

JOLLEY TROLLEY SYSTEM GRANT FUNDING AGREEMENT

This Jolley Trolley System Funding Agreement is made and entered into this _____ day of September, 2014, between the City of Clearwater, hereinafter referred to as the ("City") and the JOLLEY TROLLEY TRANSPORTATION OF CLEARWATER, INC., a Florida non-profit corporation, hereinafter referred to as the ("Corporation").

ARTICLE I. TERM

The term of this agreement shall be for a period of one (1) year commencing on October 1, 2014 and continuing through September 30, 2015, (the "Termination Date"), subject to annual budgetary appropriation approved by the Clearwater City Council, unless earlier terminated under the terms of this agreement.

ARTICLE II. RESPONSIBILITIES OF THE CORPORATION

- 1) **Services to be Provided.** The Corporation shall provide the transportation services to promote tourism described as trolley service on Clearwater Beach, Island Estates and Sand Key (Beach Route) and the Coastal Route, both described in Exhibit A.
- 2) **Transportation Pick-ups.** (a) Beach Route: The Corporation shall provide scheduled transportation pick-ups which will be no more than 30 minutes apart (conditions permitting), as described in Exhibit A. (b) Coastal Route: The Corporation shall provide scheduled transportation pick-ups which will be no more than 60 minutes apart (conditions permitting), as described in Exhibit A.
- 3) **Posted Route Schedules.** The Corporation shall provide posted route times at selected pick-up locations listing scheduled pick-up times, in conjunction with the Pinellas Suncoast Transit Authority (PSTA).
- 4) **Scheduled Reports of Activities.** The Corporation shall furnish the City with IRS Forms 990 and 990T certified by independent Certified Public Accountant within 90 days of the end of the fiscal year to the Economic Development and Housing Director. The financial report is to set forth the total cost of operations provided, and the detailed account of operational costs funded in part by the City. The Corporation will also provide quarterly reports of activities including: high level financials, ridership numbers, accident frequency, and on-time adherence to schedule for both the Beach and Coastal Routes.
- 5) **Use and Disposition of Funds Received.** Funds received by the Corporation from the City shall be used towards the payment of expenses attendant to the operation of the Trolley System.
- 6) **Creation, Use and Maintenances of Financial Records.**
 - a) **Creation of Records.** The Corporation shall create, maintain and make accessible to authorized City representatives such financial and accounting records, books, documents, policies, practices and procedures necessary to reflect fully the financial activities of the Corporation. Such records shall be available and accessible at all times for inspection, review or audit by authorized City personnel, and shall be made available in accordance with Chapter 119, Florida Statutes (Public Records) and other applicable law.
 - b) **Use of Records.** The Corporation shall produce such reports and analyses that may be required by the City and other duly authorized agencies to document the proper and prudent stewardship and use of the monies received through this agreement.

- c) **Maintenance of Driver's Log and Check Point System.** The Corporation agrees to maintain a driver's log and a check point system to document compliance with the agreed upon schedule. Changes to these attached schedules are at the discretion of the Corporation Board of Directors, but will be submitted to the City at least two weeks prior to implementation. Any change, or series of changes, which will cause more than a 25% reduction in the routes may, at the discretion of the City Council, be considered a failure to adhere to the terms of the contract and may be grounds for reducing the funding commitment or may be considered cause for termination of the contract.
 - d) **Maintenance of Records.** All records created hereby are to be retained and maintained for a period not less than five (5) years from the close of the applicable fiscal year.
- 7) **Non-discrimination.** Notwithstanding any other provision of this agreement, the Corporation for itself, agents and representatives, as part of the consideration for this agreement does covenant and agree that:
 - a) **No Exclusion from Use.** No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the operation of this program on the grounds of race, color, religion, sex, handicap, age or national origin.
 - b) **No Exclusion from Hire.** In the management, operation, or provision of the program activities authorized and enabled by this agreement, no person shall be excluded from participation in or denied the benefits of or otherwise be subject to discrimination on the grounds of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, handicap, age, or national origin, except that age may be taken into consideration to the extent that the age of an employee is a bona fide occupational qualification, as permitted by law.
 - c) **Inclusion in Subcontracts.** The Corporation agrees to include the requirement to adhere to Title VI and Title VII of the Civil Rights Act of 1964 in all approved sub-contracts.
 - d) **Breach of Non-discrimination Covenants.** In the event of conclusive evidence of a breach of any of the above non-discrimination covenants, the City shall have the right to terminate this agreement immediately.
- 8) **Liability and Indemnification.** The Corporation shall act as an independent contractor and agrees to assume all risks of providing the program activities and services herein agreed and all liability therefore, and shall defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims of loss, liability and damages of whatever nature, to persons and property, including, without limiting the generality of the foregoing, death of any person and loss of the use of any property, except claims arising from the negligence of the City or City's agents or employees. This includes, but is not limited to, matters arising out of or claimed to have been caused by or in any manner related to the Corporation's activities or those of any approved or unapproved invitee, contractor, subcontractor, or other person approved, authorized, or permitted by the Corporation whether or not based on negligence. Nothing herein shall be construed as consent by the City to be sued by third parties, or as a waiver or modification of the provisions or limits of Section 768.28, Florida Statutes or the Doctrine of Sovereign Immunity.
- 9) **Compliance with Laws.** Corporation shall comply with all federal, state, county and local laws, rules and regulations applicable to the operation of the vehicles. If it is ever determined that this Agreement violates any federal, state, county or local laws, rules or regulations, then Corporation shall comply in a timely manner or City may terminate.

- 10) **Corporation's Role in the Development and Revitalization of Clearwater Beach.** It is contemplated by the Parties hereto that in consideration for the funding provided by the City, the Corporation's role in providing trolley service shall be promoted as a tourist amenity and enhancement in furtherance of the development and revitalization of Clearwater Beach. To that end, the Corporation agrees to cooperate and work with City staff to develop the Corporation's role as integral to such revitalization and development and as a catalyst for tourism. In addition, the Coastal Route is intended to link the tourism activities on Clearwater Beach with those of Downtown Clearwater.

ARTICLE III. RESPONSIBILITIES OF THE CITY

- 1) **Funds for Operations.** The City, subject to annual City Council approval, agrees to fund in part the operational costs incurred in providing the activities and services authorized by this agreement as follows:
- An annual amount of \$163,443 for providing trolley service on Clearwater Beach, Island Estates and Sand Key, based upon the Corporation meeting the route schedule attached as Exhibit A.
 - An annual amount of \$3,550 for the Coastal Route, contingent upon PSTA match of \$3,550 and Downtown Development Board contribution of \$9,220.
 - Payable in equal payments of 1/12 per month per fiscal year.

ARTICLE IV. DISCLAIMER OF WARRANTIES

This Agreement constitutes the entire Agreement of the parties on the subject hereof and may not be changed, modified or discharged except by written Amendment duly executed by both parties. No representations or warranties by either party shall be binding unless expressed herein or in a duly executed Amendment hereof.

ARTICLE V. TERMINATION

- 1) **For Cause.** Failure to adhere to any of the provisions of this Agreement in material respect shall constitute cause for termination. Either party may terminate this Agreement for cause by giving the other party sixty (60) days notice of termination. If the default is not cured within the sixty (60) day period following receipt of notice, this Agreement shall terminate on the sixty-first (61st) day.
- 2) **Disposition of Fund Monies.** In the event of termination for any reason, monies made available to the Corporation but not expended in accordance with this Agreement shall be returned to the City within 30 days of demand.

ARTICLE VI. NOTICE

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 hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid), on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

- 1) If to Corporation, addressed to: Jolley Trolley Transportation of Clearwater, Inc.
483 Mandalay Avenue, Suite 213
Clearwater, FL 33767
- 2) If to City, addressed to: City Manager
P. O. Box 4748
Clearwater, FL 33758-4748

With copies to:

City Attorney
P. O. Box 4748
Clearwater, FL 33758-4748

Economic Development and Housing Director
P.O. Box 4748
Clearwater, FL 33758-4748

ARTICLE VII. EFFECTIVE DATE

The effective date of this Agreement shall be as of the date written below.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, 2014.

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor

William B. Horne II
City Manager

Approved as to form:

Attest:

Pam Akin
City Attorney

Rosemarie Call, MPA, CMC
City Clerk

JOLLEY TROLLEY TRANSPORTATION
OF CLEARWATER, INC.

By: _____
Rosemary W. Longenecker
Executive Director

Attest:
