liability Insurance: Grantee shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.
2. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name Metro and the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Grantee's or its contractor's activities to be performed or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
3. Continuous Coverage; Notice of Cancellation: Grantee shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or nonrenewal of coverage without thirty (30) days written notice from Grantee to the City of Portland. If the insurance is canceled or terminated prior to termination of the Agreement, Grantee shall immediately notify the City of Portland and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of the Contract.
4. Grantee shall provide the City of Portland with a Certificate of Insurance complying with this article upon return of the Grantee's signed Agreement to the City of



4. Grantee shall provide the City of Portland with a Certificate of Insurance complying with this article upon return of the Grantee's signed Agreement to the City of Portland. The Certificate of Insurance shall identify the Metro Grant number (934628).

#### **K. Right to Withhold Payments**

The City of Portland shall have the right to withhold from payments due Grantee such sums as necessary, in the City of Portland's sole opinion, to protect the City of Portland against any loss, damage or claim which may result from Grantee's performance or failure to perform under this Agreement or the failure of Grantee to make proper payment to any suppliers or subcontractors.

#### **L. Federal, State, and Local Law Compliance**

1. Grantee shall comply with the public contracting provisions of ORS chapters 279A, 2798 and 279C and the recycling provisions of ORS 2798.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Grantee shall comply with all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations.
2. This Agreement is subject to a financial assistance agreement between the City of Portland and Metro. Grantee shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:
  - the terms and conditions applicable to a "recipient" set forth in the October 1, 2016 FTA Master Agreement [FTA MA 23] between Metro and the FTA
    - FTA Circular 5010.1E, Grant Management Requirements
    - FTA Circular 4220.1F, 3rd Party Procurement Requirements
    - 2 CFR 200 - Uniform Guidance – Super Circular

#### **M. Discrimination Prohibited**

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is

defined as any function conducted by an identifiable administrative unit of the Grantee receiving funds pursuant to this Agreement.

**N. Ownership of Documents and Credit to the City of Portland**

1. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Grantee pursuant to this Agreement are the property of the City of Portland, and it is agreed by the parties that such documents are works made for hire. Grantee hereby conveys, transfers, and grants to the City of Portland all rights of reproduction and the copyright to all such documents.
2. Grantee shall ensure that all communications tools related to work performed under this Agreement including without limitation brochures and advertisements, include language found in Exhibit B – "Partnership Requirements" which is attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. Grantee shall share all project information and fully cooperate with the City of Portland, informing the City of Portland of all aspects of the project including actual or potential problems or defects. Grantee shall abstain from releasing any information or project news without the prior and specific written approval of the City of Portland.

**O. Independent Contractor Status**

1. Grantee shall be an independent Contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Grantee be considered an employee or agent of the City of Portland.
2. Grantee shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work.
3. Grantee is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.
4. Grantee shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to the City of Portland.

**P. Assignment**

Grantee may not assign or transfer this Agreement without written permission from

the City of Portland.

**Q. Choice of Law**

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

**R. No Waiver of Claims**

The failure to enforce any provision of this Agreement shall not constitute a waiver by the City of Portland of that or any other provision.

**S. Modification**

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

**T. Severability**

If any clause, sentence or any other portion of the terms and conditions of this Grant Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

**U. No Special or Consequential Damages**

Grantee expressly waives any claims against the City of Portland regarding the Scope of Work under this Agreement. The City of Portland's liability under this Agreement shall be limited to payment of the Grant Funds, to the extent that Grantee has fully and completely complied with all terms and conditions of this Agreement. In no event shall the City of Portland be liable for and the Grantee specifically releases the City of Portland from any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to the Scope of Work or this Agreement, however caused, whether or not arising from City of Portland's sole, joint or concurrent negligence.

GRANTEE, BY EXECUTION OF THIS AGREEMENT, ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.



