

EXAMPLE AGREEMENT

STATE OF NORTH CAROLINA

SECTION 5303

COUNTY OF MECKLENBURG

GRANT AGREEMENT

This **AGREEMENT** is made and entered into this July 1, 2022 (the Effective Date”) by and between the **CITY OF CHARLOTTE**, (the “City) through the Metropolitan Planning Organization (MPO) of the urbanized area (UZA), the Charlotte Regional Transportation Planning Organization (“CRTPO”) and **(AWARDEE) COUNTY, NC**, through its public transit department, the **(Awardee)** County Transportation (“**(Awardee)**”) (collectively, the “Parties”) for a transit project for fixed-route evaluation and community outreach.

GENERAL RECITALS

WHEREAS, pursuant to 49 U.S.C. § 5305, the Metropolitan Planning Program (MPP) provides Federal financial assistance to help urbanized areas (UZAs) plan for the development, improvement, and effective management of their multimodal transportation systems in accordance with the transportation planning requirements of the joint Federal Transit Administration (FTA)/Federal Highway Administration (FHWA) planning regulations (23 CFR Part 450) ; and

WHEREAS, the FTA apportions federal MPP grant funds to states based on a formula; and

WHEREAS, each state allocates MPP grant funds it receives to the metropolitan planning organizations (MPOs) in the state based on a formula approved by the U.S. Secretary of Transportation and a Unified Planning Work Program (UPWP) developed by the MPO; and

WHEREAS, CRTPO is the MPO for the Charlotte-Mecklenburg urbanized area (UZA) and is responsible for developing the long-range transportation plan and the Transportation Improvement Program in accordance with 49 U.S.C. § 5303; and

WHEREAS, the City is the lead planning agency for CRTPO; and

WHEREAS, the North Carolina Department of Transportation (NCDOT) has allocated FY2023 Section 5303 MPP grant funds for the planning projects identified in CRTPO’s UPWP, including **(Awardee)**’s fixed-route evaluation and community outreach project.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree follows.

AGREEMENT

1. **Purpose.**

The purpose of this Agreement is to provide funding for the evaluation and community outreach related to **(Awardee)** fixed-route service as described in the project application, Exhibit A (hereinafter referred to as "Project") and to state the terms and conditions as to the manner in which the Project will be undertaken and completed. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding

EXAMPLE AGREEMENT

this Agreement except as expressly set forth herein. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

2. Project Implementation. _____ (Awardee) agrees to carry out the Project as follows:

2.1 Scope. _____ (Awardee) shall undertake and complete the Project in accordance with the procedures and guidelines set forth in the following documents, to the extent applicable:

- a. FTA Circular 5010.1D, "Grant Management Requirements";
- b. FTA Circular 8100.1d, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants;
- c. FTA Circular 9045.1, "9070.1G Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions";
- d. FTA Circular 4710.1, "Americans with Disabilities Act Guidance";
- e. FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients";
- f. FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients";
- g. FTA Circular 4704, "Equal Employment Opportunity Program Guidelines for Grant Recipients";
- h. FTA Master Agreement;
- i. FTA Circular 4220.1F, "Third Party Contracting Guidance";
- j. The State Management Plan for Federal and State Transportation Programs ("State Management Plan");
- k. The Coordinated Human Services Transportation Plan for Charlotte-Mecklenburg; and
- l. _____ (Awardee) Application.

The aforementioned documents, and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the City in accordance with the terms and conditions of this Agreement. Nothing shall be construed under the terms of this Agreement by the City or _____ (Awardee) that shall cause any conflict with Local, State, or Federal statutes, rules, regulations or ordinances.

3. Definitions. Unless otherwise defined herein, the following terms shall have the meaning set forth below:

3.1 City means the City of Charlotte.

3.2 Common Rules means DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200.

3.3 Applicant, or _____ (Awardee) means _____ (Awardee) County, NC, through its public transit department, the _____ (Awardee) County Transportation _____ (Awardee).

