

Vessel Lease Agreement

THIS CONTRACT (the "Agreement") entered into this ____ day of January, 2025, by and between the CITY OF CLEARWATER, a Florida municipal corporation, hereinafter referred to as "City," P.O. Box 4748, Clearwater, Florida 33758 and Clearwater Ferry Services, Inc., 615 Pinellas Street, Clearwater, Florida, 33756, a Florida corporation, hereinafter referred to as the "Corporation". City and Corporation may be referred to herein collectively as the "Parties".

WHEREAS, the City issued Request for Proposals (RFP) No. 32-24, which sought the purchase of two vessels which were paid for by a combination of a Public Transportation Grant from the State of Florida and the City of Clearwater; and

WHEREAS, the terms of this Agreement are intended to be in compliance with requirements of the Public Transportation Grant from the State of Florida which was accepted by the City of Clearwater Council on March 7, 2024; and

WHEREAS, the City Council authorized the second amendment and extension operating agreement with the Clearwater Ferry Services LLC on July 25th, 2023, which agreement extends the Clearwater Ferry Services to continue its services within the City until 2033; and

WHEREAS, the Corporation presently offers the only waterborne transportation option that provides service between downtown Clearwater and Clearwater Beach; and

WHEREAS, the City desires to continue to support water taxi services connecting various areas within Clearwater, and in particular desires to promote safe and comfortable transit between Clearwater Beach and downtown Clearwater; WHEREAS, the agreement only applies to the vessel named Jennies Crossing with the hull identification number of TXR10207E22⁴ (the "Vessel").

NOW THEREFORE, in consideration of the promises stated herein, the City and the Corporation mutually agree as follows:

1. RECITALS

The recitals above are true and correct, and incorporated herein by reference.

2. TIME OF PERFORMANCE

The Effective Date of this agreement shall commence on the date the Vessel is received by the Corporation and end September 30, 2033.

3. LICENSING OF THE VESSEL

The City agrees to be responsible for all registration of the Vessel. The Corporation agrees to be responsible for all licensing and insuring of the Vessel including any and all coast guard compliance requirements, state or federal statutory regulations or business regulations for ferry services. The Parties agree to cooperate with one another in satisfying each of their responsibilities under this Section 3.

4. MAINTENANCE AND DAMAGE

All matters relating to cost of routine maintenance or repairs to the Vessel shall be the responsibility of the Corporation and the City shall not be responsible or liable for providing the same. The Corporation shall return the Vessel to the City in operable condition and free from defects at the end of the term of the Agreement or the Corporation is responsible for the payment of repairs necessary to get the Vessel returned to working condition. Reasonable wear and tear of the Vessel which may exist at the expiration of the term of the Agreement shall be excepted from this Section 4 and Corporation shall not be responsible for restoring same.

If there is any damage to the Vessel while in the possession of the Corporation whether by agents of the Corporation or a third party, the Corporation is responsible for all costs of repairs.

5. CONSIDERATION

As consideration of the obligations and commitments made by both Parties, the Corporation agrees to compensate the City in the amount of one dollar (\$1.00) annually

for the length of this Agreement. The amount shall be payable by October 1st each year until the Agreement is fully satisfied.

6. NOTICES AND CHANGES OF ADDRESS

Any notice required or permitted to be given by the provisions of this Agreement shall be conclusively deemed to have been received by a party hereto on the date it is electronically transmitted to either individual at the email address(es) provided below.

Clearwater Ferry Services, Inc.

City of Clearwater

Patricia Rodriguez

Michael MacDonald

Trisha@ClearwaterFerry.com

Harbormaster

michael.macdonald@myclearwater.com

Should the identity of the Corporation's president change, or should the identity of the City's Harbormaster change, the other party must be notified by email within a reasonable time not to exceed ninety (90) days.

7. INDEMNITY.

To the fullest extent permitted by law, Corporation agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by the Corporation personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by the Corporation or Corporation personnel; and (iii) the Corporation or Corporation personnel's failure to comply with or fulfill the obligations established by this Agreement.

The Corporation will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.

The City assumes no liability for actions of the Corporation and will not indemnify or hold the Corporation or any third party harmless for claims based on this Agreement or use of Corporation-provided supplies or services.

