

# FTA Section 5311

## FY 2019 Grant Application Certification Documents Package

Special Warranty Arrangement For Application to Other Than Urbanized and Over-the-Road Bus Accessibility Projects Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53.  
(Formerly Special Section 13 (c) Warranty)

### A. General Application

The Recipient, \_\_\_\_\_, agrees that, in absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project and transportation related employees of any other surface public transportation providers in the transportation service area of the Project.

The Recipient shall provide to the Virginia Department of Rail and Public Transportation (DRPT) and maintain at all times during the Project an accurate up-to-date listing of all existing public transportation providers located in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by DRPT to the Department of Labor that the designated recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangements will be sufficient.

### B. Standard Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipients and any other surface public transportation provider in the transportation service area of the project. It shall be an obligation of the Recipient and any other legally responsible party designated by the DRPT 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 interest 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 area 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 of economics related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economics 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 solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding shall not be deemed eligible for a dismissal of displacement allowance within the meaning of paragraphs (6) and (7) of the Model agreement or applicable provisions or the substitute comparable arrangement.

(2) (a) 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.

(2) (b) The Recipient or legally responsible party shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangement of the working forces. In the case of employees represented by a union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Recipient's employment available to be filled by such affected employees.

(2) (c) The procedures of this subparagraph shall apply to cases where notices involved employees represented by a union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees negotiation for the purposes of reaching an agreement with respect to the application of the terms and conditions of this agreement shall commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the deputy may submit the matter to dispute settlement procedures in accordance with paragraph (4) of this warranty. The foregoing procedures shall be compiled with and carried out prior to the institution of the intended action.

(3) The Recipient agrees to be bound by the terms and conditions of the National (Model) 1 Section 13 (c) agreement executed July 23, 1975, identified below, provided that other comparable arrangements may be substituted, if approved by the Secretary of Labor and certified for inclusion in these conditions.

(4) Any dispute or controversy arising from the application, interpretation, or enforcement of any of the provisions of this arrangement which cannot be settled by and between the parties at interest within 30 days after the dispute or controversy first arises, may be referred by any such party to any final and binding disputes settlement procedures acceptable to the parties, or in the event they cannot agree upon such procedures, to the Department of Labor for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses, shall be borne equally by the parties to proceeding and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

(5) The Recipient or other legally responsible party designated by the DRPT will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these arrangements, or the union representative of such an employee, may file claim of violation of these arrangements with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date of his position with respect to his employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period to six (6) months from the date of the filing of any claim.

(6) Nothing in this agreement shall be construed as depriving an employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor shall this arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(7) In the event of any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient or other legally responsible party designated by DRPT shall provide for such training or retraining at no cost to the employee.

(8) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Urban Mass Transportation Act and has agreed to comply with provisions of Section 13(c) of the Act. This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proposed application, administration, and enforcement of these arrangements and to the proper determination of any claims arising there under.

(9) Any labor organization which is the collective bargaining representative of employees covered by these arrangements may become a party to these arrangements by serving written notice of its desire to do so upon the Recipient and the Department of Labor. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party of these arrangements, as applied to the Project, the dispute as to whether such organization shall participate shall be determined by the Secretary of Labor.

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

### C. Waiver

As part of the grant approval process, either the Recipient or other legally responsible party designated by DRPT may in writing seek from the Secretary of Labor a waiver of the statutory required projections. The Secretary will waive these projections in cases where at the time of the requested waiver, the Secretary determines that there are no employees of the Recipient of any other surface public transportation providers in the transportation service area who could be potentially affected by the Project. A 30-day notice of proposed waiver will be given by the department of Labor and in the absence of timely objection; the waiver will become final at the end of the 30-day notice period. In the event of timely objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of waiver, these projections shall apply to the project.

D. Section 13(C) Labor Protection Warranty

The Special Section 13(c) Warranty of the FTA Act specifies that as a condition to any financial assistance, fair and equitable arrangements must be made, as determined by the Secretary of Labor, to protect the interest of the employees affected by such assistance.

As part of the grant approval process, either the Recipient or another legally responsible party designated by the Public Body may in writing seek from the Secretary of Labor a waiver of statutory required projections. The Secretary will waive these projections in cases, where at the time of the requested waiver, the Secretary determines that there are not employees of the Recipient or of any other surface public transportation providers in the transportation service who could be potentially affected by the Project. A 30-day notice of the proposed waiver will be given by the Department of Labor and become final at the end of this period if no timely objection is expressed. In the event of an objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of a waiver, the labor projections shall apply to the Project. It should be noted that the probability of receiving a waiver from the Secretary of Labor is considered very small.

---

Legal Name of Applicant

Date

---

Signature of Authorized Official

Date