**SUBRECIPIENT AGREEMENT BY AND BETWEEN THE WILLIAMSBURG AREA TRANSIT AUTHORITY**

**AND**

**THE VIRGINIA DEPARTMENT OF TRANSPORTATION**

This subrecipient agreement (hereinafter referred to as “the Agreement”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_ 2015 by and between the Williamsburg Area Transit Authority (hereinafter referred to as “WATA”) and the Virginia Department of Transportation (hereinafter referred to as “VDOT”) (collectively, the “Parties”).

**WITNESSETH:**

 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 and installation of the two engines and the two drive systems used in the *Pocahontas* (the “Project”); and

WHEREAS, WATA will develop the FTA Transportation Award Management System (“TrAMS”) application.

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 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, 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 Memorandum of Agreement dated \_\_\_\_\_\_\_\_\_\_\_ (the “MOA”) with regard to the Project; and

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.

 WHEREAS, the Project is being undertaken in the interest of 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;

 WHEREAS, VDOT will implement the Project and upon execution of this Agreement, will be eligible as a sub-recipient for funding from the Grant through WATA; and

 NOW, THEREFORE, the Parties do mutually agree as follows:

# PART I

**PROJECTS**

* 1. VDOT will undertake the Project for the ferry boat Pocahontas, which operates within the counties of Surry and James City. Said Project involves, among other things, an environmental analysis, and the installation of engines and propulsion units on the Pocahontas ferry boat as described in the Grant. The following documents are incorporated by reference as if fully set forth herein: the MOA and the FTA Master Agreement.

**PART II**

**FUNDING**

* 1. WATA will provide FTA Grant Funds in the amount of $2.68 million (the “Grant Funds”) for the Project, subject to award of the Grant to WATA and VDOT’s compliance with the terms of this Agreement.
	2. VDOT will provide funds from state sources in an amount of $670,000 which represents an amount equal to *twenty percent* (20%) of the total of $3.35 million in funds that will be paid to the Project pursuant to this Agreement, as documented by VDOT, as of the date of this Agreement. VDOT will bill WATA based on VDOT’s incurred costs. The invoice will automatically display the 80 percent portion that will require federal reimbursement from WATA from Grant Funds. Since funding for this project will be from FTA and FHWA, two UPC codes will be set up for this project. FHWA will be billed directly by VDOT. WATA will not be billed for FHWA funds.
	3. In order for VDOT to obtain Project fund reimbursement from WATA, VDOT shall submit requests at least quarterly for reimbursement to WATA’s Budget & Grants Administrator, or designee. The requests shall include contractor invoices and a written VDOT certification by the authorized VDOT representative stating that the work is complete and eligible for payment pursuant to this Agreement. WATA shall process and submit to FTA properly submitted requests for reimbursement when funds are accessible through the FTA Electronic Clearing House System (“ECHO”). When WATA receives the requested funds from FTA through ECHO, WATA shall make payments to VDOT within thirty (30) days from WATA’s receipt of the funds from the FTA through ECHO, and send to:

Commonwealth of Virginia

Virginia Department of Transportation

ATTN: Fiscal Division-Cash Receipts: Beverly A. Reynolds

1401 E. Broad Street

Richmond, VA 23219

cofiscalcashreceipt@vdot.virginia.gov

804-371-2987

 With a notice of the payments sent to:

 VDOT

 ATTN: Laura Cordrey

 1700 N. Main Street

 Suffolk, VA 23434

* 1. In no event shall reimbursement of the Project costs from the FTA Grant Funds exceed 80% of the total Project amount of $3.35 million addressed by this Agreement. If the FTA determines that any Grant Funds were not properly expended by VDOT, then VDOT agrees to reimburse the FTA and/or WATA for any FTA Grant Funds expended (excluding the 20% state funds) for costs or purposes deemed ineligible for payment with Grant funds or otherwise improperly expended. VDOT must immediately disclose to WATA any notification regarding any improper expense of Grant Funds by VDOT, and VDOT must reimburse the FTA and/or WATA sums improperly expended no later than thirty (30) days from a final, written determination from FTA that Grant Funds were improperly expended.

**PART III**

**GRANT REQUIREMENTS**

3.01. To the extent permitted by Virginia law, the applicable terms of FTA’s grant award for the Grant, the FTA Assistance Programs Certifications and Assurances for the current fiscal year, and the most current FTA Master Agreement, at this time dated October 1, 2014, including all documents incorporated therein, and all applicable laws, regulations, and circulars, are incorporated herein by reference as if fully set forth herein. VDOT shall be a subrecipient under the Grant. For the purposes of this Agreement, unless the context clearly indicates otherwise, each reference in the foregoing documents to “recipient” or “applicant” shall mean VDOT and all VDOT obligations under such documents made due and owing to “government” or “FTA” shall mean due and owing to WATA. VDOT shall perform the Project work in strict accordance with the provisions of the Grant. 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 any other documents incorporated or referenced in this Agreement, VDOT shall communicate with WATA and FTA to find an amicable resolution to prevent or overcome such conflict.

* 1. In addition, VDOT shall comply with the following:

a. Federal Requirements: To the extent permitted by Virginia law, VDOT shall at all times comply with all applicable federal statutes, executive orders, FTA circulars, regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the FTA Master Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. VDOT’s failure to comply with this provision shall constitute a material breach of this Agreement.

b. VDOT shall make all applicable certifications and assurances which the FTA may require of Grant recipients, and any revised, updated or reissued versions of the certifications and assurances. VDOT will affirm its compliance with all the certifications and assurances by signing the most current Federal Fiscal Year FTA Certifications and Assurances Signature Page and forwarding it to WATA. This certification is due to WATA annually on December 30. VDOT’s failure to comply with this provision shall constitute a material breach of this Agreement.

c. The parties agree that VDOT’s certifications and assurances are material representations of fact upon which WATA has relied in deciding whether to enter into this Agreement and accept award of the Grant proceeds. The submission of the Certification and Assurances is a prerequisite for the award of the Grant proceeds under various federal laws including 31 U.S.C. 1352. Failure to make the required certifications or the making of false certifications is punishable under federal law and can include civil penalties in excess of $10,000 for each unmade or incorrect certification. VDOT is responsible for signing a physical copy of Certification and Assurances annually. The Certification and Assurances are subject to WATA approval.

d. Procurement: In accordance with FTA Circular 4220.1F, VDOT shall adhere to the applicable federal procurement regulations, including, but not limited to, the following:

 General: VDOT may enter into third party contracts for procurement of design, engineering and construction services related to the Project. VDOT must ensure that these services are obtained in full and open competition, that the prices are fair and reasonable, and that these services are in compliance with the provisions of applicable FTA regulations, and all other federal, state, and local laws. This includes affording procurement opportunities to small and local disadvantaged business enterprises.

 Conformance with state and local Law: VDOT shall use its own procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in this Agreement.

 Contract Administration System: VDOT shall maintain a contract administration system that ensures that third-party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

 Statutory and Regulatory Requirements: A current and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Disadvantaged Business Enterprise (“DBE”), Clean Air, and Buy America) is contained in the FTA Master Agreement. VDOT is responsible for evaluating these requirements for relevance and applicability to each procurement. Subject to the limitations set forth in Section 3.01 of this Agreement, VDOT agrees to comply with all applicable statutory and regulatory requirements referenced in the FTA Master Agreement. For example, procurements involving the purchase of iron, steel, and manufactured products will be subject to the “Buy America” requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contractual clauses may be found in FTA’s Third Party Procurement Manual (FTA Circular 4220.1F and the Best Practices Procurement Manual, both available on the FTA website).

e. DBE Goal: As required by FTA, WATA has set its overall goal for DBE participation in federal contracts. VDOT agrees to support WATA in the achievement of this goal and will strive to reach the goal established by utilizing race neutral means. VDOT will also make and document its good faith efforts to ensure that Attachment 11 of WATA’s DBE program which strives to foster small business participation is accomplished. WATA’s DBE Program, Policy and Goal can be located on their website, and is incorporated by reference herein.

f. DBE Reporting Requirements: VDOT will report DBE participation in the Grant to WATA on a semi-annual basis. Reports will be due to WATA on May 1 and November 1 of each respective year. The reports shall follow the Uniform DBE Awards or Commitments and Payments that is found in the Civil Rights tab of the TEAM website: http://www.fta.dot.gov/civil\_rights.html

VDOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidder’s list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age and annual gross receipts of all bidding firms. A copy of VDOT’s bidder list shall be given to WATA at the same time as the DBE report.

VDOT will maintain and will require prime contractors to maintain records and documents of payments to DBE’s for three (3) years following the performance of any contracts relating to the Project. This reporting requirement also extends to all subcontractors used in the Project.

g. Contractors and Subcontractors: VDOT shall place in its contracts with contractors and subcontractors for the Project those obligations which the FTA Master Agreement requires recipients to include in third party contracts and subcontracts and any other obligations required by applicable law. VDOT agrees to include in its contracts entered into and for the Project the same certifications, assurances, and agreements to which VDOT is obligated under this section.

 VDOT will make sure that contractors are not suspended from performing work for the FTA and will conduct the required due diligence to ascertain that requirement. Proof that the due diligence was performed will be kept in the Project files and will be forwarded to WATA at least annually by the end of the Federal fiscal year.

 VDOT will include in all contracts pursuant to the Grant the following clause: “All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated herein by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this Agreement. Contractor’s failure to so comply shall constitute a material breach of this Agreement.”

 h. Access to Records and Reports: VDOT will give WATA, the FTA, the Comptroller General of the United States, the U.S. Secretary of Transportation, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the Grant, and will establish a proper accounting system in accordance with generally accepted standards of agency directives. VDOT will also require its third party contractors to allow the same access discussed above.

 VDOT shall require the contractor to permit WATA, VDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

 VDOT shall require the contractor to maintain all books, records, accounts, and reports for a period of not less than three (3) years after the date of termination or expiration of its contract, except in the event of litigation or settlement of claims, in which case, contractor shall agree to maintain the same until WATA, VDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39 (i)(11).

i. Breaches and Dispute Resolution

 Claims for Damages. Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. However 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.

 Remedies. Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between VDOT and WATA arising out of or relating to this Agreement or its breach may be decided by a mutually agreeable form of alternative dispute resolution, or in a court of competent jurisdiction within the County of James City.

 Rights and Remedies. The duties and obligations imposed by the Agreement’s documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed by law. No action or failure to act by WATA or VDOT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. 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.

j. WATA Oversight: WATA may inspect the Project to ensure compliance with this Agreement and compliance with all DBE requirements. Neither inspection nor approval by WATA of the Project work relieves VDOT of its responsibilities and liabilities as the responsible party for carrying out the Grant.

 k. Termination of this Agreement: This Agreement survives completion of the Project. Nonetheless, in the event that VDOT fails to perform services or to provide the matching funds required under the Agreement in the manner called for by the Agreement, WATA may terminate the Agreement for default. Termination shall be effective by serving a notice of termination on VDOT setting forth the manner in which VDOT is in default. VDOT will only be reimbursed for services performed in accordance with the manner of performance set out in the Agreement. If the Agreement is terminated by WATA due to a VDOT default, WATA is not liable nor responsible for completion of the Project, and VDOT will bear the cost of any and all audits related to the Project. Any termination by WATA for VDOT default will not relieve VDOT of its obligation to compensate WATA $26,800.00 for its administrative efforts in managing the Grant, and reasonable costs associated with audits of the Project. Any audits in relation to the Project must be conducted by an independent, third-party auditor.

 l. Opportunity to Cure: WATA in its sole discretion may, in the case of an alleged breach or default, allow VDOT time to cure the default prior to the effective date of the termination. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If VDOT fails to remedy to WATA’s satisfaction the breach or default or any terms, covenants, or conditions of this Agreement within thirty (30) business days after receipt of the written notice from WATA setting forth the nature of the breach or default, WATA shall have the right to terminate the Agreement without any further obligation to VDOT. Any such termination for default shall not in any way operate to preclude WATA from also pursuing all available remedies against VDOT, including those authorized in 3.02(k), for said default or breach.

* 1. No Obligation to Third Parties: VDOT acknowledges and agrees that, notwithstanding any concurrence by the federal government and/or WATA in, or approval of, a third party contract, absent express written consent by the federal government and/or WATA, neither the federal government nor WATA is a party to the third party contract and shall not be subject to any obligations or liabilities to the third party contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract.

VDOT agrees to include the above clause in each third party contract for which VDOT will receive reimbursement, in whole or in part, from Grant funds. It is further agreed that the clause shall not be modified, except to identify the third party contractor who will be subject to its provisions.

* 1. Incorporation of Federal Transit Administration Terms: The proceeding provisions include in part certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the proceeding Agreement provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Subject to the limitations set forth in Section 3.01 of this Agreement, all FTA mandated terms shall be deemed to control in the event of conflict with other provisions contained in this Agreement. VDOT shall not perform any act, fail to perform any act, or refuse to comply with any WATA requests which would cause VDOT to be in violation of the FTA terms and conditions.
	2. Recitals: The recitals are incorporated into this Agreement.

PART IV

NOTICES

* 1. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when either: personally delivered; or received by certified or registered mail, first class, postage paid, return receipt requested to any party hereunto as follows:

If to WATA: Executive Director

 Williamsburg Area Transit Authority

 7239 Pocahontas Trail

 Williamsburg, VA 23185

 with Copy to:

 James City County Attorney’s Office

 101-D Mounts Bay Road,

 Williamsburg, VA 23185

If to VDOT:

 Region Operation Program Manager

 Virginia Department of Transportation

 1700 N. Main Street

 Suffolk, VA 23434

PART V

SEVERABILITY

* 1. The parties agree that subject to the limitations set forth in Section 3.01 of this Agreement, the provision of federal funds for the Project under this Agreement makes the federal statutes, rules, regulation, circulars and other forms of written guidance controlling over any inconsistent state or local statutes, rules, or regulations. To the extent not covered by any federal statute, rule, regulation, circular, or other written guidance, the parties agree that if any provision of this Agreement shall contravene, or be invalid under, the applicable laws of the particular state, or jurisdiction where used, such contravention or invalidity shall not invalidate the whole Agreement but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid in the same particular state or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

PART VI

ACKNOWLEDGEMENT AND EXECUTION

* 1. This agreement shall inure to, be to the benefit of, and bind the Virginia Department of Transportation and their respective successors and/or assigns as if they had been named herein.

THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT

CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, and SECTION 1001.

PART VII

SUBJECT TO APPROPRIATIONS

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

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

WILLIAMSBURG AREA TRANSIT AUTHORITY

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

 William C. Porter Jr.

 Interim Executive Director

And

VIRGINIA DEPARTMENT OF TRANSPORTATION

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