EXAMPLE AGREEMENT

- 3.4 Disability has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102). The term “disability” means, with respect to an individual—
- (a) A physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (b) A record of such impairment; or
 - (c) Being regarded as having such an impairment.
- 3.5 DOT means the U.S. Department of Transportation.
- 3.6 FTA means the Federal Transit Administration.
- 3.7 Grant Funds means the FTA funds provided by the City for (Awardee) ' Section 5303 Project.
- 3.8 Master Agreement means the FTA official document containing FTA and other cross-cutting Federal requirements applicable to the FTA recipient and its project(s). The Master Agreement is generally revised annually in October. The Master Agreement is incorporated by reference and made part of each FTA grant, cooperative agreement, and amendment thereto.
- 3.9 NCDOT means the North Carolina Department of Transportation.
- 3.10 OMB means the United States Office of Management and Budget.
- 3.11 Prior Approval means securing the City's or NCDOT's written permission prior to taking action or incurring a certain cost.

- 4. Incorporation of Exhibits.** The following Exhibits are attached to this Agreement and are incorporated into and made a part of this Agreement by reference:

Exhibit A: (Awardee) 's Application

Each reference to this Agreement shall be deemed to include all Exhibits. Any conflict between any provisions of this Agreement shall be resolved as follows:

- Any clause required by Federal law shall control over all Agreement provisions;
- All Exhibits shall be inferior to the Agreement provisions and each Exhibit shall control over each subsequent Exhibit as delineated by this subsection.

- 5. Description of Project.** (Awardee) shall perform the services described in Exhibit A attached to this Agreement and incorporated herein except that any reference in Exhibit A to a period of performance shall be changed to the Period of Performance referenced in Section 8 of this Agreement. Unless otherwise provided in Exhibit A, (Awardee) shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Project.

- 5.1. Agreement Modification.** In the event that the City desires to alter the terms of this Agreement, or desires a reduction, expansion, or modification of the Project or the Section 5303 Program that includes an alteration of the terms of this Agreement, the City shall issue to (Awardee) a written notification, which specifies such reduction, expansion, or modification. Within fifteen (15) days after receipt of the written notification, (Awardee) shall provide the City with a detailed proposal with a detailed cost or cost reduction and schedule proposal for the alteration. This proposal shall be accepted by the City or modified by negotiations between (Awardee) and the City and, thereafter, both parties shall execute a written Agreement Modification.

EXAMPLE AGREEMENT

Unless specified in a written Agreement Modification, no change, reduction, modification or expansion of the Project within or beyond the scope of this Agreement shall serve to modify the terms and conditions of this Agreement.

6. **Cost of Project.** The total cost of the Project approved by the City is set forth in (Awardee)'s Application, incorporated into this Agreement as Exhibit A.

6.1 City Share. The City shall provide, from Federal funds received from NCDOT, eighty percent (80%) of the actual costs of the Project, not to exceed forty-two thousand four hundred four dollars (\$00,000). The City shall also provide, from State funds received from NCDOT, ten percent (10%) of the actual costs of the Project, not to exceed five thousand three hundred one dollars (\$0,000), which will bring the City's Total Share to an amount not to exceed forty-seven thousand seven hundred five dollars (\$00,000).

6.2 (Awardee) Share. (Awardee) shall provide ten percent (10%) of the actual costs of the Project as defined in (Awardee)'s Application and any amounts in excess of the City's Total Share ("(Awardee) Share"). (Awardee) shall initiate and prosecute to completion all actions necessary to enable it to provide its share of the Project costs.

7. **Grant Disbursements.** Each month (Awardee) shall submit an invoice to the City as part of its required Monthly Report detailing all direct and indirect costs incurred pursuant to this Agreement, as further detailed in Exhibit A.

7.1. (Awardee) shall not charge the City overtime rates (as defined by the Fair Labor Standards Act), regardless of the number of hours worked in a given day or week.

7.2. All reimbursable expenses submitted by (Awardee) must comply with the City's requirements, the applicable Common Rules, and Part 30 of the Federal Acquisition Regulations (FAR).

7.3. The City shall disburse the City's Share within thirty (30) days of each valid Monthly Report submitted by (Awardee). (Awardee) shall continue with its reporting requirements until completion of the Project regardless of when the City makes its final payment obligation.

7.4. The City's determination on whether an incurred cost is allowable, allocable, and reasonable under federal regulations shall be final and conclusive.