8. INSURANCE

The Corporation (referred to as "Contractor") shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives, or agents to acquire and maintain during the term with the City, sufficient insurance to adequately protect the respective interest of the Parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor's deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically, the Contractor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

a. **Commercial General Liability Insurance** coverage, including but not limited to, bodily injury, personal injury, death, property damage, advertising liability, premises operations, products/completed operations, severability of interest, and contractual liability in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

b. Unless waived by the State of Florida and proof of waiver is provided to the City, **Worker's Compensation (WC) & Employer's Liability Insurance** coverage for all employees engaged under the Agreement, Worker's Compensation as required by Florida law and Employer's Liability with minimum limits of

(a) \$500,000 bodily injury each employee and each accident, \$500,000 bodily injury by disease each employee, and \$500,000 bodily injury by disease policy limit for **quotes or agreements valued at \$50,000 and under or**

(b) \$1million bodily injury each employee and each accident, \$1million bodily injury by disease each employee, and \$1million bodily injury by disease policy limit for **formal solicitation and agreements exceeding \$50,000.**

Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable.

Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

c. Professional Liability/Malpractice/Errors or Omissions Insurance coverage appropriate for the type of business engaged in by the Contractor with minimum limits of \$1,000,000(one million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

WAIVER OF SUBROGATION – With regard to any policy of insurance that would pay third party losses, Corporation hereby grants City a waiver of any right to subrogation which any insurer of Corporation may acquire against the City by virtue of the payment of any loss under such insurance for liability and workers compensation coverages. Corporation agrees to obtain any endorsement that may be necessary to affect such waiver, but this provision shall apply to such policies regardless.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions.

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Contractor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" with respect to general and auto liability coverages.
- b. In addition, when requested in writing from the City, Contractor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

City of Clearwater

Attn: Marine and Aviation Department

P.O. Box 4748

Clearwater, FL 33758-4748

- c. Contractor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.

d. Contractor's insurance as outlined above shall be primary and non-contributory coverage for Contractor's negligence.

e. Contractor reserves the right to appoint legal counsel to provide for the Contractor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Contractor's equipment, or service. Contractor agrees that the City shall not be liable to reimburse Contractor for any legal fees or costs as a result of Contractor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.

9. PROHIBITED USE

The Vessels shall not be used by the Corporation for any use other than the use necessary to provide public Water Taxi services. No alternative use shall be available to the Corporation which, at the sole discretion of the City, is deemed hazardous, inconsistent with this Agreement, or increases the City's liability. The use will be in compliance with the requirements of Public Transportation Grant from the State of Florida.

10. PUBLIC RECORDS. The Corporation's agreement to comply with public records law applies specifically to:

a) Keep and maintain public records required by the City of Clearwater (hereinafter "Public Agency") to perform the service being provided by the Corporation hereunder.

b) Upon request from the Public Agency's custodian of public records, provide the Public Agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as

authorized by law for the duration of the term of the Agreement and following completion of the Agreement if the Corporation does not transfer the records to the Public Agency.

d) Upon completion of the Agreement, transfer, at no cost, to the Public Agency all public records in possession of the Corporation or keep and maintain public records required by the Public Agency to perform the service. If the Corporation transfers all public records to the Public Agency upon completion of the Agreement, the Corporation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Corporation keeps and maintains public records upon completion of the Agreement, the Corporation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Public Agency, upon request from the Public Agency's custodian of public records, in a format that is compatible with the information technology systems of the Public Agency.

e) A request to inspect or copy public records relating to a Public Agency's contract for services must be made directly to the Public Agency. If the Public Agency does not possess the requested records, the Public Agency shall immediately notify the Corporation of the request and the Corporation must provide the records to the Public Agency or allow the records to be inspected or copied within a reasonable time.

f) The Corporation hereby acknowledges and agrees that if the Corporation does not comply with the public agency's request for records, the public agency shall enforce the provisions in accordance with the Agreement.

g) A Corporation who fails to provide the public records to the Public Agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

h) If a civil action is filed against a Corporation to compel production of public records relating to a Public Agency's contract for services, the court shall assess and award against the Corporation the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Corporation unlawfully refused to comply with the public records request within a reasonable time; and
2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Corporation has not complied with the request, to the Public Agency and to the Corporation.

