

OPERATING AGREEMENT
Between
Hillsborough County, Florida
and
HMS Ferries, Inc.

THIS OPERATING AGREEMENT ("Agreement") is made and entered into this _____, _____ ("**Effective Date**"), by and between the Hillsborough County, Florida, a political subdivision of the State of Florida ("County") whose post office address is Post Office Box 1110, Tampa, Florida 33601, and HMS Ferries, Inc. ("**Operator**") whose principal place of business is 222 Pearl Street, New Albany IN 47150, and having its post office address at 600 Ericksen Avenue NE., Suite 350, Bainbridge Island, WA 98110, (collectively, "**Parties**").

WITNESSETH:

WHEREAS, the County, together with Pinellas County, Florida, the City of Tampa, Florida and the City of St. Petersburg, Florida, seek to continue a seasonal passenger ferry service ("**Ferry Service**") between the cities of St. Petersburg and Tampa; and

WHEREAS, the Ferry Service is a seasonal ferry transit operation that will provide direct service from downtown St. Petersburg to downtown Tampa commencing October 1, 2021; and

WHEREAS, on March 20, 2018, the City of St. Petersburg issued Request for Proposals No. 6831 ("**RFP**") for a passenger ferry operator to operate the Ferry Service for up to three seasons; and

WHEREAS, City of St. Petersburg selected Operator to manage and operate the Ferry Service; and

WHEREAS, the City of St. Petersburg's License and Operating Agreement expired May 1, 2021; and

WHEREAS, in 2013 the County received an unsolicited proposal from Operator and South Swell Development Group, LLC to design, build, operate, and finance a passenger ferry system in Tampa Bay, with principal service between south Hillsborough County and MacDill Air Force Base and downtown Tampa, as well as provide off-peak specialty service between downtown Tampa and downtown St. Petersburg; and

WHEREAS, the Parties entered in a Tampa Bay Passenger Ferry Interim Public Private Partnership Agreement on February 5, 2014; and

WHEREAS, as of August 7, 2019, the Parties entered into an Eleventh Modification of the 2014 Agreement; and

WHEREAS, on April 7, 2021, in lieu of the City of St. Petersburg entering into a new agreement, the Board of County Commissioners of the County authorized county staff to bring back for future Board consideration an agreement between the County and the Operator specific to the intercity ferry service; and

WHEREAS, as part of the preparation of such agreement, Operator submitted the Business and Operations Plan dated _____, and including any future addenda, or additions or modifications thereto, as agreed to by the Parties (collectively, "**Operations Plan**"), as set forth in **Exhibit A**; and

WHEREAS, Operator represents that it possesses the skills, experience, and resources, including

financial resources, necessary to perform all the obligations set forth in this Agreement, including the Operations Plan; and

WHEREAS, the Parties have agreed to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree as follows:

1. **RECITATIONS:** The above recitations are true and correct and are incorporated herein by reference.
2. **TERM:** The term of this Agreement shall commence on the Effective Date and terminate on September 30, 2025 (“Term”), unless earlier terminated as provided for herein, or extended further.
3. **OBLIGATION TO OPERATE A SEASONAL FERRY SERVICE:** Subject to Paragraph 17, Operator shall provide the seasonal Ferry Service in accordance with this Agreement, including the Operations Plan. Operator shall commence the operation of the Ferry Service on October 1 each year during the Term and continue the operation of the Ferry Service through April 30, 2022, the first year; May 31, 2023, the second year; June 30, 2024, the third year; and September 30, 2025, the fourth year. The commencement date for operation of the Ferry Service is subject to the Operator being authorized by the City of Tampa and the City of St. Petersburg (collectively, the "Cities") to access the Terminal Facilities.
4. **LICENSE:** The Operator shall exercise good faith efforts to obtain the following: a license from the City of St. Petersburg to occupy and use, as described herein and subject to all of the terms and conditions hereinafter provided, the submerged land area lying within the Vinoy Boat Basin as described in such license (the "**Submerged Area**") and the adjacent upland area, or the upland area adjacent to the St. Pete Pier, as described in such license (the "**St. Pete Upland Area**"), in addition to all ingress, egress and approaches thereof and thereto; and a license from the City of Tampa to occupy and use, as described herein and subject to all of the terms and conditions hereinafter provided, the upland area adjacent to the Tampa Convention Center as described in such license (the "**TCC Upland Area**"), in addition to all ingress, egress and approaches thereof and thereto (the **St. Pete Upland Area** and the **TCC Upland Area** are collectively sometimes referred to as the "**Upland Area**"). All references in this Agreement to Submerged Area shall include the Maritime Facilities as hereinafter defined. All references in this Agreement to Upland Area shall include the Terminal Facilities, as hereinafter defined.
5. **OPERATING HOURS DEFINED:** For purposes of this Agreement, “Operating Hours” shall mean those hours during which any operations associated with or incident to the provision of the Ferry Service are being performed including but not limited to passenger ticketing, passenger embarking/disembarking, Vessel (as defined herein) fueling and maintenance, and trash disposal, but shall not include those hours in which the sole activity related to the Ferry Service is the static docking of the Vessel.
6. **DUTIES OF OPERATOR RELATED TO SUBMERGED AREA:** In addition to Operator’s other duties set forth in this Agreement, Operator shall perform the following duties related to the Submerged Area at its sole cost and expense:
 - 6.1. Operator shall design, develop and install the seaside docking and landing area mutually agreed upon by the Parties and the Cities ("**Maritime Facilities**"). Operator shall be responsible for all maintenance and repairs to the Maritime Facilities, provided that Operator shall not be required to repair substantial damage to the Maritime Facilities. In the event of substantial damage to the Maritime Facilities, Paragraph 34.1 shall govern. Notwithstanding the foregoing, Operator shall promptly notify

the County and the Cities of substantial damage to the Maritime Facilities and take all necessary safety precautions. The Operator shall design, develop and install the Maritime Facilities.

6.2. Operator shall control and be responsible for the Submerged Area during Operating Hours, including but not limited to controlling access to the Maritime Facilities, guest service functions, maritime security screening and general operational organization. In addition, Operator shall perform operational safety activities and continue to evaluate the condition and suitability of the facilities for passenger activities. Operator shall properly secure the Maritime Facilities at the conclusion of daily Ferry Service.

6.3. Operator shall maintain the Submerged Area in a clean, orderly and safe condition in accordance with this Agreement and applicable Laws (as defined herein), and shall not permit any debris or litter to accumulate in or around the Submerged Area resulting from the its use of the Submerged Area.

6.4. Operator shall provide security for the Submerged Area during Operating Hours including but not limited to maintaining fencing, lighting and signage.

7. [INTENTIONALLY LEFT BLANK].

8. DUTIES OF OPERATOR RELATED TO UPLAND AREA: In addition to Operator's other duties set forth in this Agreement, Operator shall perform the following duties related to the Upland Area at its sole cost and expense:

8.1. Operator shall control and assume responsibility for the use, operation and security of the Upland Area during Operating Hours, including controlling access to the Upland Area, ticketing, guest service functions, maritime security screening (as may be required), cleaning, custodial and general operational organization.

8.2. Operator shall carry out operational safety activities and continue to evaluate the condition and suitability of the Upland Area for passenger activities. Operator shall properly secure the Upland Area at the conclusion of daily Ferry Service. Operator shall notify the County of any known potential hazardous conditions.

8.3. Operator shall provide a ticket booth to the Cities on or before September 1 each year during the Term.

9. [INTENTIONALLY LEFT BLANK].

10. PAYMENTS TO OPERATOR:

10.1. The County shall pay Operator the amounts specified in Exhibit C, in accordance with the payment terms described in Paragraph 10.2. County's obligation to pay is contingent upon execution of an interlocal agreement with Pinellas County, and the Cities of St. Petersburg and Tampa, and receipt of participating governmental agencies' contribution.

10.2. Payments will be made upon receipt of a proper invoice in accordance with Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Proper invoices must include:

Vendor's name and address
Vendor's tax identification number
Vendor's "remit to" address

Invoice date
Invoice number
Purchase order number
Description of goods/services provided
County department name – “Facilities Management & Real Estate Services”

Invoices must be mailed to “ countyfinanceinvoices@hillsclerk.com” or mailed to : County Finance Department, Hillsborough County Clerk of the Circuit Court, P.O Box 1110, Tampa, Florida 33601

10.3. Each year during the Term of this Agreement, after commencement of the Ferry Service, if Operator ceases to provide the Ferry Service in accordance with this Agreement, and fails to cure that default in accordance with this Agreement, the County may terminate this Agreement. In the event of termination pursuant to this Paragraph 10.3, payments or refunds shall be governed by Exhibit D. The County’s right to terminate pursuant to this Paragraph 10.3 shall not be construed to limit the County’s other termination rights pursuant to this Agreement.

11. REVENUE AND PAYMENTS TO COUNTY: For each season the Operator provides the Ferry Service pursuant to this Agreement, in the event Operator’s Revenues (as defined herein) exceeds four hundred thousand dollars (\$400,000), fifty percent (50%) of all Revenues in excess of \$400,000 shall be remitted to the County ("**County’s Revenue Share**"). For purposes of this Agreement, “**Revenues**” shall mean Operator’s gross revenues from all sources related to this Agreement, less any third party costs, fees, selling commissions, and sales taxes. Operator shall pay the County’s Revenue Share to the County by the fifteenth (15th) of the month following the month in which such Revenues were collected. All payments of the County’s Revenue Share due under this Agreement shall be paid in U.S. funds and in a manner acceptable to the County. Such payments shall be made without notice, demand, setoff or counterclaim. This Paragraph 11 shall survive expiration or earlier termination of this Agreement. In the event Operator fails to make the County’s Revenue Share payments in accordance with this Paragraph 11 and Operator does not cure such default in accordance with this Agreement, the County may impose a three percent (3%) late fee, compounded monthly.

12. COUNTY’S RIGHT TO AUDIT: The County shall have the right to audit the books and records of Operator relating to the County’s Revenue Share, during regular business hours, and Operator, on request of the County, shall make all such books and records available for examination. If the County should have an audit made and the County’s Revenue Share shall be found to be understated by more than five percent (5%) or contain any deliberate inaccuracies, then, in addition to immediately paying the County the full amount of the understated County’s Revenue Share, Operator shall reimburse the County for reasonable costs incurred to perform the audit.

13. CONDITION OF SUBMERGED AREA AND UPLAND AREA:

13.1. Operator has inspected and is aware of the condition of the Submerged Area and accepts the condition of the Submerged Area in an "as is" condition.

13.2. Operator shall inspect the Upland Area and Terminal Facilities prior to its occupancy and use and advise the County and the Cities in writing of its acceptance of them in their “as is” condition.

13.3. Neither the County nor the Cities have made any representations, statements, or warranties, either expressed or implied, as to the condition of the Submerged Area or the Upland Area, or as to their fitness for a particular use.

14. RETURN OF THE SUBMERGED AREA AND UPLANDS AREA:

14.1. At the conclusion of each season of the Ferry Service or upon the earlier termination of this Agreement, Operator shall remove its goods and effects (including but not limited to the Maritime Facilities and the ticket booth provided by Operator for the Terminal Facilities), repair any damage caused by Operator, its employees, agents or contractors, ordinary wear and tear excepted, and peaceably yield up the Submerged Area and Upland Area clean and in good order, repair and condition, ordinary wear and tear excepted.

14.2. All improvements, except the Maritime Facilities and the ticket booth provided by Operator for the Terminal Facilities, made to the Submerged Area or the Upland Area by either party shall immediately become the property of the Cities and shall remain at the Submerged Area or Upland Area during the Term of this Agreement and upon expiration or termination hereof. In the event any of the Maritime Facilities, trade fixtures, personal property, or improvements (including the ticket booth) are not removed within thirty (30) days after the end of each season by the Ferry Service or earlier termination of this Agreement, said items shall at the option of the Cities become property of the Cities, and may be disposed of in the Cities sole discretion at the sole cost and expense of the Operator. Except for the ticket booth, Operator shall not be responsible for removing the Terminal Facilities provided for herein.