7.5. Employment Taxes and Employee Benefits. (Awardee) acknowledges and agrees that its employees and subcontractors are not employees of the City.

(Awardee) represents, warrants, and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law in connection with the Project.

8. **Period of Performance.** This Agreement shall commence upon the Effective Date, unless specific written authorization from the City to the contrary is received. The period of performance for all expenditures shall extend from July 1, 2022 to June 30, 2023. (Awardee) shall commence, carry on, and complete the approved Project in a sound, economical, and efficient manner.

EXAMPLE AGREEMENT

9. Accounts and Records.

9.1. Establishment and Maintenance of Accounting Records. (Awardee) shall establish and maintain separate accounts for the Project, either independently or within its existing accounting system, to be known as the Project Account. (Awardee) shall use the Grant Funds only for the purposes of the Project and for no other purpose. The accounting system shall be capable of segregating, identifying and accumulating the allocable Project costs. (Awardee) shall maintain complete and accurate records, using Generally Accepted Accounting Principles, of all costs related to this Agreement.

9.2. Documentation of Project Costs. All charges to the Project Account shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and the propriety of the charges and shall adhere to the standards established in the Common Rules.

9.3. Allowable Costs. Expenditures made by (Awardee) shall be reimbursed by the City as allowable costs to the extent they meet the following requirements:

- a. Made in conformance with the Project Description and the Project Budget and all other provisions of this Agreement;
- b. Necessary in order to accomplish the Project;
- c. Reasonable in amount for the services purchased;
- d. Incurred (and for work performed) on or after the date of this Agreement, unless specific authorization from the City to the contrary is received;
- e. Made in conformance with the federal cost principles set forth in the Common Rules;
- f. Satisfactorily documented; and
- g. Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the City.

10. Audit and Inspection. (Awardee) shall permit and shall require its contractors to permit the City, the FTA, and the Comptroller General of the United States, or their authorized representatives, to inspect all data, documents, reports, records, books, contracts, and supporting materials with regard to the Project and to audit the books, records, and accounts of (Awardee) pertaining to the Project.

(Awardee) shall maintain all data, documents, reports, records, books, contracts, and supporting materials and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, (Awardee) shall make such materials available at its office at all reasonable times during the Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection and audit by the City or the FTA. In the event of litigation or settlement of claims arising from the performance of this Contract, (Awardee) agrees to maintain same until all such litigation, appeals, claims or exceptions related thereto have been disposed of.

11. Representations and Warranties of (Awardee). (Awardee) represents and covenants that:

11.1. (Awardee) has the qualifications, skills and experience necessary to perform the Project described or referenced in Exhibit A.

EXAMPLE AGREEMENT

- 11.2. The Project shall be performed in accordance with all requirements set forth in this Agreement, including but not limited to Exhibits A.
- 11.3. Neither the Project, nor any Deliverables provided by (Awardee) under this Agreement, will infringe or misappropriate any patent, copyright, trademark, trade secret or other intellectual property rights of any third party. (Awardee) shall not violate any non-compete agreement or any other agreement with any third party by entering into or performing this Agreement.
- 11.4.11.4. (Awardee) affirms that it has not retained any party other than a bona-fide employee working for (Awardee) to solicit this Agreement, and that it has not paid or agreed to pay any outside party consideration in any form contingent upon securing this Agreement. The City shall have the right to terminate this Agreement for cause for any breach of this warranty.
- 11.5. In connection with its obligations under this Agreement, (Awardee) shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses.
- 11.6. (Awardee) warrants that it has all the requisite power and authority to execute, deliver and perform its obligations under this Agreement, including but not limited to paying (Awardee)' Share of the Project Costs, as described in Section 6 of this Agreement.

