

MOTION:

SECOND:

RE: AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION AND THE CITY OF FREDERICKSBURG

ACTION:

WHEREAS, the Fredericksburg Regional Transit (FRED), because of their submittal of National Transit Database statistics for the Washington DC – MD - VA urbanized area, was apportioned Federal CARES funding; and

WHEREAS, the Potomac and Rappahannock Transportation Commission (PRTC) is a direct recipient of federal transportation grant monies distributed by the Federal Transit Administration (FTA) in the Washington, DC – MD – VA urbanized area; and

WHEREAS, PRTC and the City of Fredericksburg wish to work cooperatively in order that FRED may access the Federal CARES funding; and

WHEREAS, a Memorandum of Agreement outlining the roles of each party and the federal regulations that need to be complied with has been drafted and reviewed by PRTC's legal counsel.

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission does hereby authorize the Executive Director to execute the Memorandum of Agreement between the Potomac and Rappahannock Transportation Commission and the City of Fredericksburg to provide Fredericksburg Regional Transit access to Federal CARES funding.

Votes:

Ayes:

Nays:

Abstain:

Absent from Vote:


Alternate Present Not Voting:


Absent from Meeting:



October 29, 2020

TO: Chair Franklin and PRTC Commissioners

FROM: Betsy Massie 
Director, Grants and Project Management

THROUGH: Robert A. Schneider, PhD 
Executive Director

SUBJECT: Authorize the Executive Director to Execute a Memorandum of Agreement Between the Potomac and Rappahannock Transportation Commission and the City of Fredericksburg

Recommendation:

Authorize the execution of a Memorandum of Agreement (MOA) between the City of Fredericksburg and the Potomac and Rappahannock Transportation Commission (PRTC)

Fredericksburg Regional Transit (FRED), because of their submittal of National Transit Database statistics for the Washington DC – MD- VA urbanized area, was apportioned Federal CARES funding with the Federal Register Notice of July 2, 2020 (39971).

The Potomac and Rappahannock Transportation Commission (PRTC) is a direct recipient of federal transportation grant monies distributed by the Federal Transit Administration (FTA) in the Washington, DC – MD – VA urbanized area, the City of Fredericksburg is not. PRTC and the City of Fredericksburg wish to work cooperatively in order that FRED may access the Federal CARES funding for operating assistance.

A Memorandum of Agreement (MOA) outlining the roles of each party and the federal regulations that need to be complied with has been drafted and is attached. PRTC's legal counsel has reviewed the draft agreement, as has the City of Fredericksburg.

A grant application (VA-2020-052) was submitted to FTA on September 25, 2020 which contained PRTC, FRED, and the Virginia Railway Express projects for Federal CARES funding. That grant is expected to be awarded in November and this MOA will provide FRED access to the Federal CARES funding.

Chair Franklin and PRTC Commissioners

October 29, 2020

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Fiscal Impact:

NA

Attachment: MOA between City of Fredericksburg and Potomac and Rappahannock
Transportation Commission



Project Description

(Separate sheet for each Project)

Project Details

Project Title **FRED Project ID: 21-01 – CARES Act 5307 Allocation**

Project Start Date January 2021 Project End Date December 2021

Subrecipient Project Manager Jamie Jackson

Subrecipient Organization Fredericksburg Regional Transit

Using Pre-Award Authority Yes X No

Location of Project: 1400 Jefferson Davis Highway, Fredericksburg, VA 22401

Funding Details

Funding sources - *FTA awards require a match of 20% in most cases; Subrecipients usually provide their own match.*

Project Total	<u>\$ 81,661</u>	
Federal Funds	<u>\$ 81,661</u>	Type: <u>5307 – CARES Act</u>
Local Match (Other)	<u> </u>	Source: <u> </u>
Total Funding	<u>\$ 81,661</u>	

Project Summary - *Provide a one sentence summary of project.*

This project utilizes Section 5307 CARES Act funding to prevent, prepare for, and respond to coronavirus. The project's scope of work includes operating expenditures.

Detailed Project Description - *Provide as much detail as needed (attach additional pages)*

Project Milestones

Project Description – *In the space below, please provide detailed information about the project. Include all activities, dates, and deliverables.*

Milestone Information for Project **FRED Project ID: 21-01 – CARES Act 5307 Allocation**

Provide milestone information for each Project.