Agency: APANO

City of Portland

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A - Scope of Work

### Project Description

SmartTrips, Smart City will implement, an individualized marketing initiative and strengthen an Open Streets program to bring robust active transportation opportunities to community-led events. This project builds upon the success of Portland's SmartTrips program and Open Streets initiatives with a priority focus on equitably serving communities that are less engaged in regional active transportation programs.

SmartTrips, Smart City is partnering with five community-based organizations, the Community Cycling Center (CCC), the Asian Pacific American Network of Oregon (APANO), Oregon Walks, AARP Oregon, and Organizing People, Activating Leaders (OPAL). These partnerships dramatically increase the project's ability to reach traditionally underserved groups that the City of Portland Bureau of Transportation (PBOT) is striving to provide opportunities to engage in active transportation. Through continued direct partnerships, SmartTrips, Smart City will build on PBOT's expertise in delivery transportation demand management (TDM) programs with our community partners' ability to engage in culturally competent and community level work with Portland residents. SmartTrips, Smart City consists of three main components:

- Welcome SmartTrips, the region's award winning individualized marketing program, will offer every new and relocating Portland resident the opportunity to order free transportation resources that comprehensively cover every mode and area of the region. Welcome SmartTrips will include new outreach and transportation resources and methods designed by and for four underserved communities in the region. The Welcome SmartTrips program is not simply giving information to people, but is a full-scale conversation that takes places between residents, staff, and community specialists. Staff and specialists provide the resources, encouragement, hands-on experiential opportunities, and one-on-one engagement necessary to make active transportation comfortable and easy.
- Community-based Open Streets events, such as Portland Sunday Parkways, Cully Camina, Oregon Walkways, and Better Blocks provide opportunities to experience walking, bicycling, and healthy activities in a fun, comfortable environment. SmartTrips, Smart City builds upon growing community engagement with PBOT to create Open Streets events that resonate with the unique character and demographics of individual neighborhoods and residents. By partnering with community organizations to support their signature cultural events, such as the Jade District Night Market that draws 20,000 participants to SE 82nd Ave. and Division St., an Open Streets programs will create car-free streets that seamlessly weave community events with active transportation opportunities.

SmartTrips, Smart City focuses on four collaboration communities, where our community partners are already actively engaged:

- The Jade District, centered on SE 82nd Ave. and Division St., is a designated Neighborhood Prosperity Initiative (NPI) area and APANO is leading the development of the initiative. The NPI is a public/private partnership that aims to transform underserved commercial districts in Portland into engines of economic growth without displacing the communities that reside there.

- Lents, located in East Portland the Lents neighborhood is home to many Asian, Russian/Eastern European, and Latino immigrants. Lents is a transportation nexus for the Portland region with Interstate 205 and three major arterials (Powell Blvd., Foster Road and 82nd Ave.), the MAX Green Line, 9 TriMet bus lines and the Springwater Corridor multi-use path. OPAL is currently engaged in youth development work in Lents, as well as transit access and advocacy campaigns in the neighborhood and across Oregon.
- New Columbia, a neighborhood of 2,700 residents that speak 22 languages and represent 18 different nationalities in North Portland, is currently partnering with the CCC on a neighborhood focused bicycle repair shop and other programming to increase active transportation and civic engagement.
- Hacienda in the Cully neighborhood of NE Portland is a community of approximately 2,000 residents, roughly 60% of which are Latino. The CCC and PBOT have already partnered to provide long-term bike parking lockers to residents in cooperation with the neighborhood's bicycle riding support group, Andando en Bicicleta en Cully (ABC).

SmartTrips, Smart City will increase opportunities for all Portlanders and particularly underserved communities to meaningfully engage in active transportation. Specifically, the project will:

- Increase the number of people walking and bicycling in four partnership communities by 10%.
- Reduce drive alone trips and increase environmentally friendly trips among all program participants throughout the city by 10%.
- Increase the use of digital and electronic sources of active transportation information to reach more underserved populations.
- Use social and digital marketing campaigns to increase awareness and change travel behavior among Portland residents and commuters that do not typically access active transportation information.
- Increase awareness and use of active transportation to get to community-led events that focus on healthy and active living.