12. Termination of Agreement.

- 12.1 Termination for Convenience. The City, upon thirty (30) days written notice, may terminate this Agreement in whole or in part, when it is in the interest of the City. If this Agreement is terminated, the City shall be liable only for payments under the payment provisions of this Agreement for services rendered and costs incurred before the effective date of termination.
- 12.2 Termination for Funding Withdrawal. The City may terminate this Agreement immediately on written notice to (Awardee) if at any time the FTA or the State for any reason does not award further Grant Funds for Section 5303 Programs to the City. (Awardee) shall be paid under the payment provisions of this Agreement for any services rendered and costs incurred prior to the effective date of such termination.
- 12.3 Termination for Default. If (Awardee) fails to perform the services within the time specified in this Agreement or any extension or if (Awardee) fails to comply with other provisions of this Agreement, the City may, subject to the cure provision in Section 12.4, terminate this Agreement for default. The City shall terminate by delivering a Notice of Termination to (Awardee) specifying the nature of the default. (Awardee) shall only be paid for services performed and costs incurred in accordance with the manner or performance set forth in this Agreement.
- 12.4 Opportunity to Cure. The City shall, in the case of a termination for default, provide (Awardee) seven (7) business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If (Awardee) fails to remedy to the City's reasonable satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within seven (7) business days after receipt of the City's notice, the City shall have the right to terminate the Agreement without any further obligation to (Awardee), except for payment in the manner or performance set forth in this Agreement for services rendered and costs incurred prior to such termination. Any such

EXAMPLE AGREEMENT

termination for default shall not in any way preclude the City from also pursuing all available remedies against (Awardee) and its sureties for said breach or default.

12.5 Waiver of Remedies for Breach. In the event the City elects to waive its remedies for any breach by (Awardee) of any covenant, term or condition of this Agreement, such waiver by the City shall not limit the remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

12.6 Obligations upon Expiration or Termination. Upon expiration or termination of this Agreement, (Awardee) shall promptly provide the City with a written statement describing in detail the status of the Project as of the date of termination, including an invoice documenting all Project Costs as of the date of termination. Termination of this Agreement shall not relieve (Awardee) of the obligation to file any monthly, quarterly, or annual reports nor relieve (Awardee) from any claim for reimbursement of Grant Funds previously accrued or then accruing against (Awardee) .

13. Relationship of the Parties. The relationship of the parties established by this Agreement is the City as recipient and (Awardee) as the subrecipient of federal grant funds as defined by the FTA. With the exception of the required administrative oversight of the Project by the City, nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has the power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

14. Indemnification.

14.1 To the fullest extent permitted by law, (Awardee) shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "charges" (as defined below) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Project ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by (Awardee) or its subcontractors in connection with this Agreement; or (iii) arising from (Awardee) 's failure to perform its obligations under this Agreement or from any act of negligence or willful misconduct by (Awardee) or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that (Awardee) or an employee or subcontractor of (Awardee) is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City, the State of North Carolina, and the United States Department of Transportation (U.S. DOT), and the officers, officials, employees, agents and independent contractors (excluding (Awardee)) of the City, the State, or the U.S. DOT; and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

14.2 This Section 14 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

EXAMPLE AGREEMENT

14.3 Notwithstanding the foregoing, (Awardee) shall not be liable to the City to the extent a claim arises from the City's negligence or willful misconduct or the negligence or willful misconduct of any employee or agent of the City.

15. Insurance.

15.1. General Requirements.

- (a) (Awardee) shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this Section 15, and the City has approved such insurance. (Awardee) shall not allow any subcontractors to commence work on its subcontract until all insurance required of the subcontractors has been obtained and approved.
- (b) All insurance policies required by Section 15.2 shall be with insurers qualified and doing business in North Carolina and recognized by the Secretary of State and the Insurance Commissioner's Office. (Awardee) shall name the City as an additional insured under the commercial general liability policy required by Section 15.2.
- (c) (Awardee)' insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from (Awardee)' operations under this Agreement. (Awardee) and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees (as defined in Section 14).
- (d) The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of (Awardee) and/or subcontractors providing such insurance.
- (e) Within three (3) days after execution of this Agreement, (Awardee) shall provide the City with Certificates of Insurance documenting that the insurance requirements set forth in this Section 15 have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. (Awardee) shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Agreement, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of (Awardee) shall not relieve (Awardee) of its obligation to meet the insurance requirements set forth in this Agreement.
- (f) Should any or all of the required insurance coverage be self-funded/self-insured, (Awardee) shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.
- (g) If any part of the work under this Agreement is sublet, the subcontractors shall be required to meet all insurance requirements set forth in this **Section 15**, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve (Awardee) from meeting all insurance requirements or otherwise being responsible for the subcontractors.