Use this format for bus purchases. This is the required FTA format for this activity and you should not change Milestone descriptions.

Project - FRED 20-01	Item Description or Purpose	Total Budget Amount
	<u>CARES Act 5307 Allocation</u>	\$ <u>81,661</u>
	<u>Milestone Description</u>	<u>Milestone Dates</u>
1	RFP/IFB Issued	<u>n/a</u>
2	Contract Award Date	<u>n/a</u>
3	Contract Complete Date	<u>n/a</u>
4	Project Complete	<u>December 2021</u>
5		<u></u>
6		<u></u>
7		<u></u>
8		<u></u>
9		<u></u>
10		<u></u>

MEMORANDUM OF AGREEMENT

A SUBGRANT BETWEEN

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION AND

CITY OF FREDERICKSBURG

DbA FREDERICKSBURG REGIONAL TRANSIT

FOR TRANSIT PROJECTS

PART I

THIS AGREEMENT, consisting of Part I and Attachments A-C attached and incorporated by reference, (“SUBGRANT”) made this _____ day of _____, 202_, between the Potomac and Rappahannock Transportation Commission (PRTC), located at 14700 Potomac Mills Road, Woodbridge, VA 22192 and, the City of Fredericksburg, dba Fredericksburg Regional Transit (FRED) with its office at, 1400 Jefferson Davis Highway, Fredericksburg, VA 22401 (“SUBRECIPIENT”), and

WHEREAS, PRTC serves as the administrative agent for the Vanpool Alliance Program under an agreement with the Northern Virginia Transportation Commission and the George Washington Regional Commission (GWRC); and

WHEREAS, the GWRC has determined that a specified amount of funding for GWRC generated by the Vanpool Alliance program would be used for Fredericksburg Regional Transit (FRED) projects; and

WHEREAS, PRTC is a direct recipient of Federal formula funds in the Washington DC-VA-MD UZA, WMATA being the designated recipient; and

WHEREAS, FRED, because of their submittal of National Transit Database statistics for the Washington DC–VA-MD Urbanized Area, also earns Federal Section 5307 Urbanized Area Funds, Federal Section 5339 Bus and Bus Facilities Funds, and CARES funds; and

WHEREAS, PRTC is an eligible recipient of federal transportation grant monies distributed by the FTA under the FTA Section 5307 Urbanized Area Formula funds, FTA Section 5339 Bus and Bus Facilities funds, and CARES Act funds in the Washington, DC-VA-MD urbanized area; and

WHEREAS, PRTC and the City wish to work cooperatively in order that FRED may access the Federal Section 5307, Section 5339 and CARES Act funds for various FRED projects.

WHEREAS, PRTC has applied for a Federal Grant No. 5438-2020-02 from FTA, based on a CARES project submitted on August 16, 2020, on behalf of the Fredericksburg Regional Transit; and

WHEREAS, FTA approved the PROJECT, as part of Federal Grant VA-2020-052 on _____; and

WHEREAS, the SUBRECIPIENT will carry out the PROJECT as described in this SUBGRANT and in accordance with the supplemental information provided in Attachment B; and

WHEREAS, requirements of the most recent FTA Master Agreement, which may be found at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/sample-fta-agreements/146616/fta-master-agreement-fy-2020.pdf> and the following federal agency circulars are applicable to this SUBGRANT award:

- FTA Circular No. 4702.1B – Title VI Requirements and Guidelines for Federal Transit Administration Recipients;
- 49 U.S.C. 5323(n) – Annual Certifications and Assurances;
- FTA Circular No. C 4220.1F – Third Party Contracting Guidance;
- FTA Circular No. C 5010.1E – Award Management Requirements;
- FTA Circular No. C 9030.1E Urbanized Area formula Program: Program Guidance and Application Instructions
- FTA Circular No. C 4710.1 Americans with Disabilities Act Guidance
- 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; and

WHEREAS, the SUBRECIPIENT possesses the necessary qualifications and ability to carry out the PROJECT, and is desirous of carrying out the PROJECT in accordance with the provisions set forth herein.

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

SECTION 1. STATEMENT OF WORK

Subrecipient will perform work under this subgrant as outlined in **FRED Project #21-01 (Attachment B)** and implement this project as described. Subrecipient will complete and submit timely reports, including monthly invoices and quarterly status reports throughout the subgrant period.