#### Task Description:

APANO will continue to build upon programming from the previous two years to promote active transportation in the neighborhoods we serve. This will occur in three primary areas of work.

- 1) Community Led Planning & Education to Increase Transportation Options: APANO works with public agencies and local stakeholders to ensure that the Jade District is advancing our community prioritized goal of developing a safer, more walkable neighborhood. This includes outreach and engagement around Vision Zero, Division Transit Project, and the Division Safety Project. This includes:
  - a) Participating in various public task forces and committees including the Vision Zero Task Force or Division Transit CAC.
  - b) Outreach and convening local community for public forums 3-4 times a year with 20-30 attendees each focusing on the safety or transit projects to ensure that diverse voices are represented in the planning process.



- c) 1-2 pedestrian safety trainings a year in language (Chinese or Vietnamese) with 50-100 attendees in collaboration with PBOT staff.
- 2) Encouragement Programs: As our neighborhoods become more walkable and bikeable, we will promote active transportation programs to promote use of new facilities.
  - a) 5-6 Jade District Tours for a diverse audience annually. Each tour has between 10-40 attendees and will be a mix of tours by bicycle or walking tours. This may include collaborations with partners such as Ten Toe Walks, Steptember, or Pedalpalooza.
- 3) Street Fairs & Activation of Public Space: Through the Jade District Night Market, East Portland Arts & Literary Fest, and other community celebrations, we activate our neighborhood assets in new and exciting ways. These events highlight community needs and is a boon for our local business community.
  - a) Hold a signature annual community event. The Jade District Night Market, for example, attracts 25,000 visitors annually and activates blocks around event. This grant period we will also explore means of encouraging attendees to walk or bike to the event.
  - b) Continue to be a center for East Portland Street Fairs. This year we hosted PBOT barricades for street events and coordinated with neighbors to check them out. We hope to continue this opportunity and support neighbors hoping to have block parties.

Note: The City of Portland acknowledges the project timeline and budget is an approximation used for initial planning and budgeting purposes. Any significant changes to the above schedule must be made in writing and approved in writing by the City of Portland project manager.

Grantee's invoices shall include:

- Agreement number:
  - Grantee name:
  - remittance address
  - invoice date
  - invoice number
  - invoice amount
- Itemized statement of work performed and expenses incurred during the invoice period is **required** to be submitted **quarterly** on the following dates:

December 31, 2017  
March 31, 2018  
June 30, 2018  
September 2018  
December 31, 2018

March 31, 2019  
June 30, 2019  
September 2019  
December 31, 2019

Grantee's invoice shall be sent to:  
City of Portland  
Attention: Linda Ginenthal  
1120 SW Fifth Avenue 8<sup>th</sup> floor  
Portland OR 97204

OR

[linda.ginenthal@portlandoregon.gov](mailto:linda.ginenthal@portlandoregon.gov)

The Metro Grant number (934628) shall be referenced in the email subject line.

## Exhibit B - Partnership Requirements

The purpose of the following partnership requirements is to set up Regional Travel Options (RTO) partners for success in their grant projects. As the RTO program is largely funded through ongoing allocations of Regional Flexible Funds, these requirements help partners produce solid evidence of the efficient and effective use of their regional funds. PBOT and RTO is available to support partners by providing tools and guidance to achieve a successful grant project, both during the grant cycle and beyond. Partnership will multiply the benefits of the RTO grant by applying current strategies and brands while incorporating past lessons learned.

Grantee will engage in a partnership with PBOT, Metro, RTO staff and other RTO program partners. Partnership requirements apply to anything included in the grant agreement or made possible by the grant agreement. Exceptions to the following requirements can be requested by writing to PBOT grant program manager, Linda Ginenthal and must receive confirmation in writing by PBOT staff.

