

Second Amendment and Second Extension to Water Taxi Operating Agreement

THIS CONTRACT renewal entered into this 25th day of July, 2023,

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"

WHEREAS, the City issued Request for Proposals (RFP) No. 35-16, which is incorporated by reference hereto as if fully stated herein, seeking an experienced, appropriately equipped, staffed, licensed and insured water taxi service provider; and

WHEREAS, the Corporation was the winning bidder of RFP 35-16 and was awarded a two-year initial contract ("the Contract") on November 18, 2016; and

WHEREAS, the City Council has authorized two additional extensions of the prior agreement; and

WHEREAS, the Corporation presently offers the only public waterborne transportation option that offers service between downtown Clearwater and Clearwater Beach, thereby qualifying the Corporation for consideration as a sole source or single source vendor; and

WHEREAS, the City desires to continue to support water taxi services connecting various areas that are exclusively within Clearwater, and in particular desires to promote safe and comfortable transit between Clearwater Beach and downtown Clearwater;

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. PROVISION OF WATER TAXI SERVICE

The Corporation agrees to provide scheduled Water Taxi services connecting the Areas detailed in "Exhibit A – Map of Service Locations," by following the Time and Route Schedule in "Exhibit B". Both exhibits are attached and incorporated into this renewal, and in the event of ambiguity between this Agreement and the Exhibits, this Agreement shall prevail.

The Corporation shall at all times maintain at least two (2) vessels capable of providing service at the locations described in "Exhibit A" and in furtherance of the Time and Route Schedule described in "Exhibit B". However, the Corporation may provide only one (1) vessel for up to seven (7) calendar days if the second vessel is temporarily removed from service due to maintenance or other mechanical reasons. If the second vessel is temporarily removed pursuant to this provision, the Corporation shall immediately notify the City's harbormaster of the removal, the reason for the removal, and anticipated date on which service shall resume.

If more than seven (7) days elapse with only one (1) vessel servicing the locations described in "Exhibit A" or performing the routes described in "Exhibit B," the City's contribution shall be reduced by five hundred dollars (\$500.00) for each Friday, each Saturday, and each Sunday that only one (1) vessel is in service. This reduction in the City's contribution shall be reflected at the next annualized payment described in Section 4 of this agreement. If for any reason no vessels are providing the service required by this agreement, the City's contribution shall instead be reduced by one thousand dollars (\$1,000.00) for each Friday, each Saturday, and each Sunday that no vessels are providing the service.

3. TIME OF PERFORMANCE

The Effective Date of this agreement shall commence on October 1, 2023, and end September 30, 2033, unless terminated sooner by either party pursuant to Section 16 of this agreement. Both the services described in Section 2 of this agreement and the

compensation described in Section 4 of this agreement shall commence on the Effective Date.

4. COMPENSATION

In return for providing the services described in "Exhibit B" at the locations described in "Exhibit A," the City shall provide the annual compensation described in "Exhibit C." As shown in "Exhibit C," it is the intent of the parties for the City's contribution to reduce gradually during a five year period and reach a zero level by October 1, 2028. The parties expect the Corporation to achieve profitability within that time-frame, and to become a thriving business that fills an important need within the City. As a result, the parties expect the services described in Section 2 of this agreement to continue for the entire duration of this agreement, including dates occurring after October 1, 2028.

5. NOTICES AND CHANGES OF ADDRESS

Any notice required or permitted to be given by the provisions of this Contract 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.
Patricia Rodriguez
Trisha@ClearwaterFerry.com

City of Clearwater
Eric Gandy, Harbormaster
Eric.Gandy@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.

6. LICENSE TO USE CITY DOCKAGE AND UPLAND AREA

The City grants the Corporation a license to occupy and use the City's dockage and adjacent upland area land reasonably related to the Corporation's provision of Water Taxi Service, including all ingress, egress and approaches to and from such dockage and upland area. The dockage and upland areas are those associated with and illustrated by

“Exhibit A.” The City reserves the right to temporarily relocate operations from either the Harbor or Beach Marina Landing as necessary, due to planned or unplanned infrastructure repairs or improvements. Such relocation shall not persist longer than reasonably necessary to accomplish the City’s objective.

7. CORPORATION’S DUTIES RELATED TO CITY DOCKAGE AND UPLAND AREA

The Corporation shall control and assume responsibility for the use, operation and security of the Upland Area during Water Taxi Operating Hours, such responsibility includes controlling access to the Upland Area and associated dockage, ticketing, guest service functions, security, cleaning and general operational organization. The Corporation shall continually evaluate the condition and suitability of the city dockage and upland area for water taxi activities. The Corporation shall properly secure the city dockage and upland area at the conclusion of daily ferry service. The Corporation shall notify the City of any potential or actual hazardous conditions. The Corporation shall report any damage it causes to the Marine and Aviation Department and be financially responsible for any repairs necessary to correct any damage caused by the Corporation.

8. THE CITY’S DUTIES RELATED TO CITY DOCKAGE AND UPLAND AREA

At times other than Water Taxi Operating Hours, the City shall maintain the city dockage and upland area in a clean and orderly condition. The Corporation shall immediately notify the City if an unsafe condition exists at these locations. The City shall be responsible for all maintenance and repairs to the city dockage and upland areas, but the Corporation understands their financial obligations to reimburse the City for damage caused by the Corporation. The City is under no obligation to repair city dockage or the upland areas in the event that the City Council, in its sole discretion, determines that it is not in the City’s best economic interest to repair such impacted areas due to substantial

damage. The City will, however, take best efforts to avoid or mitigate substantial damage to City dockage and upland areas.

9. PROHIBITED USE

The City dockage and associated upland area shall not be used by the Corporation for any use other than the use necessary to provide Water Taxi services. No occupation or 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.

10. PUBLIC RECORDS

IF THE CORPORATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CORPORATIONS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUTODIAN OF PUBLIC RECORDS AT 727-562-4092, Rosemarie.Call@myclearwater.com, 112 S. Osceola Ave., Clearwater, FL 33756

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 contract term and following completion of the contract if the Corporation does not transfer the records to the public agency.

d) Upon completion of the contract, 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 contract, 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 contract, 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 contract provisions in accordance with the contract.

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 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 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 and also disclose the fare amount charged to passengers.

12. INDEMNIFICATION AND INSURANCE

Subject to Section 768.28, Florida Statutes, the Corporation agrees to comply with all terms, provisions, and requirements contained in Request for Proposal (RFP) No. 35-16, Water Taxi Services, including, but not limited to, S.25 – Indemnification/Liability, and the Corporation agrees to designate the City as an additional insured under its own insurance policy. RFP No. 35-16 is incorporated into this Renewal by reference. To the extent there is any ambiguity between the terms of this Renewal and the terms of the RFP, the terms of this Renewal prevail. 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.

13. TAXES, FEES, AND COSTS

The City shall not charge the Corporation fees for usage of the city dockage and associated upland areas. 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.

14. CONSTRUCTION AND ALTERATION OF CITY DOCKAGE AND UPLAND AREAS

The Corporation shall not make or permit to be made any alterations, additions, improvement or changes to the city dockage or associated upland area 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.

15. ASSIGNMENT

The Corporation shall not have the right to assign, transfer, convey, sublet or otherwise dispose of its license to utilize city dockage and associated upland areas or its rights or obligations under this Agreement.

16. 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 of 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. In the event of early termination of this Agreement due to the Corporation's default.

17. DAMAGE TO CITY DOCKAGE, ASSOCIATED UPLAND AREAS, AND VESSELS

If any portions of the city dockage or associated upland areas are substantially damaged by fire, hurricane or other casualty, the City or the Corporation may elect to repair or replace the affected facilities within thirty (30) days of the casualty or occurrence. In the event the affected facilities are not repaired or replaced within thirty (30) days of the casualty or occurrence or if neither the City or the Corporation elects to repair or replace the affected facilities, either party may immediately terminate this Agreement.

Nothing contained herein shall limit the City's rights and remedies against the Corporation for any such damage caused by the Corporation, its employees, agents or contractors.

18. RELATIONSHIP OF PARTIES

The relationship between the Parties is that of licensor and licensee. In conducting the Water Taxi Service 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 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.

19. NO EXCLUSIVE RIGHTS

Nothing contained in this Agreement shall be construed to grant or authorize the granting of exclusive right other than right of use of the city dockage and related upland properties pursuant to the terms of this Agreement.

20. CONFORMANCE WITH LAWS

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

21. 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.

22. GOVERNING LAW AND VENUE

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

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

CITY OF CLEARWATER, FLORIDA

Countersigned:



Brian Aungst Sr.
Mayor

By:



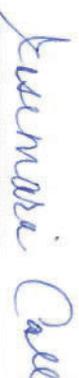
Jennifer Poirier
City Manager

Approved as to form:



David Margolis
City Attorney

Attest:



Rosemarie Call
City Clerk



(Clearwater Ferry Services, Inc.)

Attest:

By: Patricia Rodriguez

Print Name: _____

Print Name: Patricia Rodriguez

Title: Owner

EXHIBIT A
Map of Service Locations



EXHIBIT B Time & Route Schedule

Route Schedule - Blue Line

Coachman Park/Downtown Clearwater	Clearwater Beach Marina	Coachman Park/Downtown Clearwater	Dunedin
10:30 AM	11:00 AM	11:30 AM	12:00 PM
12:30 PM	1:00 PM	1:30 PM	2:00 PM
2:30 PM	3:00 PM	3:30 PM	4:00 PM
4:30 PM	5:00 PM	5:30 PM	6:00 PM
6:30 PM	7:00 PM	7:30 PM	8:00 PM
8:30 PM	9:00 PM	9:30 PM	

Route Schedule - Purple Line

Coachman Park/Downtown Clearwater	Clearwater Beach Marina
10:00 AM	10:30 AM
11:00 AM	11:30 AM
12:00 PM	12:30 PM
1:00 PM	1:30 PM
2:00 PM	2:30 PM
3:00 PM	3:30 PM
4:00 PM	4:30 PM
5:00 PM	5:30 PM
6:00 PM	6:30 PM
7:00 PM	7:30 PM
8:00 PM	8:30 PM
9:00 PM	9:30 PM

Departure Times by Location

Coachman Park/ Downtown Dunedin	Going to
10:00 AM	Clearwater Beach Marina
10:30 AM	Clearwater Beach Marina
11:00 AM	Clearwater Beach Marina
12:00 PM	Clearwater Beach Marina
12:30 PM	Clearwater Beach Marina
1:00 PM	Clearwater Beach Marina
2:00 PM	Clearwater Beach Marina
2:30 PM	Clearwater Beach Marina
3:00 PM	Clearwater Beach Marina
4:00 PM	Clearwater Beach Marina
4:30 PM	Clearwater Beach Marina
5:00 PM	Clearwater Beach Marina
6:00 PM	Clearwater Beach Marina
6:30 PM	Clearwater Beach Marina
7:00 PM	Clearwater Beach Marina
8:00 PM	Clearwater Beach Marina
8:30 PM	Clearwater Beach Marina
9:00 PM	Clearwater Beach Marina

Clearwater Beach Marina	Going to
10:30 AM	Coachman Park/Downtown Clearwater
11:00 AM	Coachman Park/Downtown Clearwater
11:30 AM	Coachman Park/Downtown Clearwater
12:30 PM	Coachman Park/Downtown Clearwater
1:00 PM	Coachman Park/Downtown Clearwater
1:30 PM	Coachman Park/Downtown Clearwater
2:30 PM	Coachman Park/Downtown Clearwater
3:00 PM	Coachman Park/Downtown Clearwater
3:30 PM	Coachman Park/Downtown Clearwater
4:30 PM	Coachman Park/Downtown Clearwater
5:00 PM	Coachman Park/Downtown Clearwater
5:30 PM	Coachman Park/Downtown Clearwater
6:30 PM	Coachman Park/Downtown Clearwater
7:00 PM	Coachman Park/Downtown Clearwater
7:30 PM	Coachman Park/Downtown Clearwater
8:30 PM	Coachman Park/Downtown Clearwater
9:00 PM	Coachman Park/Downtown Clearwater
9:30 PM	Coachman Park/Downtown Clearwater

Dunedin	Going to
12:00 PM	Coachman Park/Downtown Clearwater
2:00 PM	Coachman Park/Downtown Clearwater
4:00 PM	Coachman Park/Downtown Clearwater
6:00 PM	Coachman Park/Downtown Clearwater
8:00 PM	Coachman Park/Downtown Clearwater

Exhibit C

<u>Fiscal Year</u>	<u>Subsidy amount</u>
Year 1: Fiscal Year October 1, 2023 – September 30, 2024	\$150,000.00
Year 2: Fiscal Year October 1, 2024 – September 30, 2025	\$150,000.00
Year 3: Fiscal Year October 1, 2025 – September 30, 2026	\$66,667.00
Year 4: Fiscal Year October 1, 2026 – September 30, 2027	\$66,667.00
Year 5: Fiscal Year October 1, 2027 – September 30, 2028	\$66,666.00