Subrecipient will also comply with all of the following:

- A. Administrative Reporting Requirements
 - 1. Certification of Local Match (if needed)
 - 2. Annual Certifications and Assurances

SUBRECIPIENT will be responsible for completing and submitting the FTA Certifications and Assurances, as directed by PRTC, annually throughout the life of the project.

3. FTA-Required Quarterly Progress Reports

SUBRECIPIENT shall submit (due by the 15th day of the month following the end of the quarter) a status report including any milestones met,

4. Quarterly DBE Prompt Payment Reports

If a Prime Contractor is using a DBE sub-contractor evidence that the Prime is promptly paying the sub(s) must be submitted quarterly.

5. Project Work Plan

SUBRECIPIENT has provided a PROJECT Work Plan, which is provided in ATTACHMENT B, and agrees to provide quarterly status reports on the PROJECT objectives and benchmarks on a schedule provided in (3 above) and in a format provided by PRTC.

6. Title VI Policy and Program

SUBRECIPIENT must have a Title VI Policy and Program.

7. Title VI, ADA, and EEO Complaint Status Report

SUBRECIPIENT will provide a Title VI, ADA, and EEO complaint report quarterly, outlining complaints received, outcome of investigation, and current status.

8. Procurement Policies and Procedures Procurement Requirements

SUBRECIPIENT will provide a copy of its Procurement Policies and Procedures to ensure all federal requirements are included. Any FTA-assisted procurement will be reviewed by PRTC prior to being issued for procurement.

9. Single Audit if more than \$750,000 of federal funding is expended in a year, audited financial statements if total federal funding expended is under \$750,000.

10. Financial Processes and Procedures

RECIPIENT will review SUBRECIPIENTS financial management systems, including Standards of Financial Reporting, Accounting Records, Internal Controls, Budget Controls, Allowable Costs, Cash Management, Source Documentation and documentation for Indirect Costs, is applicable.

11. Final Report

SUBRECIPIENT is required to submit a Final Report (due 60 days following contract expiration), in a format provided by PRTC.

Payment of the final invoice is contingent on receipt of the Final Report.

B. Compliance and Oversight

As a recipient of FTA formula funds, PRTC complies with federal requirements that pass through to the SUBRECIPIENT. To ensure that projects are implemented in accordance with FTA requirements, PRTC will monitor SUBRECIPIENT activity by randomly reviewing documentation including but not limited to A-133 audit or other consolidated and comprehensive financial statements, monthly, quarterly and annual reports, FTA-required documentation of Title VI and DBE compliance, review of procurement Policies and Procedures, review of FTA assisted procurements, completion of Financial Profile Questionnaire, and by conducting site visits at a minimum of once every year over the life of the project.

SUBRECIPIENT is subject to Federal Funding Accountability and Transparency Act (“FFATA”) reporting and must supply required data for entry into the FFATA Subaward Reporting System if applicable.

SECTION 2. COMPENSATION AND METHOD OF PAYMENT

- a. Payment to SUBRECIPIENT shall be on a cost reimbursable basis for the Federal share of the Project in accordance with the budget as shown in ATTACHMENT B. This amount shall be inclusive of all expenses for the completion of the PROJECT in accordance with this SUBGRANT.
- b. Payment shall be made by PRTC to the SUBRECIPIENT upon receipt of SUBRECIPIENT’s invoice, which shall be submitted monthly to PRTC in a format to be provided by PRTC (similar to Attachment C). All invoices must be accompanied by documentation and invoices falling at the end of the quarter must be accompanied by quarterly status reports. Each invoice shall show the Subgrant Agreement number and shall be sent to Betsy Massie.

SECTION 3. RESPONSIBILITIES OF THE SUBRECIPIENT

- a. Performance of the work allocated to the SUBRECIPIENT in Section 1, Statement of Work;
- b. SUBRECIPIENT shall supervise and direct all PROJECT activities as specified in Section 1. All PROJECT personnel employed by the SUBRECIPIENT shall be fully qualified to perform services under this SUBGRANT;
- c. Submission of any proposed subcontracts to PRTC for review and, if approved, concurrence as shown by PRTC’s written signature; and
- d. Any changes to this SUBGRANT must be carried out in writing. Procedures for PRTC concurrence in changes and the execution of these changes are specified in Section 6, CHANGES.

