



August 9, 2017

Re: EMPLOYEE PROTECTIONS REFERRAL
OF PENDING FTA GRANT APPLICATION
Iowa Department of Transportation *On Behalf of*: Various Sub Recipients
IA-2016-019-01

Dear FTA Grantee and Union Representative(s):

Pursuant to 49 U.S.C. § 5333(b), the Department of Transportation has referred the above-referenced grant application to this office and requested the Department of Labor's (DOL) certification that the required employee protective arrangements have been made. As required by DOL's procedural Guidelines, [29 C.F.R § 215](#), as amended, we are providing a copy of this grant application to the labor organization(s) representing transit employees in the service area of the project and to the applicant and/or recipient(s) identified on the following page(s) of this letter.

DOL will certify the grant on the proposed terms and conditions set forth in Attachment A unless it receives a sufficient written objection within 15 calendar days of the date of this referral. *See* 29 C.F.R. § 215.3(d).

Objections and other correspondence must be sent to DOL by e-mail at OLMS-DSP@dol.gov or by facsimile at (202) 693-1343, with copies to all relevant parties, including, at a minimum, the parties identified in this letter.

Additional information is available at <http://www.dol.gov/olms/>. Please contact me if you need assistance.

Sincerely,

A handwritten signature in black ink that reads "Denise Diminuco".

Denise Diminuco
Program Specialist
Division of Statutory Programs
(202) 693-0221
diminuco.denise@dol.gov

Enclosure

Number: 1245-0006 (Expires 03/30/2020). According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 8 hours per response for composing answers to these briefing questions, including producing briefs to issues in dispute. The obligation to respond to this collection is required to obtain or retain a benefit, see 29 CFR part 215.3. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-5609, Washington, DC 20210 or email olms-public@dol.gov, and reference the OMB Control Number 1245-0006.

REFERRAL SENT TO:

Grantee/Recipient:

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Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010
Ph: 515 239 1872
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Sub Recipients:

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Brad DeBrower, Transit Manager
Five Seasons Transportation
427 8th Street, NW
Cedar Rapids, Iowa 52405
Phone: (319) 286-5540
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Sioux City Transit, City of Sioux City

Mike Collett, Transit Director
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Sioux City, IA 51101
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City of Fort Dodge (DART)

Jay Kammerer
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Service area: City: Fort Dodge

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North Iowa Area Regional Transit System

(region 2)
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Siouxland Regional Transit System (Region 4)

Brenda Berens, Transit Director
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Sioux City, IA 51105
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MIDAS Council of Governments (Region 5)

Jay Kammerer, Executive Director
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Delaware, Dubuque, & Jackson County RTA

(Region 8)

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River Bend Transit [Region 9]

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East Central Iowa COG (Region 10)

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**Heart of Iowa Regional Transit Agency
(HIRTA) [Region 11]**

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Unions:

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**DOL PROPOSAL
FOR
EMPLOYEE PROTECTION CERTIFICATION
IA-2016-019-01**

1. URBANIZED AREA *Existing Arrangements for ATU-represented employees*

Iowa DOT has agreed that it will incorporate a “Labor Protections Provision” clause in the state contract of assistance which it enters into with each of the urbanized area subrecipients in the following form:

“The PROVIDER, by becoming signatory to this AGREEMENT, agrees to comply with all requirements of Section 13(c) of the Federal Transit Act, as amended, 49 U.S.C. §5333(b), and to apply and comply with the employee protection agreements entitled (1) between the PROVIDER and (2) as executed on (3), the terms and conditions of which are incorporated herein and made a part hereof as Appendix I, subject to the understanding that the term “Project” as used therein shall be deemed to refer to and cover this project. The PROVIDER also agrees to bear full financial responsibility, and hold the DEPARTMENT harmless, for any employee impacts as a result of this project.”