**Instructions: Read each section below and then initial**

### Applying Strategies and Collaborating with RTO Partners

Grantee will:

- Review 2012-2017 RTO Strategic Plan and the 2018 RTO Strategy, when completed.
- Review RTO Marketing Strategy and use messages, approaches and techniques with applicable audiences.
- Participate in the RTO Collaborative Marketing Group, including attending bi-monthly meetings, and implementing regional marketing campaigns when applicable. Resources can be found online <http://www.oregonmetro.gov/collaborativemarketing>.
- If the grant is focused on commute options, grantee must coordinate frequently with TriMet, Wilsonville SMART, City of Portland, TMAs or other employer outreach partners affected by this project scope or located in the project geographic area to exchange existing tools, campaigns and support ECO surveys.

\_\_\_\_ **Initial Here**

### General Tools & Resources

Grantee will use, at minimum, the tools and resources available below.

- For rideshare or vanpool matching, RTO encourages the use of Drive Less Connect [www.drivelessconnect.org](http://www.drivelessconnect.org). Other options include Enterprise Vanpool, CarpoolWorld, ERideShare, or one of any number of mobile ridesharing apps.
- For logging trips, RTO encourages the use of Drive Less Connect [www.drivelessconnect.org](http://www.drivelessconnect.org). RTO can provide training for using the Drive Less Connect tool upon request.
- For personalized trip planning, RTO encourages the use of TriMet Trip Planner. Contact TriMet (Adriana Britton at [BrittonA@trimet.org](mailto:BrittonA@trimet.org)) for language or logos if highlighting use of the tool.



- Information on federal commuter tax benefits can be found at <https://www.nctr.usf.edu/programs/clearinghouse/commutebenefits/>

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**Project Materials**

Grantee will use, at minimum, the tools and resources available below.

- All projects shall attribute credit to the Federal Transit Administration, Metro and PBOT. Print attribution on project materials (such as reports, booklets, brochures, and web pages) must read: "Made possible with support from Metro, City of Portland and the Federal Transit Administration"
- All print ads, banners, flyers, posters, signage and videos must include Metro and PBOT logos.
- If marketing is done with audio only, spoken attribution language must be:
  - "This project is made possible by a partnership with Metro, the City of Portland, with support by the Federal Transit Administration"
- For non-commercial promotional photo needs, browse the existing collection of RTO photos (currently located publicly on Flickr). Refer to each photo's guidance for determining attribution and any use restrictions. Project photos that have potential value to partners should be shared by uploading them to the photo website.
- Include the Metro and PBOT logo on all marketing and advertising materials, both print and online (size permitting). Grantees must seek Metro approval through the grant manager of any materials where the Metro logo is included to ensure proper logo design and placement. Metro and PBOT logos and usage guidelines will be emailed to grantee. If you need them again, please email [Commshelp@oregonmetro.gov](mailto:Commshelp@oregonmetro.gov) and [CC\\_rto@oregonmetro.gov](mailto:CC_rto@oregonmetro.gov) for Metro and [linda.ginenthal@portlandoregon.gov](mailto:linda.ginenthal@portlandoregon.gov) for PBOT.
- If the project designs wayfinding signage, apply the Intertwine design guidelines: [http://library.oregonmetro.gov/files/intertwine\\_regional\\_trail\\_signage\\_guidelines.pdf](http://library.oregonmetro.gov/files/intertwine_regional_trail_signage_guidelines.pdf)
- For web-based resources needed for biking and walking info, include a link to Metro's Getting Around web page, <http://www.oregonmetro.gov/gettingaround>

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**Events and Media**

Grantee will:

- Inform PBOT grant manager of any event needs 90 days in advance. Examples of needed help from partners may include cross-promotion or recruiting volunteers.
- Mention support provided by Metro, PBOT and the Federal Transit Administration in press releases, and social media.
- For projects that include a ceremony (e.g., ribbon-cutting, unveiling), please contact the PBOT grant manager to consider partnership highlights and discuss if a Metro or City official should attend and speak.

- If a reporter or media outlet inquiries about efforts related to this grant project, please notify the PBOT grant manager immediately. If the grant manager is not available, contact other PBOT staff immediately.

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### **Measurement and Evaluation**

Grantee will communicate, monitor and track progress, demonstrate impact, document lessons learned, and be accountable and transparent to PBOT, partners and benefiting communities by doing the following:

- Review the Multiple Accounts Evaluation (MAE) framework at the beginning of the grant cycle, prioritize measurement efforts, collect qualitative and quantitative project data, and incorporate it into the tasks and deliverables throughout the grant cycle.
- Quarterly Reports: These reports are required by all grantees, to be delivered by the dates listed in ZoomGrants. Quarterly reports should contain:
  - Qualitative Data: The purpose of qualitative data is to help illustrate the impact of a project (the how and why), based on background information, descriptive text and visuals. Stakeholder engagement can be vital part of the qualitative process. We encourage grantees to engage with stakeholders or seek advice from PBOT on this topic. If the project includes conducting a survey, contact PBOT staff for assistance and provide a report to PBOT grant manager at least two weeks before official release.
  - Quantitative Data: The purpose of quantitative data is to help illustrate the impact of a project based on comparable values. When calculating vehicle miles reduced, emissions reduced, gas savings or other numeric MAE metrics, use tools provided by RTO and PBOT to ensure consistent methods. If collecting automated data (for example, bike/ped counters), contact PBOT staff regarding format, data cleaning, and shareability.
  - Data can be collected internally or from outside sources, and creative reports, visuals, and stories are encouraged. Use of past Metro reports as sources is also encouraged. Quantitative data should be combined with qualitative data to create a well-rounded project summary. See the ZoomGrants Library for more help, or contact PBOT for more information.
- End of Year One Check In: No later than one year after the grant begins, the grantee shall update the PBOT grant manager with details confirming that the groundwork is set for this grant project to deliver measured results (i.e., a baseline survey has been conducted).
- End of grant project report: Grantee shall produce a final project report and the RTO Story Form in a timely manner. These products shall be consistent with initial grant application and the MAE framework outcomes highlighted in the scope of work.

\_\_\_\_ **Initial Here**

## Exhibit C – Federal Clauses      \$10,000 to \$25,000

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The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2016 FTA Master Agreement [FTA MA 23]** including, but not limited to, the following:

### A. Application of Federal, State, and Local Laws, Regulations and Guidance.

For purposes of this Master Agreement:

(1) Federal requirement. A Federal requirement includes, but is not limited to a:

- (a) An applicable Federal law,
- (b) Applicable Federal regulation,
- (c) Provision of the Recipient's Underlying Agreement, or
- (d) Provision of this Master Agreement,

(2) Federal guidance. Federal guidance includes, but is not limited to:

(a) Federal guidance such as a:

- 1 Presidential Executive Order,
- 2 Federal order that applies to entities other than the Federal Government,
- 3 Federal published policy,
- 4 Federal administrative practice,
- 5 Federal guideline,
- 6 Letter signed by an authorized Federal official, and
- 7 Other applicable Federal guidance as defined at section 1.j of this Master Agreement, or

(b) Other Federal publications or documents providing official instructions or advice about a Federal program that:

- 1 Are not designated as a "Federal Requirement" in section 2.c (1) of this Master Agreement, and
- 2 Are signed by an authorized Federal official,

(3) Compliance. The Recipient understands and agrees that:

(a) Federal Requirements. It must comply with all Federal requirements that apply to itself and its Project,

(b) Federal Guidance. FTA strongly encourages the Recipient and each of its Third Party Participants to follow Federal guidance as described in the preceding section 2.c(2) of this Master Agreement to ensure satisfactory compliance with Federal requirements,

(c) Alternative Actions. It may violate Federal requirements if it:

- 1 Adopts an alternative course of action not expressly authorized by the Federal Government in writing, and
- 2 Has not first secured FTA's approval of that alternative in writing,

[FTA Master Agreement §2.c (1) (2) (3)]



## Exhibit C – Federal Clauses      \$10,000 to \$25,000

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### **B. No Federal Government Obligations to Third Parties.**

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not be subject to any obligations or liabilities related to:
  - (a) The Project,
  - (b) Any Third Party Participant at any tier, or
  - (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement for the Project, and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have obligation or liability to any:

- (a) Third Party Participant, or
- (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

[FTA Master Agreement, §2.f]

### **C. False or Fraudulent Statements or Claims.**

- (1) Civil Fraud. The Recipient acknowledges and agrees that:

- (a) Federal law and regulations apply to itself and its Project, including:
  - (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and
  - (2) U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31,
- (b) By executing the Underlying Agreement, the Recipient certifies and affirms the:
  - (1) Truthfulness and accuracy of any
    - (a) Claim,
    - (b) Statement,
    - (c) Submission,
    - (d) Certification,
    - (e) Assurance, or
    - (f) Representation, and
  - (2) For which the Recipient has made, makes, or will make to the Federal Government, and
- (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient:
  - (1) Presents, submits, or makes available any information in connection with any:
    - (a) Claim
    - (b) Statement
    - (c) Submission
    - (d) Certification
    - (e) Assurance, or
    - (f) Representation, and

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- (2) That information is false, fictitious, or fraudulent,
- (2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323 (1) (1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:

(1) Presents, submits, or makes available any information in connection with any:

- (a) Claim
- (b) Statement
- (c) Submission
- (d) Certification
- (e) Assurance, or
- (f) Representation, and

(2) That information is false, fictitious, or fraudulent,  
*[FTA Master Agreement §3.f]*

### D. Procurement.

Access to Third Party Contract Records. The Recipient agrees to require, and assures that its Subrecipients will require, its Third Party Contractors at each tier, to provide:

- (1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and
- (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable Federal laws and regulations or to assure proper Project management as determined by FTA.

*[FTA Master Agreement §17(u)]*

### E. Project Implementation.

Changes to Federal Requirements and Guidance.

(1) Requirements and Guidance. New Federal Requirements and Guidance may:

- a. Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
- b. Apply to the Recipient or its Project,

*[FTA Master Agreement, §2.d (1)]*

### F. Civil Rights.

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically:

a. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:

- (1) prohibit discrimination based on:

## Exhibit C – Federal Clauses      \$10,000 to \$25,000

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- (a) race,
- (b) color, or
- (c) national origin

(2) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) 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 C.F.R. Part 21 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the previous section 13.a of this Master Agreement, and

(3) Except as FTA determines otherwise in writing, follow

- (a) The most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance.
- (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964, 28 C.F.R. § 50.3, and
- (c) other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13.a of this Master Agreement, and,
- (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Religion,
- 4 Sex,
- 5 Disability,

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- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

(b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

- (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
- (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13a. of this Master Agreement,

(2) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:

The Recipient 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 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. 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 Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49

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C.F.R. part 26 and may, in appropriate cases, refer 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.*,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

- (1) Federal laws, including:
  - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
  - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;
  - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;
  - (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
  - (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
- (2) The following Federal regulations including:
  - (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37,
  - (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,
  - (c) U. S. DOT regulations "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
  - (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and
  - (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,

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- (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and

(1) Other applicable Federal civil rights and nondiscrimination guidance,  
[FTA Master Agreement §13(b) (c) (d) (g)]

### **G. Private Enterprise.**

The Recipient agrees to protect the interests of private enterprise affected by Federal public transportation programs by:

- a. Participation. Encouraging private enterprise to participate in the planning of public transportation and the programs that provide public transportation, to the extent permitted by  
(1) 49 U.S.C. § 5306,  
[FTA Master Agreement §15(a)]

### **H. Right of the Federal Government to Terminate.**

- a. Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:

- (1) The Recipient has violated the Underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project,
- (2) The Recipient has failed to make reasonable progress on the Project,
- (3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

- b. Financial Implications.

- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled, and
- (2) The Federal Government may:
  - (a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:



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- 1 Failing to make adequate progress,
- 2 Failing to make appropriate use of Project property, or
- 3 Failing to comply with the underlying Agreement or this Master Agreement

(b) Require the Recipient to refund

- 1 The entire amount of Federal funds provided for the Project, or
- 2 Any lesser amount as the Federal Government may determine, and

c. Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the underlying Agreement.

*[FTA Master Agreement §12]*

**Exhibit D****Department of Labor Clauses**

UNIFIED PROTECTIVE ARRANGEMENT  
 For Application to Capital and Operating Assistance Projects  
 PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S.  
 CODE, CHAPTER 53  
*January 3, 2011*

The following language shall be made part of the Department of Transportation's contract of assistance with the Grantee, by reference;

The terms and conditions set forth below shall apply for the protection of the transportation related employees in the transportation service area of the Project. As a precondition of the release of assistance by the Grantee to any additional Recipient under the grant, the Grantee shall incorporate this arrangement into the contract of assistance between the Grantee and the Recipient, by reference, binding the Recipient to these arrangements.

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.

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, refers to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant, including both employees of the Recipient and employees of other public transportation providers. 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 for assistance; a Grantee which receives assistance is also a Recipient.

(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 any other 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.

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.

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## Department of Labor Clauses

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and check off 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 displacements 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 their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number 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, provided under subparagraph S (a), 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 has been rendered pursuant to the dispute resolution procedures in accordance with paragraph (15) of this arrangement; 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 dispute resolution determination is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to the dispute resolution process under paragraph (15) of this arrangement. In any such dispute resolution procedure, the neutral shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the "preconsummation" issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as



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amended). If the Recipient demonstrates, as a threshold matter in any such dispute resolution process, 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 dispute resolution procedure, the time period within which the parties are to respond to the list of potential neutrals submitted by the American Arbitration Association shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, and the award of the neutral 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 if post hearing briefs are submitted by either party. The intended change shall not be instituted during the pendency of any dispute resolution proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final 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 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 dispute resolution determination rendered pursuant to 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 dispute resolution determination shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final 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 "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid to 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 where 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 month, 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 where 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.

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(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 with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/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 to 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 Prior to adverse effect	Period of protection
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 is unable to obtain another position, either by the exercise of 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.

(?) (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.

(?) (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.

(?) (e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer, after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or 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.

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(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 a dismissal allowance shall actively seek and not refuse other reasonably 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 and binding dispute resolution determination rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/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 employee 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, at 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 any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/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 the 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.



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(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is 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 loss under such contract, and in addition, shall relieve the employee from any further obligation there under.

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 with 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 in residence" means transfer to a work location which is either:

(A) outside a radius of twenty (20) miles of the employee's former work location and farther from 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)

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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 month's pay
2 years and less than 3 years	6 month's pay
3 years and less than 5 years	9 month's pay
5 years and less than 10 years	12 month's pay
10 years and less than 15 years	12 month's pay
15 years and over	12 month's 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 payments) 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 instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, 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 there from, provided, 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 of the employee's displacement or dismissal.

(15) 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) of this arrangement, 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(s) and the Union(s), 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 the Recipient(s) or the Union(s) in accordance with a final and binding resolution procedure mutually acceptable to the parties. Failing agreement within ten (10) days on the selection of such a procedure, any party to the dispute may request the American Arbitration Association to furnish an arbitrator and administer a final and binding arbitration under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding.

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

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be 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



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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 affected, as a result of the project, may file a written claim through his/her Union representative 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 the claim is filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claims.

The Recipient will fully honor the claim, making appropriate payments, or will give written notice to the claimant and his/her representative of the basis for denying or modifying such claim, giving reasons therefore. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed in accordance with the final and binding resolution procedures described in 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 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, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) hereof, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is 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 in such craft or class;
- (b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;
- (c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

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(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 there under.

(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 Grantee and between the Grantee and any Recipient; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, 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 no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, provision and/ or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree in writing. Transit employees in the service area of the project are third-party beneficiaries to the terms of this protective arrangement, as incorporated by reference in the contractual agreement.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or 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 local 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 these 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 federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its work force(s) 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.