SECTION 4. RESPONSIBILITIES OF PRTC

- a. Maintain relevant data in support of the PROJECT;
- b. Provide the SUBRECIPIENT copies of technical reports prepared by PRTC;
- c. The PRTC Project Manager shall review SUBRECIPIENT's draft products in a timely manner, as necessary, to ensure deliverable completion by SUBRECIPIENT in accordance with the Period of Performance, specified in SECTION 3 above; and
- d. Review any proposed subcontracts for consistency with the terms of this agreement; and require any necessary modification in writing.

SECTION 5. ADMINISTRATION OF THE SUBGRANT

For the purpose of this SUBGRANT, the Executive Director of PRTC, or his designee, is the PRTC Contracting Officer, and is the only party authorized to make changes or amendments in this SUBGRANT on PRTC's behalf. The PRTC Project Manager shall be Betsy Massie of PRTC's Department of Grants and Project Development at bmassie@omniride.com

SECTION 6. CHANGES

- a. The parties hereto agree that any modification or change in any aspect of this SUBGRANT must be accomplished in writing and signed by both parties before it is considered a SUBGRANT requirement.
- b. The parties hereto may, from time to time, propose changes in the Statement of Work to be performed by the SUBRECIPIENT. Such changes (including, but not limited to material scope of work changes, time schedule and report delivery changes, budget revisions that increase, decrease, or materially change the SUBGRANT's total compensation) must be mutually agreed upon in writing and signed by both PRTC and the SUBRECIPIENT.
- c. Period of performance or schedule changes may be granted by PRTC to the SUBRECIPIENT on a unilateral basis, as requested by the SUBRECIPIENT, that do not increase, decrease or materially change the SUBGRANT's total compensation or include material scope of work changes, or authorize any work or costs to be incurred outside the period in which the grant funding is available for reimbursement.
- d. Any modification or change in key personnel working on the project outlined in this SUBGRANT must be communicated in writing and approved by PRTC.

THE PARTIES hereto have executed this SUBGRANT as of the day, month and year on which the PRTC authorized representative fully and finally executes this document as evidenced by his/her signature hereto.

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION
Transit**

**CITY of FREDERICKSBURG
dba Fredericksburg Regional**

By: _____

By: _____

Executive Director

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID NUMBER

FEDERAL TAX ID NUMBER

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

1. Energy Conservation. 42 U.S.C. § 6321 *et seq.*

The SUBRECIPIENT 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.

2. Clean Water Requirements. 33 U.S.C. § 1251 *et seq.*

a. The SUBRECIPIENT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The SUBRECIPIENT agrees to report each violation to PRTC and understands and agrees that PRTC will, in turn, report each violation, as required, to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.

b. The SUBRECIPIENT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.

3. Lobbying. 31 U.S.C. § 1352 *et seq.*

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. [Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995. (P.L. 104-65, to be codified at 2 U.S.C. § 1601 *et seq.*)]

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts

under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

4. Access to Records and Reports. 49 U.S.C. § 5325

a. The SUBRECIPIENT agrees to provide PRTC, and if applicable the state or federal funding agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the SUBRECIPIENT which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transactions.

b. The SUBRECIPIENT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The SUBRECIPIENT agrees to maintain all books, records, accounts and reports required under this Contract for a period of 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 the SUBRECIPIENT agrees to maintain same until PRTC, the applicable state or federal funding agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5. Funding Agency Changes.

The SUBRECIPIENT shall at all times comply with all applicable state and federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the funding agreement between such agency and PRTC, as they may be amended or promulgated from time to time during the term of this Contract. SUBRECIPIENT failure to comply shall constitute a material breach of this Contract.

6. Clean Air. 42 U.S.C. § 7401 *et seq.*

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

a. The SUBRECIPIENT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* The SUBRECIPIENT agrees to report each violation to PRTC and understands and agrees that PRTC will, in turn, report each violation as required to assure notification to the funding federal agency, if any, and the appropriate EPA regional office.

b. The SUBRECIPIENT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.

7. Recycled Products. 42 U.S.C. § 6962

The Recycled Products requirements apply to all contracts for items designated by the EPA, when PRTC or the SUBRECIPIENT procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using federal funds.