i) A notice complies with subparagraph (h)2 if it is sent to the Public Agency's custodian of public records and to the Corporation at the Corporation's address listed on its contract with the Public Agency or to the Corporation's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

j) A Corporation who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

11. RIGHT TO AUDIT AND PROVISION OF MONTHLY OPERATIONS REPORTS

The Corporation shall prepare, in accordance with generally accepted accounting practice, accurate books of account, along with other records as required by law. All records, including but not limited to tax returns, with respect to the Corporation's business conducted pursuant to the prior Agreement dated November 18, 2016, shall be kept by the Corporation and shall be available to the City for examination or audit during the term of this Agreement and for a period of five (5) years following the expiration or earlier termination of this Agreement.

The Corporation shall also provide monthly operations reports, and such reports shall include Water Taxi ridership numbers, the number of trips by the Vessel and also disclose the fare amount charged to passengers.

12. TAXES, FEES, AND COSTS

The Corporation will be solely responsible for payment of its own income and sales taxes. The Corporation's storage and fuel costs remain the Corporation's responsibility.

13. CONSTRUCTION AND ALTERATION OF THE VESSELS

The Corporation shall not make or permit to be made any alterations, additions, improvement or changes to the Vessel nor permit the painting or placing of any signage, placards or other related advertising media without obtaining prior written consent of the City, which shall be at the City's sole discretion.

14. ASSIGNMENT

The Corporation shall not have the right to assign, transfer, convey, sublet or otherwise dispose of its license to utilize the Vessel or its rights or obligations under this Agreement without obtaining prior written consent of the City, which shall be at the City's sole discretion.

15. DEFAULT AND TERMINATION

Subject to the Corporation's right to notice and an opportunity to cure, as specified herein, the Corporation shall be deemed in default of its obligations under this Agreement upon the occurrence of any of the following:

- a. The Corporation's failure to perform any covenant, promise, or obligation contained in this Agreement or comply with the terms and conditions of this Agreement;
- b. The appointment of a receiver or trustee for all or substantially all the Corporation's assets;
- c. The Corporation's voluntary petition for relief under any bankruptcy or insolvency law, or the filing of an involuntary bankruptcy petition which is not dismissed within sixty (60) days;
- d. The sale of the Corporation's interest under this Agreement by execution or other legal process;
- e. The seizure, sequestration, or impounding by virtue of or under authority of any legal proceeding of all or substantially all of the personal property or fixtures of the Corporation used in or incident to its operations in providing the Water Taxi Service.
- f. The Corporation making an assignment of its assets for the benefit of creditors;
- g. Any sale, transfer, assignment, subleasing, concession, license, or other disposition of this Agreement that is not authorized by this agreement;

The City may immediately terminate this Agreement if a default pursuant to this Agreement is not cured within thirty (30) days after receipt of notice from the City.

If the July 25, 2023 "Second Amendment and Second Extension to Water Taxi Operating Agreement" between the Corporation and the City of Clearwater terminates for any reason this agreement will terminate and the Vessel will be returned to the City immediately and without defects, ordinary wear and tear excepted.

16. RELATIONSHIP OF PARTIES

The relationship between the Parties is that of licensor and licensee. In using and maintaining the Vessel hereunder, the Corporation shall act as an independent contractor and not an agent of the City. The selection, retention, assignment and direction of the Corporation's employees that may work on or around the Vessel shall be the sole responsibility of the Corporation, and the City shall not attempt to exercise any control over the daily performance of the duties of the Corporation's employees.

17. CONFORMANCE WITH LAWS

The Corporation agrees to comply with all applicable federal, state and local laws during the life of this Agreement.

18. ATTORNEY FEES

In the event that either party seeks to enforce this Agreement via legal action, then the parties agree that each party shall bear its own attorney fees and costs.

19. GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern this Agreement, and any action brought by either party shall lie in Pinellas County, Florida.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

CITY OF CLEARWATER, FLORIDA

Countersigned:

Bruce Rector
Mayor

By:

Jennifer Poirrier
City Manager

Approved as to form:

Attest:

Melissa Isabel
City Attorney

Rosemarie Call
City Clerk

Attest:

(Clearwater Ferry Services, Inc.)

By: Patricia Rodriguez

Print Name: _____

Print Name: Patricia Rodriguez

Title: Owner