

Water Taxi Operating Agreement Second Renewal

THIS CONTRACT renewal entered into this 20th day of October, 2020, 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 desires to continue to support water taxi services connecting various areas that are exclusively within Clearwater, such as the City's Downtown Harbor Marina, Clearwater Beach Marina, Island Estates and the Clearwater Beach Recreation Center Loading Dock (the "Areas"); and

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, which terminated on November 30, 2018; and

WHEREAS, the Contract allowed the City and the Corporation to enter into two (2) 2-year renewals; and

WHEREAS, the City and the Corporation entered into a first renewal ("the Renewal") of the Contract on _____, and the Renewal is scheduled to terminate on December 1, 2020; and

WHEREAS, the City and the Corporation desire to enter into the final 2-year renewal allowed under the Contract; and

WHEREAS, this proposed water taxi service is in the best interest of Clearwater as it will help alleviate traffic to and from the aforementioned Areas;

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 – Scope of Work, following the routes as detailed in Exhibit B – following the Time and Route Schedule in Exhibit C – Charging the public no more for this service than is detailed in Exhibit D. These 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 utilizes three (3) vessels dedicated to providing Water Taxi Service within the City of Clearwater. Those vessels are identified as Maddie's Crossing, Hailey's Crossing and Monica's Crossing. Monica's Crossing, hereinafter referred to as "Purchased Vessel" was purchased by the Corporation with the use of the City's subsidy funds under the original Water Taxi Agreement. The Corporation agrees that Purchased Vessel shall remain in service exclusively within the City, and a failure to do so shall constitute a default under this Agreement. Maddie's Crossing and Hailey's Crossing are not restricted to service exclusively within the City, however any connections outside of the City shall have a direct connection back to one of the Areas contemplated within this agreement and a failure to do so shall constitute a default under this Agreement.

If the Corporation fails to provide Water Taxi Service after commencement of this Agreement, ceases to provide Water Taxi Service after commencement of this Agreement, and/or fails to cure any defaults, pursuant to the terms and conditions of this Agreement, then the City may immediately terminate this Agreement.

3. TIME OF PERFORMANCE

This 2-Year Renewal Term shall commence on December 1, 2020 and end December 1, 2022.

4. COMPENSATION

At the end of this 2-Year Renewal Term, the City, at its option and sole discretion, may purchase the Purchased Vessel from the Corporation for \$10.00. Alternatively, In the event the Corporation wishes to retain ownership of the Purchased Vessel, the City, at its option and sole discretion, may agree to release the lien which attaches to the Purchased Vessel in exchange for payment by the Corporation of the depreciated value of the Purchased Vessel as calculated under the IRS Modified Accelerated Cost Recovery System (MACRS) depreciated value for boats over a ten (10) year period. The City will notify the Corporation if it chooses to purchase the Purchased Vessel no later than sixty (60) days before the end of the 2-Year Renewal Term.

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 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.

Clearwater Ferry Services, Inc.

City of Clearwater

Patricia Rodriguez
Name

Ed Chesney, P.E.
Name

President
Title

Marine and Aviation Director
Title

615 Pinellas St.
Unit 2

P.O. Box 4748

Clearwater, FL 33756
Address

Clearwater, FL 33758
Address

(813) 857-3268
Telephone #

(727) 562-4959
Telephone #

Trisha@ClearwaterFerry.com
E-Mail

ed.chesney@myclearwater.com
E-Mail

With Copy to:

Brian J. Aungst, Jr., Esq.
625 Court Street, Suite 200
Clearwater, FL 33756
BJA@macfar.com

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 illustrated in Exhibit A, Paragraph E. The City reserves the right to temporarily relocate operations from the Downtown Harbor Marina landing to the Seminole Street Boat Ramp while permitted construction associated with the City approved "Imagine Clearwater" redevelopment plan is occurring. Following such construction, the Corporation will resume use of the Downtown Harbor Marina landing under the terms of this agreement.

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 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.

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. VESSEL PURCHASED

The Corporation understands that during the term of this Agreement, it may not utilize the Purchased Vessel as collateral on behalf of the Corporation.

14. TAXES, FEES, AND COSTS

The City shall not charge the Corporation fees for usage of the city dockage and associated upland areas identified in Exhibit A, paragraph E. 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.

15. 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.

16. 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.

17. DEFAULT AND TERMINATION

- a. 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: 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;
- h. The Corporation doing or permitting anything that creates a lien upon the City's dockage or associated upland areas or any Vessels Purchased; or
- i. Utilizing Purchased Vessel to provide Water Taxi Service in a manner not contemplated in this Agreement or related Exhibits.

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.

18. 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. In the event of termination pursuant to this section, the City still retains the sole right to purchase Purchased Vessel from the Corporation at a cost of \$10.00. If the City elects to purchase the Purchased Vessel pursuant to this Section, value will be determined following the IRS Modified Accelerated Cost Recovery System (MACRS) depreciated value for boats over a ten (10) year period at the time of the termination of this Agreement.

If any portion of the Purchased Vessel is substantially damaged by fire, hurricane, or other casualty or occurrence, the Corporation may elect to repair or replace the affected Purchased Vessel within thirty (30) days of the casualty or occurrence that caused the vessel damage. In the event that the Corporation fails to repair or replace within thirty (30) days of the vessel damage or the Corporation elects not to repair or replace the affected vessel, then the City may immediately terminate this Agreement. In the event of termination due to substantial damage to Purchased Vessel, the Corporation shall refund the City following the IRS Modified Accelerated Cost Recovery System (MACRS) depreciated value for boats to determine the depreciated value of the vessel that was not repaired or replaced.

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.

19. 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.

20. 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.

21. NO LIENS

The Corporation shall not cause any liens to be filed against the Purchased Vessel, the city dockage, or the associated upland properties by any reason of work, labor, services, or materials performed at or furnished to the Corporation related to this Agreement. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the Purchased Vessel, the city dockage, or associated upland properties to any lien or liability under the lien laws of the State of Florida.

22. CONFORMANCE WITH LAWS

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

23. 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.

24. 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:

By: William B. Horne II
William B. Horne II
City Manager

Approved as to form:

[Signature]
Michael Fuino
Assistant City Attorney

Attest:

Rosemarie Call
Rosemarie Call
City Clerk



(Clearwater Ferry Services, Inc.)

Attest:

James Halios
Print Name: James Halios

By: Patricia Rodriguez
Print Name: Patricia Rodriguez
Title: Owner