The SUBRECIPIENT agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

8. No Government Obligation to Third Parties.

a. The SUBRECIPIENT acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities of PRTC, the SUBRECIPIENT, or any other person (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The SUBRECIPIENT agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the SUBRECIPIENT that will be subject to its provisions.

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

31 U.S.C. § 3801 *et seq.*

a. The SUBRECIPIENT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and all appropriate federal agency regulations apply to its actions pertaining to this Project. Upon execution of the underlying contract, the SUBRECIPIENT certifies or 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 contract of the federally

assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the SUBRECIPIENT further acknowledges that if it makes, or caused 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 the SUBRECIPIENT or to the extent the Federal Government deems appropriate.

b. The SUBRECIPIENT 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, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(N)(1) on the SUBRECIPIENT, to the extent the Federal Government deems appropriate.

c. The SUBRECIPIENT agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the SUBRECIPIENT who will be subject to the provisions.

10. Termination. 49 U.S.C. Part 18

Applicable to all contracts in excess of \$10,000

a. **Termination for Convenience.** PRTC, by written notice, may terminate this Contract, in whole or in part, at any time by written notice to the SUBRECIPIENT when it is in PRTC's best interest. If this Contract is terminated, PRTC shall be liable only for payment under the payment provisions of this Contract for services rendered before the effective date of termination.

b. **Termination for Default [Breach or Cause].** If the SUBRECIPIENT fails to perform in the manner called for in this Contract, or if the SUBRECIPIENT fails to comply with any other provisions of the Contract, PRTC may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the SUBRECIPIENT setting forth the manner in which the Contract is in default. The SUBRECIPIENT will only be paid the contract price for services performed in accordance with the manner of performance set forth in the Contract. If it is later determined by PRTC that the SUBRECIPIENT had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the SUBRECIPIENT, PRTC, after setting up a new delivery of performance schedule, may allow the SUBRECIPIENT to continue work, or treat the termination as a termination for convenience.

c. PRTC in its sole discretion may, in the case of termination for breach or default, allow the SUBRECIPIENT ten (10) working 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 the SUBRECIPIENT fails to remedy to PRTC's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the ten (10) working days after receipt by the SUBRECIPIENT of written notice from PRTC setting forth the nature of said breach or

default, PRTC shall have the right to terminate the Contract without further obligation to the SUBRECIPIENT. Any such termination for default shall not in any way operate to preclude PRTC from also pursuing all available remedies against the SUBRECIPIENT and its sureties for said breach or default.

d. In the event PRTC elects to waive its remedies for any breach by the SUBRECIPIENT of any covenant, term or condition of this Contract, such waiver by PRTC shall not limit PRTC's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

11. Civil Rights Requirements. 29 U.S.C. § 62, 42 U.S.C. § 2000, 42 U.S.C. § 602, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332

a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, the SUBRECIPIENT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the SUBRECIPIENT agrees to comply with applicable federal implementing regulations.

b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

i. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the SUBRECIPIENT 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 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this Project. The SUBRECIPIENT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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, the SUBRECIPIENT agrees to comply with apprenticeship. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

ii. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and other applicable law, the SUBRECIPIENT agrees to refrain from discrimination against present and prospective employees for reason of

age. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

iii. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the SUBRECIPIENT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

c. The SUBRECIPIENT also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance, modified only if necessary to identify the affected parties.

12. Breaches and Dispute Resolution.

a. **Disputes.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the PRTC Executive Director or his/her designee. This decision shall be final and conclusive, unless within ten (10) working days from the date of receipt of its copy, the SUBRECIPIENT mails or otherwise furnishes a written appeal to the Executive Director or his/her designee. In connection with any such appeal, the SUBRECIPIENT shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director or his/her designee shall be binding upon the SUBRECIPIENT, and the SUBRECIPIENT shall abide the decision.

b. **Performance During Dispute.** Unless otherwise directed by PRTC, the SUBRECIPIENT shall continue performance under this Contract while matters in dispute are being resolved.

c. **Claim for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for acts it 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.

d. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between PRTC and the SUBRECIPIENT arising out of or relating to this agreement or its breach may be submitted by the parties for arbitration if the parties mutually agree, otherwise, such claims, counterclaims, disputes and other matters shall be decided by a court of competent jurisdiction within the District of Columbia.

e. **Rights and Remedies.** The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by PRTC or the SUBRECIPIENT shall constitute a waiver or any right or duty afforded to them under

the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

13. Patent and Rights in Data.

a. **Rights in Data.** The following requirements apply to each contract involving experimental, developmental or research work:

i. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; CDs or flash drives (thumbsticks/thumbdrives) containing data; and any other information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

ii. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its federal license to any other party.