The Iowa DOT and the ATU have agreed that the references to be inserted in the above language are as set forth below:

- A. For the contract with the City of **Sioux City**:
 - 1. “Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended”
 - 2. Local Union 779, Amalgamated Transit Union, AFL-CIO
 - 3. June 10, 1976 (capital), and July 23, 1975 (operating)¹

- B. For the contract with the City of **Cedar Rapids**:
 - 1. “Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended”
 - 2. Local Union 638, Amalgamated Transit Union, AFL-CIO
 - 3. May 12, 1976 (capital), and July 23, 1975 (operating)

Furthermore, the Iowa DOT has agreed to act and remain as the “guarantor” of the obligations, rights and duties thus assumed by each of the above-referenced urbanized area subrecipients to the same extent as provided under Paragraph (1)(b), (c) and (d) of the April 8, 1992 Section 13(c) Arrangement between Iowa DOT and the ATU.

The Iowa DOT has agreed to provide the Union, via certified mail to the Legal Department of the ATU in Silver Spring, MD, a copy of each state contract of assistance entered into as referenced above no later than thirty (30) days following execution thereof by the parties thereto.

¹ For purposes of 49 USC § 5333(b), the Department makes operating arrangements applicable to capitalized line items which FTA formerly funded as operating assistance, including and not limited to other program administration funds which are operating in nature.

Also, the Iowa DOT and the ATU have agreed that any dispute or controversy between the Iowa DOT and any of the interested ATU locals regarding the interpretation, application or enforcement of the foregoing stated conditions which is not resolved within thirty (30) days after such dispute or controversy first arises may be submitted by either party at interest to a board of arbitration as provided in Paragraph (7)(b) through (f) of the April 8, 1992 Section 13(c) Arrangement, with the understanding that the term "Recipient" as used therein shall be deemed to refer to the Iowa Department of Transportation.

2. URBANIZED AREA *Existing Arrangements for Other represented employees*

Cedar Rapids

The January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of the Federal transit law, 49 U.S.C. § 5333(b). Accordingly, employees represented by AFSCME Locals 183 and 231, and International Brotherhood of Electrical Workers (IBEW) Local 1360, shall be considered third party beneficiaries in accordance with condition five (5) below for application to the instant grant. The City of Cedar Rapids, by executing the U.S. Department of Transportation's contract of assistance, accepts the terms and conditions of the UPA.

3. SMALL URBAN *Existing Arrangements for ATU-represented employees*

The Iowa Department of Transportation (Iowa DOT) and the ATU have agreed on behalf of employees in the service area of the Recipients to apply the terms and conditions of a protective arrangement dated April 8, 1992, with the substitution of the "**Appendix A**" document enclosed, in lieu of that attached to the 1992 Arrangement, and subject to the understanding that the term "Project," as used in the 1992 Arrangement, shall be deemed to refer to and cover the instant grant application, and the further understanding that the term "Project Operator" as used in Paragraph (1)(a) shall be deemed to instead refer to and cover the Iowa Department of Transportation and the term union as used throughout the 1992 Arrangement shall be deemed for this project's purposes to include not only the two labor organizations identified in the opening "WHEREAS" clauses of the agreement, but also ATU locals representing transit employees in the service areas of any of the providers of mass transit. (Listed on Appendix A, enclosed) These protective arrangements, negotiated in connection with a previous grant application, and as applied to the instant project, provide to the employees represented by the union protections satisfying the requirements of 49 U.S.C. Section 5333(b).

4. SMALL URBAN *Existing Arrangements for other represented employees*

The Iowa Department of Transportation (Iowa DOT), the American Federation of State County and Municipal Employees (AFSCME) locals 12, 183, 828, 888, and 3589, and the International Brotherhood of Teamsters (IBT) locals 238, 421, and 441, and the International Union of Operating Engineers, have agreed that the employee protections contained in the *Special Section 13(c) Warranty* shall be provided by the following subrecipients:

Region 8 - Delaware, Dubuque and Jackson County RTA: IBT
Region 9 - River Bend Transit IBT and AFSCME

Region 10 - East Central Iowa Council of Governments: AFSCME
Region 11 - Heart of Iowa Regional Transit Agency (HIRTA)
Region 13 - Southwest Iowa Transit Agency (SWITA): IBT and TWU
Region 14 - Agency on Aging, Southern Iowa Trolley (SIT)

The terms of the Special Warranty Arrangement establish protections for transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the Grantee and any contract with any subsequent recipient. The parties to the contract so signify when executing such contracts which incorporate this certification letter and the Special Warranty, by reference. These protective arrangements provide to the employees represented by the union protections satisfying the requirements of 49 U.S.C. Section 5333(b) for the instant project.

5. SMALL URBAN *Arrangements for others*

The Department of Labor makes the certification called for under the statute on condition that the attached Nonunion Protective Arrangement is made applicable to **Region 1 - Northeast Iowa Community Action Corporation (NICAC)**. These terms and conditions provide to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C. Section 5333(b). This certification letter shall be incorporated into the contract of assistance between the IA DOT and the U.S. Department of Transportation (DOT), by reference. The IA DOT shall incorporate the terms of the attachment and this certification, by reference, into the contract with each Recipient as a precondition to the release of assistance to such Recipient.

Iowa Department of Transportation, as Grantee

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

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

1. This letter and the terms and conditions of the above protective arrangements, shall be made applicable to the instant project and made part of the contract of assistance between the Iowa DOT and the U.S. Department of Transportation, by reference;

2. As a precondition to the release of assistance to any Recipient, this letter and the terms and conditions of the respective protective arrangements referenced above, shall be incorporated into the contract of assistance between the Iowa DOT and such Recipient, by reference;

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

3. The term "project" as used in each of the above employee protective arrangements shall be deemed to cover and refer to those portions of the instant project to which they have been applied;
4. In accordance with Section 20.27 of Iowa Code Chapter 20, the provisions of Act 2017 (87 G.A.), H.F. 291, effective February 17, 2017, shall be deemed inoperative and thus inapplicable to the Grantee's and Subrecipients' transit employees who are covered under the above protective arrangements and the terms and conditions of this certification letter; and that in lieu of these inoperative and inapplicable provisions, the provisions of Iowa Code Chapter 20 in effect on February 16, 2017, shall be deemed operative and applicable to said transit employees.
5. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the Iowa DOT, and the parties to the contract so signify by executing that contract. Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s). Employees not represented by any labor organization, or if so represented through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;
6. Disputes over the interpretation, application and enforcement of the terms and conditions of the certified protective arrangements, including those disputes arising out of this letter of certification, except for any disputes arising out of enumerated paragraph 2 above, shall be resolved

in accordance with the procedures specified in the aforementioned certified arrangements; and

7. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Appendix A

City of Fort Dodge

Region 2 - North Iowa Regional Transit System (NIARTS)

Region 4 - Region Siouxland Regional Transit System (SRTS)

Region 5 - Mid-Iowa Development Association (MIDAS)

Region 9 - River Bend Transit

Region 10 - East Central Iowa Transit (ECIT)

Region 11 - Heart of Iowa Regional Transit Agency (HIRTA)

Region 13 - Southwest Iowa Transit Agency (SWITA)

Region 14 - Area XIV Agency on Aging, Southern Iowa Trolley (SIT)

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

October 17, 2014

IA-2016-019-01

The term "Grantee" refers to the applicant for assistance; a "Recipient" as used herein, shall refer to any entity receiving transportation assistance under the grant. A Recipient may also act as the Grantee. The term "project" shall be deemed to cover and refer to the activities funded under the grant.

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

- (1) The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "service area" as used herein, includes the geographic area over which the project is operated and the area whose population is served by the project, including adjacent areas affected by the project;
- (2) All rights, privileges, and benefits (including collective bargaining rights and pension rights and benefits) of employees (including employees already retired) shall be preserved and continued. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer;
- (3) The Recipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;
- (4) In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the Recipient shall provide or provide for such training or retraining at no cost to the employee;
- (5) Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement

certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971.² An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project;

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

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

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation to identify the project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the project affected the employee. The claiming employee shall prevail if it is established that the project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71)³;

(8) The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph;

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

² See Appendix C-1 http://www.dol.gov/olms/regs/compliance/transit/9_AppendixC1.pdf.

³ http://www.dol.gov/olms/regs/compliance/transit/10_Hodgson_Affadavit.pdf