15.2. (Awardee) agrees to purchase and maintain, during the life of this Agreement, with an insurance company acceptable to the City and authorized to do business in the State of North Carolina, the following insurance policies:

EXAMPLE AGREEMENT

- (a) **Automobile Liability.** Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 bodily injury each person, each accident and \$2,000,000 property damage, or \$2,000,000 combined single limit each occurrence/aggregate, or as the State of North Carolina requires, whichever is greater.
- (b) **Commercial General Liability.** Bodily injury and property damage liability as shall protect _____ (Awardee) and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by _____ (Awardee), any subcontractor, or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than \$5,000,000 bodily injury each occurrence/aggregate and \$5,000,000 property damage each occurrence/aggregate or \$5,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability assumed under the indemnity provision of this Agreement.
- (c) **Workers' Compensation Insurance.** Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit, providing coverage for employees and owners.
- 16. Drug-Free Workplace.** The City is a drug-free workplace employer. The Charlotte City Council has adopted a policy requiring Companies to provide a drug-free workplace in the performance of any City contract. _____ (Awardee) hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:
- 16.1** Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 16.2** Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) _____ (Awardee)'s policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 16.3** Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined above, and (ii) notify _____ (Awardee) of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
- 16.4** Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 16.5** Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 16.6** Require any party to which it subcontracts any portion of the work under this Agreement to comply with the above provisions.
- 16.7** *A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be grounds for suspension, termination or debarment.*
- 17. Non-Discrimination Policy.** The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's

EXAMPLE AGREEMENT

website (the "Non-Discrimination Policy"). As a condition of entering into this Agreement, _____ (Awardee) represents and warrants that it will fully comply with the Non-Discrimination Policy and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, _____ (Awardee) shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of any subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall _____ (Awardee) retaliate against any person or entity for reporting instances of such discrimination. _____ (Awardee) shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this Agreement, _____ (Awardee) agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Agreement; and (b) if requested, provide to the City, within sixty (60) days after the request, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that _____ (Awardee) has used on City contracts in the past five (5) years, including the total dollar amount paid by contractor on each subcontract or supply contract. _____ (Awardee) further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

_____ (Awardee) understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of _____ (Awardee) from participating in City contracts and other sanctions.

- 18. Notices and Principal Contacts.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For _____ (Awardee) :

Jane Doe, Public Transit
123 Main Street
Anywhere, NC 00000
Phone: (704) 555-1234
Fax: (704) 555-5678

E-mail: jane.doe@abctransit.gov

For the City:

Robert Cook,
Division Manager, CRTPO Division
600 East Fourth Street
Charlotte, NC 28202
Phone: (704) 336-8643
Fax: (704) 353-0797

E-mail: rwcook@charlottenc.gov

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall further be copied to the following (in addition to being sent to the individuals specified above):

For the City:

Lisa Flowers
City Attorney's Office
600 East Fourth Street
Charlotte, NC 28202
Phone: (704) 432-2568

EXAMPLE AGREEMENT

Fax: (704) 353-0797

E-mail: lflowers.charlottenc.gov

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice that is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

19. Governing Law, Jurisdiction and Venue. North Carolina law shall govern interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

20. Breaches and Dispute Resolution.

20.1 For all disputes, the parties shall first meet in good faith to resolve the dispute. If the parties are unsuccessful in settling the dispute, such meeting shall be followed by non-binding mediation conducted pursuant to the conditions set forth in this Section.

20.2 Any contractor or subcontractor performing work or providing supplies or services used in this Agreement that is a party to an issue or claim in which the amount in controversy is at least fifteen thousand dollars (\$15,000) may require others that are party to the issue or claim to participate in the Dispute Resolution Process set forth in this Section. Unless otherwise directed by the City, (Awardee) shall continue performance under this Agreement while matters in dispute are being resolved. The process set forth by this Section may be foregone upon the mutual written agreement of all parties in interest to the individual dispute. Otherwise, full compliance with this Section is a precondition for any party to initiating any form of litigation concerning the dispute.

20.2.1 Subcontract Inclusion. (Awardee) shall and hereby agrees to include this Section in every subcontract or any other agreement it enters into with any party that will be involved in this project.

20.2.2 Parties at Issue and Required Notice.

- (a) If the City is not a party to the issue or claim, the party requesting dispute resolution must notify the City, in writing, of the requested dispute resolution and must include a brief summary of the issue including the alleged monetary value of the issue. The written notice must be sent to the City prior to the service of the request for dispute resolution upon the parties to the issue.
- (b) If the party requesting dispute resolution is a subcontractor, it must first submit its claim to the Prime Contractor with whom it has a contract. If the matter is not resolved through the Prime Contractor's informal involvement, then the matter becomes ripe for the Dispute Resolution Process under this Section, and the party may submit its written notice of Dispute Resolution to the City.
- (c) The City is under no obligation to secure or enforce compliance with this Section in which the City is not a party. The City is entitled to notice as required by this Section,

EXAMPLE AGREEMENT

but has no obligation to administer, mediate, negotiate, or defray any costs in which the City is not a party, except for the selection of a mediator as set forth in Section 20.4 below.

- (d) If the City is a party to the issue, the party requesting resolution must submit a written request to the City.
- (e) Upon receipt of a written request for dispute resolution that fully complies with the requirements of this Section, the parties to the dispute shall follow the process as set forth in this Section in good faith. The costs of the process shall be divided equally among the parties.

20.3 Formal Resolution Meeting. Representatives of each party shall meet as soon as reasonable to attempt in good faith to resolve the dispute. If the City is a party to the dispute, all other parties must be represented by a person with the authority to settle the dispute on behalf of their respective organizations. The parties may, by agreement and in good faith, conduct further meetings as necessary to resolve the dispute. If resolution is not achieved, the parties shall initiate mediation as set forth below.

20.4 Mediation.

- (a) Selection of Mediator. The parties shall in good faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties desire a mediator not so certified, the City's consent to such a mediator must first be obtained in writing. If the parties cannot agree to a mediator within a reasonable time, the City shall have the right to unilaterally select a certified mediator if the City is a party to the dispute or, if the City is not a party to the dispute but is requested to do so by a party to the dispute.
- (b) Mediation Contract. Upon selection of a mediator, the parties to the dispute shall in good faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation including those set forth in Section 22.6(c) below. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Section and Agreement, as well as all applicable laws. If the parties fail to agree to the procedural rules to be used, then the American Arbitration Association Construction Industry Mediation Rules shall be used to the extent such rules are consistent with this Agreement and applicable law.
- (c) Stalemate. If after all reasonable good-faith attempts to resolve the dispute have been made, it appears to the mediator that the parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the parties and shall issue a written Notice of Stalemate, which shall conclude the dispute resolution process, unless the parties agree otherwise.

21. No Liability for Special or Consequential Damages. The City and (Awardee) shall not be liable to each other, their agents or representatives or any subcontractors for or on account of any stoppages or delay in the performance of any obligations of the City, or any other consequential, indirect or special damages or lost profits related to this Agreement.

22. Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising

EXAMPLE AGREEMENT

under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

23. No Publicity. No advertising, sales promotion or other materials of (Awardee) or its agents or representations may identify or reference this Agreement or the City in any manner without the written consent of the City.

24. Approvals. All approvals or consents required under this Agreement must be in writing.

25. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights. No delay or omission by either party to exercise any right or remedy it has under this Agreement shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any right or remedy, or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that right or remedy or of any other right or remedy.

26. Survival of Provisions. All provisions of this Agreement which by their nature and effect are required to be observed, kept or performed after termination of this Agreement shall survive the termination of this Agreement and remain binding thereafter, including but not limited to the following:

Section 7.5	“Employment Taxes and Employee Benefits”
Section 11	“Representations and Warranties of <u>(Awardee)</u> ”
Section 12	“Termination of Agreement”
Section 14	“Indemnification”
Section 15	“Insurance”
Section 18	“Notices and Principal Contacts”

27. Familiarity and Compliance with Laws and Ordinances. (Awardee) agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Project. (Awardee) further agrees that it will at all times during the term of this Agreement comply with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Project.

28. Conflict of Interest and Code of Conduct. (Awardee) shall notify the City immediately if it has a real or apparent conflict of interest with regard to this Agreement. (Awardee) shall not use its position for personal or organizational gain. (Awardee) shall not engage in any transaction that presents a real or apparent conflict of interest. (Awardee) shall not engage in any transaction incompatible with the proper discharge of its duties in the public interest or that would tend to impair independent judgment or action in performance of its contractual obligations.

(Awardee) shall not give gifts or favors to City staff nor shall City staff accept gifts or favors in violation of N.C.G.S. § 133-32 or City Policy HR 12.3 regarding gifts and favors.

29. Construction of Terms. Each of the parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

EXAMPLE AGREEMENT

30. Federal Clauses. The work to be performed under this Agreement will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Agreement. The most recent of such Federal requirements, including any amendments made after the execution of this Agreement, shall govern this Agreement, unless the Federal Government determines otherwise. (Awardee) agrees to comply with the following federal requirements that are applicable to this Agreement and shall incorporate these requirements into any subagreement or subcontract it executes pursuant to its obligations under this Agreement.

To the extent applicable, the Federal requirements contained in the most recent version of the Federal Transit Administration (“FTA”) Master Agreement, as amended (the “Master Agreement”), including any certifications and contractual provisions required by any Federal statutes or regulations referenced therein to be included in this Agreement, are deemed incorporated into this Agreement by reference and shall be incorporated into any sub agreement or subcontract executed by (Awardee) pursuant to its obligations under this Agreement. (Awardee) and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the Master Agreement then in effect and with all applicable Federal, State and Local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the work to be performed under this Agreement. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. (Awardee) shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

30.1 Access to Records and Reports.

- (a) Record Retention. (Awardee) shall retain, and shall require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (c) Access to Records. The Contractor agrees to provide sufficient access to the City, the FTA and their respective contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- (d) Access to the Sites of Performance. The Contractor agrees to permit the City, the FTA and their respective contractors access to the sites of performance under this contract as reasonably may be required.

30.2 Buy America. Reserved

30.3 Cargo Preference. Reserved

30.4 Charter Service. (Awardee) agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if

EXAMPLE AGREEMENT

there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, “Charter Service,” 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

(Awardee) agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include, barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or any other appropriate remedy that may apply.

(Awardee) should also include the substance of this clause in each subcontract that may involve operating public transit services.

30.5 Clean Air Act & Federal Water Pollution Control Act. Except to the extent the Federal Government determines otherwise in writing, (Awardee) agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q; and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251-1387.. Specifically, (Awardee) agrees that:

- (a) It will not use any violating facilities;
- (b) It will report the use of facilities placed on, or likely to be placed on, the U.S. EPA “List of Violating Facilities;”
- (c) It will report violations of use of prohibited facilities to FTA; and
- (d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

30.6 Civil Rights Laws & Regulations. The City is an Equal Opportunity Employer. As such, the City has agreed to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City has agreed to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, (Awardee) shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- (a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

EXAMPLE AGREEMENT

- (b) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, (Awardee) agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. (Awardee) agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity)... Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, (Awardee) agrees to comply with any implementing requirements FTA may issue.
- (c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, (Awardee) agrees to comply with any implementing requirements FTA may issue.
- (d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*; and Federal transit law at 49 U.S.C. § 5332, (Awardee) agrees that it will not discriminate against individuals on the basis of disability. In addition, (Awardee) agrees to comply with any implementing requirements FTA may issue.
- (e) Access to Services for Persons with Limited English Proficiency. (Awardee) agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. §2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.
- (f) Environmental Justice. The Company agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. §4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
- (g) Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Company agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C.

EXAMPLE AGREEMENT

§§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

- (h) Other Nondiscrimination Laws. (Awardee) agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(Awardee) also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Failure by (Awardee) to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate.

- 30.7 Disadvantaged Business Enterprises (DBE). (Awardee) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

(Awardee) shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by (Awardee) to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying (Awardee) from future bidding as non-responsible. 49 C.F.R. § 26.13(b).Reserved

- 30.8 Contract Work Hours and Safety Standards. Reserved

- 30.9 Energy Conservation. (Awardee) agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

- 30.10 Fly America - Reserve

- 30.11 Government-Wide Debarment and Suspension.

- (a) Debarment, Suspension, Ineligibility and Voluntary Exclusion. (Awardee) shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- (i) Debarred from participation in any federally assisted Award;
- (ii) Suspended from participation in any federally assisted Award;
- (iii) Proposed for debarment from participation in any federally assisted Award;
- (iv) Declared ineligible to participate in any federally assisted Award;

EXAMPLE AGREEMENT

- (v) Voluntarily excluded from participation in any federally assisted Award; or
- (vi) Disqualified from participation in any federally assisted Award.

- (b) Certification. Upon execution of this Agreement, (Awardee) certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that (Awardee) knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (Awardee) agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, throughout the period of this Agreement. (Awardee) further agrees to include a provision requiring such compliance in its lower tier covered transactions."

- (c) Verification. (Awardee) and all lower-tier participants must verify that the entity with whom the (Awardee) or lower-tier participant intends to do business with is not excluded, pursuant to the definition set out in 2 CFR Part 180.940, or disqualified, pursuant to the definition in 2 CFR Part 180.935. (Awardee) and all lower-tier participants may do this by either: (i) checking the Excluded Parties List System (EPLS), found at <http://epls.arnet.gov> or <http://www.epls.gov>, (ii) collecting the certification form from the lower-tier participant, or (iii) adding a clause or condition to the covered transaction with that lower-tier participant.
- (d) Disclosing Information. (Awardee) and all lower-tier participants, before entering into a covered transaction, must notify the higher-tiered participant if they are presently excluded or disqualified, or any of their principals are excluded or disqualified, pursuant to 2 CFR Part 180.355.

30.12 Lobbying Restrictions. (Awardee) agrees to comply with the provisions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. (Awardee) and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the City. This Certification is attached with (Awardee)'s Application in Exhibit A.

(Awardee) further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

30.13 No Government Obligation to Third Parties.

- (a) The City and (Awardee) acknowledge and agree that, notwithstanding any

EXAMPLE AGREEMENT

concurrence by the Federal Government in or approval of the solicitation or award of the underlying Section 5303 grant, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the City, (Awardee), or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Section 5303 grant.

- (b) (Awardee) agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

30.14 Reserved.

30.15 Reserved.

30.16 Program Fraud and False or Fraudulent Statements or Related Acts.

- (a) (Awardee) acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801, *et. seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of this Agreement, (Awardee) certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made pertaining to the underlying Agreement or the Project. In addition to other penalties that may be applicable, (Awardee) further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on (Awardee) to the extent the Federal Government deems appropriate.
- (b) (Awardee) also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on (Awardee), to the extent the Federal Government deems appropriate.
- (c) (Awardee) agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

30.17 Reserved.

30.18 Recycled Products. (Awardee) agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247.

30.19 Safe Operation of Motor Vehicles.

- a) **Seat Belt Use.** (Awardee) is encouraged to adopt and promote on-the-job

EXAMPLE AGREEMENT

seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by _____ (Awardee) _____ or the City.

- b) **Distracted Driving.** _____ (Awardee) _____ agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle _____ (Awardee) _____ owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

30.20 School Bus Operations. – Reserve

30.21 Reserved.

30.22 Reserved.

30.23 Reserved.

30.24 Reserved.

30.25 Federal Changes.

- (a) _____ (Awardee) _____ shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this Agreement.
_____ (Awardee) _____’s failure to so comply shall constitute a material breach of this Agreement.
- (b) _____ (Awardee) _____ agrees to include the above clause in each subcontract, and it is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provision.

30.26 ADA Access. _____ (Awardee) _____ agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and the following regulations and any amendments thereto:

- (a) DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
- (b) DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- (d) Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
- (e) DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
- (f) General Services Administration regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;

EXAMPLE AGREEMENT

- (g) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
- (j) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
- (k) Any implementing requirements FTA may issue.

(Awardee) also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

30.27 Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

(Awardee) shall not perform any act, fail to perform any act, or refuse to comply with any of the City's requests which would cause the City to be in violation of the FTA terms and conditions. This requirement extends to all third-party contracts and their contracts at every tier.

(SIGNATURES ON NEXT PAGE)

EXAMPLE AGREEMENT

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

_____ **COUNTY**

Attest:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CITY OF CHARLOTTE

Attest:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____