(1) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(2) Any rights of copyright purchased by the Purchaser or the SUBRECIPIENT using federal assistance.

b. **Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

i. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and the SUBRECIPIENT agree to take actions necessary to provide immediate notice and a detailed

report to the party at a higher tier until the federal funding agency is ultimately notified.

ii. Unless the Federal Government later makes a contrary determination in writing, irrespective of the SUBRECIPIENT status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the SUBRECIPIENT agree to take the necessary actions to provide, through the federal funding agency, those rights in that invention due the Federal Government as described in the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

iii. The SUBRECIPIENT also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

14. Interest of Members of Congress.

No member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

15. Interest of Employees of PRTC.

No employee of PRTC who exercises any functions or responsibilities in review or approval of the undertaking or carrying out the Project during his or her tenure or one (1) year thereafter, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Contract or the proceeds thereof.

16. Interest of the SUBRECIPIENT.

The SUBRECIPIENT covenants that it has presently no financial interest, shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The SUBRECIPIENT further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

17. Allowable Costs.

Only those costs which are consistent with Title 2 Part 200 of the Code of Federal Regulations shall be reimbursed under this Contract.

18. Covenant Against Contingent Fees.

The SUBRECIPIENT warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of warranty shall give the Contracts Officer the right to terminate this Contract or, in his discretion, to —

deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the SUBRECIPIENT upon contracts or sales secured or made through a bona fide established commercial or selling agency maintained by the SUBRECIPIENT for the purpose of securing business.

19. Indemnification.

The SUBRECIPIENT, acting as an independent SUBRECIPIENT, shall hold PRTC harmless from and shall be solely responsible, where found liable, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of this work.

20. Severability.

It is understood and agreed by the parties that if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as of not containing the particular provision or provisions held to be invalid in the said particular state, county or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

21. Assignments.

This Contract shall not be assigned, sublet or transferred in whole or in part by the SUBRECIPIENT, except with the previous written consent of the PRTC Contracting Officer or his designee.

22. Entire Agreement.

This Contract sets forth the entire understanding of the parties and supersedes all previous agreements, whether oral or in writing, relating to the subject matter hereof. This Contract may only be altered, amended or modified in accordance with Changes Clause of this Contract.

23. Confidential or Personal Data.

a. PRTC respects the privacy or business interests involved in confidential or personal data. It is PRTC's policy to obtain confidential or personal data or store or allow storage of such data only (i) when necessary to fulfill PRTC's information-gathering and data collection responsibilities, or (ii) in conjunction with PRTC projects. PRTC intends to minimize risk of disclosure of such confidential or personal data.

b. Whenever feasible and the requirements of a project allow, the names of survey

participants or users of a website or other data collection method shall not be accepted, recorded, stored or retained.

c. When PRTC engages in a project, which involves the collection or storage of confidential or personal information by or through use of surveys, websites or by other data collection, the following conditions shall be met:

i. The survey, website or other collection method shall contain a set of conditions for use and a disclaimer of any PRTC liability for use, in language approved by PRTC in writing.

ii. The party(ies) working with PRTC shall demonstrate adherence to a federal or applicable state standard for protecting confidential or personal information.

iii. The confidential or personal information collected or stored by or through the survey, website or other data collection shall be kept confidential. All necessary steps shall be taken to protect the privacy of the users of the website or other data collection. Any confidential or personal information provided by users of the website or other data collection, including but not limited to their names and addresses, shall be protected.

iv. PRTC shall retain control over and ownership of all surveys, web pages, control files and scripts, database schema, and database contents, in addition to all content which is published on or stored by the website or other data collection, unless PRTC specifically agrees in writing otherwise.

v. No release of any announcements intended for public dissemination concerning the collection or storage of such information by or through the survey, website or other data collection shall occur until PRTC has given prior written authorization, unless PRTC specifically agrees in writing otherwise.

vi. In the event that information collected or stored by or through the survey, website or other data collection shall be stolen or handled incorrectly, the party(ies) working with PRTC on the project shall be responsible for any required notification to persons who have entered personal information in that system and all costs related thereto.

