**ATTACHMENT A**

**Federal Transit Authority Grant for *Pocahontas* Ferry Boat Engine and Propulsion Unit Replacement**

**Memorandum of Agreement**

**Purpose:** Agreed Upon Terms and Conditions between the Williamsburg Area Transit Authority (WATA) and the Virginia Department of Transportation (VDOT) as it pertains to the Federal Transit Authority (FTA) Grant identifying VDOT as the Subrecipient for the Project identified below.

**Project:** Replacement of Engines and Propulsion Units in the Ferry Boat Pocahontas

**UPC:** 105456, 108059

**Facility:** Jamestown-Scotland Ferry Service

**Owner/Operator:** Virginia Department of Transportation

**Memorandum of Agreement between WATA and VDOT**

THIS Memorandum of Agreement between the Williamsburg Area Transit Authority and the Virginia Department of Transportation (the “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_\_\_\_, 2016 by and between the Williamsburg Area Transit Authority (“WATA”) and the Virginia Department of Transportation (“VDOT”).

WHEREAS, VDOT owns and operates the Jamestown-Scotland Ferry (the “Ferry”), which provides vehicle and pedestrian ferry services across the James River connecting two portions of Virginia State Route 31 and serving as a link in the local transit bus service; and

WHEREAS, WATA buses use the ferry to link service between Surry County, Virginia and James City County/Williamsburg, Virginia; and

WHEREAS, as of 2015, the Ferry has Average Daily Traffic of 2,710 vehicles with peaks of up to 4,560 vehicles per day on summer weekends; and

WHEREAS, the Ferry fleet presently consists of four ferry boats: the *Virginia*, the *Surry*, the *Williamsburg,* and the *Pocahontas*, the *Pocahontas* being the boat with the largest capacity of 70 cars; and

WHEREAS, because the existing two engines used in the *Pocahontas* are not supported by the manufacturer due to their age, it is becoming increasingly difficult to find parts for the engines, the engines no longer meet Environmental Protection Agency standards for emissions, and they are not as fuel efficient as more modern engines, therefore VDOT has determined that these engines should be replaced; and,

WHEREAS, the Voith model 24 thrust propulsion drive systems in the *Pocahontas* are no longer manufactured, it has become very difficult to find parts for the drive systems, and the drive systems would not be compatible with the new engines, therefore the drive systems must also be replaced; and

WHEREAS, WATA, as a Designated Recipient in accordance with Federal Transit Administration Circular 9030.1E (Final Rule, January, 2014) and Title 49 of the United States Code § 5302, sponsored an application to the Passenger Ferry Grant Program (“Ferry Program”) on behalf of VDOT in October 2013; and

WHEREAS, VDOT’s application to the Ferry Program as sponsored by WATA was for the replacement of the two engines and the two drive systems used in the *Pocahontas* (the “Project”); and

WHEREAS, the VDOT application as sponsored by WATA specifies that WATA will pass through grant proceeds to VDOT to be used for the Project; and

 WHEREAS, the United States Department of Transportation (“USDOT”) announced on July 22, 2014 the award of a Ferry Program grant in the amount of $2.68 million (the “Ferry Grant”) to WATA, the Designated Recipient, on behalf of VDOT, the Grant Recipient; and

WHEREAS, VDOT, through WATA, shall use the Ferry Grant funds (the “Funds”) for the Project and shall allocate Federal Ferry Program funds as described and defined in the FTA Master Agreement (as defined herein); and

WHEREAS, VDOT will provide $670,000 in state funding which represents 20 percent of the total Project funding - ($3.35 million) addressed pursuant to this Agreement; and

WHEREAS, VDOT will, to the extent necessary and available, provide additional funds from the Federal Highway Administration (“FHWA”) Ferry Boat Formula Program that are eligible for use in improvements to ferry boats and ferry terminal facilities; and

WHEREAS, the annual Federal Transit Administration Master Agreement (the “FTA Master Agreement”), most currently dated October 1, 2014, contains the standard terms and conditions governing the administration of the Project that FTA has financed with Federal assistance (funds or funding) awarded through an underlying agreement with WATA, which can take the form of any: 1) FTA Grant Agreement, including an FTA Grant Agreement for a Tribal Transit Program Project, 2) FTA Cooperative Agreement, or 3) FTA Transportation Infrastructure Finance Innovation Act (TIFIA) Loan, Loan Guarantee, or Line of Credit; and

WHEREAS, VDOT and WATA have executed a Subrecipient Agreement dated \_\_\_\_\_\_\_\_\_\_\_ (the “Subrecipient Agreement”) with regard to the Project;

 WHEREAS, the Federal Transit Administration (FTA) will administer the Ferry Grant funds on behalf of the USDOT; and

WHEREAS, WATA, VDOT and the FTA (the “Project Partners”) have agreed upon the roles, responsibilities and rights of each party, and the terms and conditions for administration of the Project under the FTA Master Agreement; and

WHEREAS, WATA, VDOT, and the FTA have agreed upon the Subrecipient Agreement wherein:

1. WATA agrees to permit VDOT to receive and dispense the Funds as described in the FTA Master Agreement and the Subrecipient Agreement;
2. WATA is not responsible for reimbursement of FHWA funds;
3. VDOT, as the Grant Recipient, agrees to assume all responsibilities set forth in the FTA Master Agreement and Subrecipient Agreement.

 WHEREAS, the Project is being undertaken in the interest of the public good and safety and will benefit the users of the Ferry, the local transit system, the citizens, and the economy of the areas served by the Ferry;

 NOW, THEREFORE, in consideration of the mutual terms, conditions, covenants, and payments hereinafter set forth, WATA and VDOT agree as follows:

1. To the extent permitted by Virginia law, the terms of the FTA Master Agreement, the Subrecipient Agreement, and the Ferry Grant are hereby incorporated by reference as if fully set forth herein. To the extent that Virginia law prohibits VDOT’s compliance with the FTA Master Agreement or any applicable flow-down requirement included in the FTA Master Agreement or other documents incorporated or referenced in this Agreement, VDOT shall communicate with WATA and FTA to find an amicable and lawful resolution to prevent or overcome such conflict.

2. WATA shall develop the FTA Transportation Award Management System (“TrAMS”) application. Within such timeframes as are mutually established by WATA and VDOT, VDOT shall provide all requested and recommended language for the application process, which is subject to the final approval of WATA. WATA shall advise VDOT of any additional information FTA requests, including content and procedural conditions for submitting such information, regarding the Project and VDOT will comply with all requests.

3.      WATA shall manage the TrAMS quarterly Federal Financial (“FFR”) and Milestone (MSR) reporting requirements. VDOT shall provide milestone language and an updated timeline of project progress no later than the 10th of the month following the end of a quarter. For example: For Quarter 1 (October 1 - December 31), the progress report is due no later than January 10th.

4.    VDOT shall follow all applicable laws and regulations (federal and state), procurement policies and guidelines and circulars as directed by WATA, the Commonwealth of Virginia, and FTA in the procurement process and implementation of the Project. VDOT is responsible for providing all detailed specifications for all items to be purchased under the Ferry Grant. If proprietary equipment and/or “Sole Source” is specified, the appropriate documentation must be provided to WATA for the appropriate level of review and approval.

5.      VDOT will provide all documentation of acceptance to WATA verifying satisfaction of all equipment as delivered and satisfaction of installation of equipment prior to payment to vendor(s).

6. VDOT is to provide proof of vendor payments prior to WATA requesting Federal draws for reimbursement.

7.      WATA will manage the drawing of funds and transfer/wires into VDOT’s account within thirty (30) business days of the correctly drawn funds posting into WATA’s account.  VDOT’s transfer account and routing information shall be provided to WATA’s Budget and Grants Administrator upon execution of this Agreement.

 8.    A VDOT representative will be present at WATA Board meetings whenever any items related to the Project require action from the WATA Board of Directors. WATA will give VDOT notice of any meetings in which Board action is anticipated regarding this Project at least five (5) workdays prior to the meeting. If a VDOT representative is not present at the WATA Board meeting, the WATA Board will not take any action with respect to the Project.

9.   VDOT is responsible for the maintenance of all items purchased pursuant to the Project (the “Purchased Assets”) and the keeping of all items, including those items that support the Purchased Assets and are used to maintain the Purchased Assets in a state of good repair, in compliance with the manufacturer’s warranties and specifications. VDOT will maintain ownership of the Purchased Assets and will include the Purchased Assets within the capitalized assets reported by VDOT to the Virginia Department of Accounts for inclusion in the statewide Comprehensive Annual Financial Report.

10.   VDOT shall ensure all vendors who have contracted for any work (goods, services, or repair) in relation to the Project are properly insured prior to execution of any contract and/or beginning work with items purchased in relation to the Ferry Grant.

11.   VDOT must keep all records/documents available for audit in regard to the Ferry Grant, and must maintain all records as required by the FTA after disposition of any Purchased Assets for no less than five (5) years after disposition of any Purchased Assets, in accordance with the FTA Master Agreement. VDOT must provide all necessary documentation, as prescribed by the FTA, to WATA when the Pocahontas Ferry is to be disposed of and FTA must approve this documentation prior to disposition of any Purchased Assets.

12. To the extent permitted by Virginia law, VDOT is solely responsible for all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expense which arise out of, or are related to, this Project. WATA waives all liability with regard to any claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments costs and expenses that arise out of, or are related to, the Project.

13. Upon submission of appropriate invoices, VDOT will compensate WATA, on a quarterly basis, for its administrative efforts in managing the grant and funds associated with the Project. The total amount of compensation from VDOT to WATA will be $26,800. The compensation amount is paid by VDOT and shall not be funded with the FTA Grant Funds. VDOT is responsible for any reasonable audit costs that occur as a result of this Grant and Project. These costs are not included in the $26,800 compensation amount. VDOT staff will be available for any audits and Federal reviews and provide all documents as requested by auditors and reviewers as it pertains to this Project. Any audits in relation to the Project must be conducted by an independent, third-party auditor.

14. The Ferry service and maintenance is regulated by the Coast Guard, and VDOT must adhere to all Coast Guard rules and regulations with regard to the Ferry and the Project, in addition to all other applicable laws.

15. All obligations of VDOT and WATA pursuant to this Agreement are subject to appropriation and the legal availability of funding.

16. Nothing in this Agreement shall be considered a waiver of the sovereign immunity of VDOT, WATA, or the Commonwealth, nor a waiver of VDOT’s or WATA’s right to assert sovereign immunity against any claim for damages as allowed by law.

Executed this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2016.

WILLIAMSBURG AREA TRANSIT AUTHORITY

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

 William C. Porter Jr.

 Interim Executive Director

And

VIRGINIA DEPARTMENT OF TRANSPORTATION

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