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(ONLY USE THIS NOTE FOR 1<sup>ST</sup> REFERRAL IN THE NEW YEAR)

Note: Third party beneficiary language was updated by the Department of Labor on January 3, 2011 in the certification terms and conditions and in the UPA. These changes are highlighted in bold.

Re: EMPLOYEE PROTECTIONS REFERRAL OF  
PENDING FTA GRANT APPLICATION(S)  
[Applicant]  
[Description]  
[Grant Number]

Dear FTA Applicant and Union Representative:

In accordance with Federal transit law, 49 U.S.C. 5333(b), the Department of Transportation has referred to this office the above-captioned grant application(s) and has requested the Department of Labor's (Department) certification that the required employee protective arrangements have been made. As required by the Department's procedural Guidelines, 29 C.F.R. Part 215, as amended by 73 Fed. Reg. 47,046, 47,055 (Aug. 13, 2008),<sup>1</sup> we are providing a copy of this grant application to the labor organization(s) representing transit employees in the service area of the project. These labor organizations are identified on the last page of this referral letter. (A reference copy of the grant application is also being provided to the applicant and/or recipient indicated.)

**In addition to referring the application to the appropriate labor organization(s), this letter serves to notify the applicant of this referral, and to advise the parties how to proceed.**

Please review the information below carefully. The Department will certify the pending grant on the terms and conditions indicated under the heading,

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<sup>1</sup> ? The amendments to the procedural Guidelines are also available online at <http://www.dol.gov/olms/regs/compliance/compltransit.htm>.



"Basis of this Referral" unless the Department **receives** written objections **within 15 calendar days** of the date of this referral. **Written objections must be forwarded to the Department by facsimile at (202) 693-1342 OR by e-mail to [OLMS-TransitGrant@dol.gov](mailto:OLMS-TransitGrant@dol.gov).** Objections must contain sufficient detail for the Department to make a determination of their validity under the criteria set forth at 215.3(d)(3) of the Guidelines.<sup>2</sup> Objections should be filed as soon as possible within the 15-day period. If objections are filed, you are encouraged to engage in negotiations or discussions with the other party(ies) in an effort to resolve the matters which gave rise to the objection.

Upon receipt of an objection, the Department will review the objection to determine whether it is sufficient. Within 10 days from the deadline for submitting objections, the Department will notify the parties of the status of the objections. If it is determined that objections are sufficient, the parties will be given specific instructions for continued negotiations or discussions which will be limited to issues the Department has identified.

#### BASIS OF THIS REFERRAL:<sup>3</sup>

##### — RECURRING REFERRAL

The Department has previously certified negotiated protective agreements, adopted arrangements, or Departmental determinations that are appropriate for application to the instant project as set forth in 29 CFR 215.3(b)(1). The terms and conditions of that certification are included in Attachment A hereto.

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<sup>2</sup> Section 215.3(d)(3): "The Department will consider an objection to be sufficient when: (i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or (ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees."

<sup>3</sup> Clarifying revisions have been made to the UPA in the second introductory paragraph, paragraph 21, and the certification terms and conditions in Attachment A. These clarifications highlight the requirement, embodied in the UPA (introductory paragraphs and paragraph 21) and certification letters, that transportation employees in the transportation service area of a project are primary and direct beneficiaries of the protective arrangements with the right to enforce such arrangements.



— UPA REFERRAL<sup>4</sup>

There are no previously certified negotiated, adopted or determined protective arrangements to be applied to the pending grant as described in 29 CFR 215.3(b)(1). Accordingly, pursuant to 29 CFR 215.3(b)(2), the Department proposes to apply the terms and conditions of the January 3, 2011 Unified Protective Arrangement referenced in Attachment A hereto.<sup>5</sup>

Questions with regard to whether a union, and the employees they represent, should be considered a third party beneficiary to the arrangements must be raised during the 15-day review period for this grant, or the Department's certification will specify that the employees, or their representative on their behalf will be considered third party beneficiaries.

As the project representative in the Division of Statutory Programs responsible for processing this certification request, I am available to provide any assistance you may need. I can be reached by phone at (202) 693-xxxx, by FAX at (202) 693-1342, or by e-mail at [Rep's e-mail address].

Sincerely,

(name)

Project Representative

Enclosure

**Please Note: All written communications relating to this application are to be copied to all relevant parties including, at a minimum, the parties identified in this referral and the Project Representative identified above.**

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<sup>4</sup> ? This referral is for new applicants, applicants with new unions in the service area, or for applicants which do not have protective arrangements subject to a recurring referral.

<sup>5</sup> ? Copies of the January 3, 2011 Unified Protective Arrangement can be accessed on the Department's website at [http://www.dol.gov/olms/regs/compliance/transit/6\\_UPA-01-03-11.pdf](http://www.dol.gov/olms/regs/compliance/transit/6_UPA-01-03-11.pdf) or may be obtained by contacting the Department at (202) 693-0126. This arrangement was developed by the Department pursuant to 29 CFR 215.3(b)(2).

**U.S. Department of Labor**

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



REFERRAL SENT TO:

Grantee/Recipient(s):

Union(s):

## **Attachment A**

PROPOSED TERMS FOR EMPLOYEE PROTECTION CERTIFICATION  
DOL REFERRAL OF FTA GRANT

[Insert Grant Number]

-----[Insert text from your Property Specific "Attachment A" Shell here. Auto page numbering for this section of the Referral shell has been set to start anew. Your PSA shell should be set in Normal style with no preset page breaks in the text portion.]