vii. The project documents shall provide that other parties working with PRTC on the survey, website or other data collection or storage shall indemnify PRTC with at least the following commitment:

The [SUBRECIPIENT or other party] shall indemnify and hold PRTC harmless from and shall be solely responsible, for the payment of any and all claims for loss, personal injury, death, property damage, infringement or misappropriation of any third party's intellectual property rights, violation of privacy, confidentiality or otherwise, arising out of any act of omission or negligence of its employees or agents in

connection with the performance of the work under this [agreement or memorandum of understanding].

viii. At the end of the project or contract, any personal or confidential information shall be given to PRTC or destroyed and a certification of destruction provided to PRTC by the SUBRECIPIENT or other party.

24. PRTC's Policies and Procedures.

When federal law, or any grant conditions, certifications or assurances require PRTC to utilize competitive procurement procedures for selection of a SUBRECIPIENT, PRTC's policies and procedures shall govern every aspect of the SUBRECIPIENT selection process, e.g., the solicitation, evaluation, award, and post-award process (including, without limitation, any protest of an award, and the terms and conditions under which a contract may be approved, executed and administered). Any SUBRECIPIENT and potential SUBRECIPIENT will be provided with a copy of such policies and procedures, on request.

25. Additional Requirements.

In addition to the terms and conditions expressly referenced in this Contract, the SUBRECIPIENT acknowledges and agrees that the terms and conditions of any federal or state grant that provides funding for this Contract, in whole or in part, shall apply to and shall govern the parties' rights and obligations under this Contract and shall be deemed additional terms, conditions and requirements of this Contract.

26. DBE Assurance.

The SUBRECIPIENT or _____ shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The SUBRECIPIENT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the SUBRECIPIENT 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 PRTC deems appropriate.

27. Audits.

PRTC will collect A-133 audit reports from the SUBRECIPIENT receiving more than \$750,000 in federal funds. At a minimum, the SUBRECIPIENT is required to bring to PRTC's attention any audit findings relevant to its use of FTA funds. If the SUBRECIPIENT is not subject to A-133 audit requirements it may require additional monitoring, in a format elected by PRTC, to ensure compliance.

28. FFATA Reporting.

_____ The Federal Funding Accountability and Transparency Act ("FFATA") requires prime _____

recipients of federal grants and contracts to report sub-award and executive compensation data. PRTC is the prime recipient of federal awards for the purposes of this policy and is responsible for reporting sub-award data.

PRTC and first-tier sub-awardees are required to maintain current registration in the System for Awards Management ("SAM") as well as obtain a DUNS number. PRTC is responsible for filing the report in the FSRs system, not sub-awardees. However, sub-award recipients must provide the following information to PRTC before they will be eligible to receive the sub-award:

- The entity's information;
- Description and/or title of the sub-award (including NAICS code or CFDA number);
- Date and amount of award;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, state, congressional district, and country;
- Active and current SAM unique identifier;
- DUNS number;
- Names and total compensation of the five (5) highest paid officers/executives of the sub-recipient **if** all three criteria are met:

(1) Federal awards make up 80% or more of the SUBRECIPIENT's annual gross revenues; and

(2) the SUBRECIPIENT's annual gross revenue from federal awards is \$25 million or more; and

(3) the SUBRECIPIENT's officer names are not publicly available and the public does not have access to data on executive compensation of the entity through the Securities and Exchange Commission (SEC) as described in further detail in OMB Guidance on Sub-award and Executive Compensation Reporting (August 27, 2010).

(PRTC, as the prime recipient of the federal award, must also report its own executive compensation data by the end of the month following the award if the same criterion noted above is met.)

29. Priority of Requirements.

In the event of a conflict between or among any of the terms, conditions and requirements applicable to this Contract, the conflict shall be resolved by giving weight in accordance with the following priorities, in the order as stated below:

- a. Terms and conditions of any grant that provides funding for this Contract, in whole or in part;

- b. Terms and conditions set forth or referenced within this Contract;
- c. Terms and conditions and representations set forth or referenced within Attachments to this Contract;
- d. Terms, conditions, specifications, and requirements set forth within any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded;
- e. Offers, representations, promises, terms and conditions set forth with the bid or proposal submitted in response to any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded.