

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2018 by and between the City of St. Petersburg, Florida (“City of St. Petersburg”) and Pinellas County, Florida (“Pinellas”), City of Tampa, Florida (“Tampa”), and Hillsborough County, Florida (“Hillsborough”). For purposes of this Agreement, Pinellas, Tampa and Hillsborough shall be referred to collectively as the “Participating Governmental Agencies” and the “Parties” to this Agreement shall be the City of St. Petersburg and the Participating Governmental Agencies.

RECITALS

WHEREAS, passenger ferries represent one of the most cost-effective options for providing transportation capacity and service between communities and destinations located around Tampa Bay; and

WHEREAS, passenger ferries represent a regional transportation capacity option that can be implemented faster than other options; and

WHEREAS, passenger ferries can provide an elegant and iconic connection to and between major cities and destinations around Tampa Bay and have significant potential to boost urban and environmental tourism in Tampa, St. Petersburg, Pinellas County and Hillsborough County by providing greater participation and attendance at major sporting events, museums, restaurants and special events in these areas; and

WHEREAS, the City of St. Petersburg issued a request for proposals (“RFP”) for a passenger ferry operator to operate a seasonal (i.e., November 1 through April 30) ferry service for up to three seasons; and

WHEREAS, HMS Ferries, Inc. (“HMS”) submitted a proposal in response to the RFP and, after reviewing HMS’s proposal, the City of St. Petersburg selected HMS to operate the seasonal ferry service; and

WHEREAS, the City of St. Petersburg and HMS intend to enter into a license and operating agreement for HMS to manage and operate the seasonal ferry service between St. Petersburg and Tampa (“Ferry Service”) for up to three seasons; and

WHEREAS, the City of St. Petersburg is requesting funding from the Participating Governmental Agencies for season one (i.e., November 1, 2018 through April 30, 2019) of the Ferry Service; and

WHEREAS, the City may request funding from the Participating Governmental Agencies for season two and season three of the Ferry Service at a future time.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises, covenants, and

conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City of St. Petersburg and the Participating Governmental Agencies hereby agree as follows:

1. PURPOSE

The City of St. Petersburg and the Participating Governmental Agencies desire to enter into this Agreement for the Participating Governmental Agencies to provide funding for season one (i.e., November 1, 2018 through April 30, 2019) of the Ferry Service.

2. DESCRIPTION OF FERRY SERVICE

A. The Ferry Service is a seasonal ferry transit operation that will provide direct service from downtown St. Petersburg to downtown Tampa from November 1 through April 30 for up to three seasons. HMS will manage and operate the Ferry Service pursuant to and in accordance with the License and Operating Agreement between the City of St. Petersburg and HMS ("License and Operating Agreement"). The License and Operating Agreement (which includes the Operations Plan) is attached hereto as Exhibit A. Pursuant to the License and Operating Agreement, the City of St. Petersburg and HMS may amend the schedule by mutual written agreement, provided that there will be no reduction in the number of weekly trips without written consent from the Participating Governmental Agencies.

B. If HMS decides to dock the vessel at a Tampa owned or controlled facility, Tampa will negotiate in good faith with HMS to allow HMS to obtain necessary dockage for the Ferry Service.

3. NEGOTIATION OF LICENSE AND OPERATING AGREEMENT

The City of St. Petersburg shall be responsible for negotiating the terms and conditions of the License and Operating Agreement, provided that the City of St. Petersburg shall ensure the License and Operating Agreement requires the Participating Governmental Agencies to be named as additional insureds on all insurance policies in which the City of St. Petersburg is an additional insured.

4. FUNDING AND WAIVER OF FEES

A. On or before November 1, 2018, each of the Participating Governmental Agencies shall pay the City of St. Petersburg one hundred fifty thousand dollars (\$150,000) for season one of the Ferry Service. Unless the Parties execute a new interlocal agreement(s) for funding from the Participating Governmental Agencies for season two and season three of the Ferry Service, the Participating Governmental Agencies shall not be responsible for contributing any additional funds to the Ferry Service.

B. If the Ferry Service does not commence due to the fault of HMS, the City of St. Petersburg shall reimburse the Participating Governmental Entities the full amount of their funding contribution.

C. If the Ferry Service does not commence due to a force majeure event, any of the funds paid to the City of St. Petersburg for the Ferry Service that are not expended pursuant to the License and Operating Agreement shall be reimbursed to the Participating Governmental Agencies in equal shares.

D. Once the Ferry Service commences, if any of the funds paid to the City of St. Petersburg for the Ferry Service are not expended pursuant to the License and Operating Agreement (e.g., early termination of the License and Operating Agreement or excess funds available at the end of the term of the License and Operating Agreement), the City of St. Petersburg shall reimburse the Participating Governmental Agencies equal shares of such unexpended funds.

E. If HMS decides to dock the vessel at a Tampa owned or controlled facility, Tampa shall waive all docking fees for the Ferry Service.

5. REVENUE SHARING

Pursuant to the License and Operating Agreement, each ferry season the City of St. Petersburg shall receive fifty percent (50%) of all gross revenues, excluding third party costs, fees and selling commissions and sales taxes, generated from the Ferry Service above four hundred thousand dollars (\$400,000) ("Revenues"). In the event that the City of St. Petersburg receives any Revenues from the Ferry Service, the Parties shall equally share such Revenues. Any Revenues due to the Participating Governmental Agencies shall be paid by the City of St. Petersburg to the Participating Governmental Agencies within thirty (30) days after the City of St. Petersburg's receipt of Revenues.

6. EFFECTIVE DATE AND TERM OF AGREEMENT

The City of St. Petersburg shall be responsible for filing this Agreement with the Clerk of the Circuit Court of Pinellas and Hillsborough Counties and this Agreement shall be effective on the date of the last filing.

The term of this Agreement shall commence on September 15, 2018, and shall terminate upon conclusion of season one of the Ferry Service.

7. AMENDMENTS

This Agreement may be modified or amended only by a document in writing executed by the Parties with the same formality of this Agreement.

8. GOVERNING LAW

The laws of the State of Florida shall govern this Agreement.

9. SEVERABILITY

The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall

not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect, unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

10. NOTICES

Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by one party to another shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

CITY OF ST. PETERSBURG

City of St. Petersburg
175 Fifth Street North
St. Petersburg, FL 33701
Attn: Rick Kriseman, Mayor

PINELLAS COUNTY

Pinellas County
315 Court Street
Clearwater, Florida 33756
Attn: Mark S. Woodard,
County Administrator

CITY OF TAMPA

City of Tampa
306 E. Jackson Street, 2N
Tampa, Florida 33602
Attn: Bob McDonough,
Administrator of Economic Opportunity

HILLSBOROUGH COUNTY

Hillsborough County
601 E. Kennedy Blvd., 26th Floor
Tampa, Florida 33602
Attn: Michael S. Merrill,
County Administrator

11. ENTIRE AGREEMENT

This Agreement reflects the full and complete agreement between the Parties regarding the subject matter contained herein and supersedes all prior or contemporaneous agreements (whether oral or written) between them regarding the subject matter contained herein.

12. SURVIVAL

All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement shall survive such expiration or earlier termination.

13. EXECUTION

This Agreement may be signed in counterparts by the Parties hereto.

14. NON-APPROPRIATION

In the event sufficient budgeted funds are not appropriated for a new fiscal period of a particular Participating Governmental Agency, the affected Participating Governmental Agency shall notify the City of St. Petersburg of such an occurrence and this Agreement shall terminate as to the affected Participating Governmental Agency on the last day of the current fiscal year without penalty or expense to the affected Participating Governmental Agency.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF ST. PETERSBURG, FLORIDA

ATTEST

By: _____
Rick Kriseman, as its Mayor

City Clerk

(SEAL)

Approved as to Form and Content

City Attorney (Designee)
0390470 (8-1-18)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

PINELLAS COUNTY, FLORIDA

ATTEST

By: _____
Chairman,
Pinellas County Board of County Commissioners

APPROVED AS TO FORM:

Office of the County Attorney

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

HILLSBOROUGH COUNTY, FLORIDA

ATTEST

By: _____
Sandra Murman, Chairwomen,
Hillsborough County Board of County Commissioners

APPROVED AS TO FORM:

Office of the County Attorney

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF TAMPA, FLORIDA

ATTEST

By: _____
Bob Buckhorn, as its Mayor

APPROVED AS TO FORM:

Office of the City Attorney

DRAFT