15. PERMITTED USE: Operator shall occupy and utilize the Submerged Area and the Upland Area for the sole purpose of providing the Ferry Service, in accordance with this Agreement, including the Operations Plan ("**Permitted Use**"). Operator shall operate its business in an efficient and reputable manner.

16. PROHIBITED USE/ OTHER RESTRICTIONS:

16.1. The Submerged Area and the Upland Area shall not be used for any use other than the Permitted Use. No occupation or other use shall be allowed which, in the sole discretion of the Cities, is deemed hazardous to persons or to the Submerged Area or the Upland Area or which will increase the County's or the Cities' liability or cost of insurance.

16.2. The County may impose restrictions necessary for carrying out any and all activities related to County authorized, sponsored or co-sponsored events.

17. REQUIRED APPROVALS FOR EACH SEASON OF THE FERRY SERVICE:

17.1. Operator commencing season one of the Ferry Service per this Agreement is subject to and conditioned upon the following occurring by August 15, 2021: (i) to the extent required pursuant to this Agreement, the Operator obtaining any required permits and approvals from all applicable federal, state and local environmental, regulatory, and municipal agencies, including but not limited to the Army Corps of Engineers; and (ii) the execution of one or more interlocal agreements between the County and the Government Partners (as defined herein) for funding from the Government Partners for season one of the Ferry Service. For purposes of this Agreement, the "**Government Partners**" shall mean Pinellas County, Florida, the City of Tampa, Florida and the City of St. Petersburg, Florida. If, after exercising good faith efforts, the Operator does not obtain any required permits or approvals by August 15, 2021, or County fails to approve and execute one or more interlocal agreements with the Government Partners by August 15, 2021 due to its failure to exercise good faith efforts to approve and execute such agreement(s), the County may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 17.1, County shall pay Operator for documented mobilization costs and expenses incurred by Operator for season one of the Ferry Service, provided such costs and expenses were incurred after the County issued a Notice to Proceed (NTP) for season one and prior to the date of such termination, and provided further that such payment shall not exceed fifty thousand

dollars (\$50,000.00).

17.2. Operator commencing season two of the Ferry Service is subject and conditioned upon the County notifying Operator in writing by July 1, 2022, that the County desires Operator to provide the Ferry Service for season two. Operator commencing season two of the Ferry Service is further subject and conditioned upon the following occurring by August 15, 2022: (i) to the extent required pursuant to this Agreement, the Operator obtaining any required permits and approvals from all applicable federal, state and local environmental, regulatory, and municipal agencies, including but not limited to the Army Corps of Engineers and (ii) the execution of one or more interlocal agreements between the County and the Government Partners for funding from the Government Partners for season two of the Ferry Service. If the County does not provide notice to Operator by July 1, 2022, that the County desires Operator to provide the Ferry Service for season two, this Agreement shall automatically terminate, and the County shall not be liable for any costs and expenses incurred by Operator for season two of the Ferry Service. If the County provides notice to Operator by July 1, 2022, that the County desires Operator to provide the Ferry Service for season two, and, after exercising good faith efforts, Operator does not obtain any required permits or approvals by August 15, 2022, or the County fails to approve and execute one or more interlocal agreements with the Government Partners by August 15, 2022 due to its failure to exercise good faith efforts to approve and execute such agreement(s), the County may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 17.2, the County shall pay Operator for documented mobilization costs and expenses incurred by Operator for season two of the Ferry Service, provided such costs and expenses were incurred after the County issued a Notice to Proceed (NTP) for season two and prior to the date of such termination, and provided further that such payment shall not exceed fifty thousand dollars (\$50,000.00).

17.3. Operator commencing season three of the Ferry Service is subject and conditioned upon the County notifying Operator in writing by July 1, 2023, that the County desires Operator to provide the Ferry Service for season three. Operator commencing season three of the Ferry Service is further subject and conditioned upon the following occurring by August 15, 2023: (i) to the extent required pursuant to this Agreement, the Operator obtaining any required permits and approvals from all applicable federal, state and local environmental, regulatory, and municipal agencies, including but not limited to the Army Corps of Engineers and (ii) the County execution of one or more interlocal agreements between the County and the Government Partners for funding from the Government Partners for season three of the Ferry Service. If the County does not provide notice to Operator by July 1, 2023, that the County desires Operator to provide the Ferry Service for season three, this Agreement shall automatically terminate, and the County shall not be liable for any costs and expenses incurred by Operator for season three of the Ferry Service. If the County provides notice to Operator by July 1, 2023, that the County desires Operator to provide the Ferry Service for season three, and, after exercising good faith efforts, Operator does not obtain any required permits or approvals by August 15, 2023, or the County fails to approve and execute one or more interlocal agreements with the Government Partners by August 15, 2023 due to its failure to exercise good faith efforts to approve and execute such agreement(s), the County may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 17.3, the County shall pay Operator for documented mobilization costs and expenses incurred by Operator for season three of the Ferry Service, provided such costs and expenses were incurred after the County issued a Notice to Proceed (NTP) for season three and prior to the date of such termination, and provided further that such payment shall not exceed fifty thousand dollars (\$50,000.00).

17.4. Operator commencing season four of the Ferry Service is subject and conditioned upon the County notifying Operator in writing by July 1, 2024, that the County desires Operator to provide the Ferry Service for season four. Operator commencing season four of the Ferry Service is further subject and conditioned upon the following occurring by August 15, 2024: (i) to the extent required pursuant

to this Agreement, the Operator obtaining any required permits and approvals from all applicable federal, state and local environmental, regulatory, and municipal agencies, including but not limited to the Army Corps of Engineers and (ii) the County execution of one or more interlocal agreements between the County and the Government Partners for funding from the Government Partners for season four of the Ferry Service. If the County does not provide notice to Operator by July 1, 2024, that the County desires Operator to provide the Ferry Service for season four, this Agreement shall automatically terminate, and the County shall not be liable for any costs and expenses incurred by Operator for season four of the Ferry Service. If the County provides notice to Operator by July 1, 2024, that the County desires Operator to provide the Ferry Service for season four, and, after exercising good faith efforts, Operator does not obtain any required permits or approvals by August 15, 2024, or the County fails to approve and execute one or more interlocal agreements with the Government Partners by August 15, 2024, due to its failure to exercise good faith efforts to approve and execute such agreement(s), the County may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 17.4, the County shall pay Operator for documented mobilization costs and expenses incurred by Operator for season four of the Ferry Service, provided such costs and expenses were incurred after the County issued a Notice to Proceed (NTP) for season four and prior to the date of such termination, and provided further that such payment shall not exceed fifty thousand dollars (\$50,000.00).

18. **COMPLIANCE WITH LAWS:** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "**Laws**"), including but not limited to statutes governing construction of public buildings and repairs upon public buildings and public works (including but not limited to the bonding requirements of Section 255.05, Florida Statutes).

19. **PUBLIC RECORDS:**

19.1. Operator shall (i) keep and maintain public records (as defined in Chapter 119, Florida Statutes) required by the County to perform the services pursuant to this Agreement; (ii) upon request from the County, provide the County (at no cost to the County) 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 under Florida laws regarding public records or other applicable Laws; (iii) ensure that public records in Operator's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws for the Term of this Agreement and after the expiration or earlier termination of this Agreement; and (iv) after the expiration or earlier termination of this Agreement, at the County's request, either transfer, at no cost, to the County all public records in Operator's possession within ten (10) days following the County's request and/or keep and maintain any public records required by the County to perform the services pursuant to this Agreement. If Operator transfers all public records to the County upon the expiration or earlier termination of this Agreement, Operator shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Operator keeps and maintains public records upon the expiration or earlier termination of this Agreement, Operator shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the County's request, all public records stored electronically by Operator shall be provided to the County in a format approved by the County.

19.2. IF OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THOMAS FASS, ASSISTANT

COUNTY ADMINISTRATOR FOR HILLSBOROUGH COUNTY AT 813-307-1711, fasst@hillsboroughcounty.org, or 601 E. Kennedy Blvd., 26th Floor, Tampa, Florida 33602.

19.3. Nothing contained herein shall be construed to affect or limit Operator's obligations including but not limited to Operator's obligations to comply with all other applicable Laws and to maintain books and records pursuant to this Agreement.

20. VESSEL: For the operation of the Ferry Service each season during the Term of this Agreement, Operator shall provide a high-speed, 149-passenger, catamaran ferry that is 98' in length, with a 33' beam, and a 7' draft ("Vessel"). The Vessel shall have a cruising speed of 27 knots and a top speed of 29 knots. Operator shall be solely responsible for the Vessel including operation, maintenance and security at all times. Any deviation in the Vessel used for Ferry Services must be the functional equivalent of the Vessel and is subject to the approval by the County Administrator or his or her designee.
21. SERVICE, ROUTE AND SCHEDULE: Operator shall provide the service, route and schedule for the Ferry Service as set forth in the Operations Plan, which may be amended from time to time by mutual written agreement of the Parties.
22. RECORDS AND REPORTING:
- 22.1. Operator shall prepare in accordance with generally accepted accounting practice and shall keep, at the address set forth in this Agreement, accurate books and records with respect to this Agreement, along with other records as required by applicable Laws ("**Records**"). All Records, including but not limited to tax returns, with respect to the Operator's business conducted pursuant to this Agreement, shall be kept and maintained by Operator and shall be open to examination or audit by the County and FDOT during the Term of this Agreement and for the retention periods set forth in the most recent General Records Schedule GSI – SL for State and Local Government Agencies.
- 22.2. In addition to the Records, Operator shall provide monthly operations reports, as reasonably required by the County and FDOT ("**Reports**"), to the designated County staff set forth in this Agreement. Such Reports shall include, but not be limited to, customer use of the Ferry Service, revenues generated, and copies of submitted Florida Department of Revenue Form DR-15.
23. TAXES AND FEES: The County shall not charge any fees based on the Permitted Use, including but not limited to dockage fees, landing fees or passenger fees. Operator shall be solely responsible for payment of applicable income taxes and sales taxes, provided that calculation of the County's Revenue Share shall include an adjustment for sales taxes pursuant to this Agreement.
24. CONSTRUCTION AND ALTERATIONS: Operator shall not make or permit to be made any alterations, additions, improvements or changes to the Submerged Area or Upland Area nor permit the painting or placing of any exterior signs, placards or other advertising media, banners, pennants, utility connections and meters, awnings, aerials, antennas or the like, without on each occasion obtaining prior written consent of the County and the Cities, which consent shall be at the sole discretion of the County and the Cities.
25. LICENSES, PERMITS, CERTIFICATIONS AND AUTHORIZATIONS: Unless otherwise provided in this Agreement, Operator, at its expense, shall obtain and maintain during the Term of this Agreement any licenses, permits, certifications and authorizations required by the U.S. Coast Guard or any governmental agency or authority with respect to operation of the Vessel and performance of Operator's

duties pursuant to this Agreement. No unlawful activities shall be permitted in the use of the Submerged Area or Upland Area. The County and the Cities makes no representations as to whether the licenses, permits, certifications or authorizations required by any governmental agencies or authorities will be issued to Operator.

26. INDEMNIFICATION: Operator shall indemnify, defend, and hold harmless County, Government Partners, FDOT, and their officers, employees, agents, invitees, elected and appointed officials and volunteers (collectively, "**Indemnified Parties**") from any claim, loss, damage, costs, charge, or expense arising out of any act, error, omission, or negligent act by Operator, its agents, or employees, during the performance of this Agreement, except that neither Operator, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission or negligent act by the Indemnified Parties.

27. INSURANCE:

27.1. Operator shall obtain and maintain during the Term of this Agreement, at Operator's cost, the following insurance, written by a firm that is authorized to conduct business in the State of Florida, recognized by the State of Florida Insurance Department. The policy or policies shall include products, completed operations and contractual liability coverage or endorsements and shall not be self-insured by Operator and shall have the following minimum limits:

27.1.1. Workers' Compensation: Workers' Compensation insurance as required by Florida Statute and Employers Liability in an amount of \$1,000,000 per employee, \$1,000,000 for disease and \$1,000,000 total for all diseases. United States Longshore and Harborworker's Act Insurance and applicable protection and indemnity (P&I) to include, but not limited to coverage for injuries to crew.

27.1.2. Automobile Liability: Automobile Liability insurance for bodily injury and property damage liability including coverage for all owned, non-owned and hired autos with a minimum combined single limit of \$1,000,000.

27.1.3. Environmental Liability: Environmental Liability insurance including marine pollution coverage with a minimum of \$5,000,000 per occurrence limit.

27.1.4. Marine Insurance: Hull and Machinery insurance as required based on the Vessel's value with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate limits covering liability and property damage coverage, Protection & Indemnity (P&I) insurance including Passenger Liability, Marine Liability and Crew coverage including Jones Act coverage if not under Workers' Compensation with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate limits, Comprehensive Marine Liability insurance with a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate limits covering the operations, contractual liabilities and product and completed operations liability exposure of Operator.

27.1.5. Umbrella Liability: Marine Umbrella Liability insurance and Bumbershoot Umbrella Liability insurance with a minimum combined limit of \$5,000,000 to apply following form to Marine Liability, Automobile Liability, Environmental Liability policies and to the P&I insurance.

27.1.6. Personal Property: Operator shall maintain whatever insurance coverage it may desire on the contents on the Submerged Area and Upland Area. "All Risk" property damage insurance covering Operator's personal property at the Submerged Area and Upland Area for damage or other loss caused by fire or other casualty or cause, including but not limited to

vandalism and malicious mischief, theft, explosion, and water damage of any type.

27.1.7. Business Interruption: Operator shall secure and maintain Business Interruption insurance for a period of 30 days to cover income losses during an unexpected event. In the event the Operator is unable to secure this insurance they must provide the County documentation showing the insurance is not reasonably available.

27.2. All of the insurance required to be maintained by Operator, except Workers' Compensation, and Professional Liability, shall name the Indemnified Parties as additional insureds.

27.3. All insurance shall be provided by responsible insurers licensed in the State of Florida and rated at least an A- in the current edition of Best's Insurance Guide. If coverage is obtained by utilizing a pool, captive or club, Operator shall submit the information on the coverage and the entity providing the coverage to the County to allow the County to confirm coverage and the financial stability of the pool, captive or club. Information provided shall include a certificate with the coverages, the rules, Operator's application, confirmation the Vessel is scheduled, and verification of the financial stability of the pool, captive or club.

27.4. Operator shall provide the County with notice at least thirty (30) days prior to any cancellation, reduction or material change in coverage.

27.5. Operator hereby waives all subrogation rights of its insurance carriers, pools, captive and clubs in favor of the Indemnified Parties and agrees to provide its insurance carriers, pools, captives and clubs with all necessary documentation to secure this waiver. This paragraph is intended to waive fully and for the benefit of the Indemnified Parties any rights or claims which might give rise to a right of subrogation in favor of any insurance carrier, pool, captive or club.

27.6. Operator shall provide the County with Certificates of Insurance on a standard Acord form reflecting all coverages, all coverage limits and all covered vessels. At the County's request, Offeror shall provide copies of current policies with all applicable endorsements. If coverage is obtained by utilizing a pool, captive or club, in addition to the requirements set forth in Paragraph 27.3, Operator shall provide similar documentation to an Acord form to reflect coverage and limits. Operator shall provide all information and documentation required pursuant to this Paragraph 27.6, evidencing compliance with all requirements contained herein, on or before the start of seasonal service.

27.7. If any contractor of Operator (or subcontractor) performs any work at or upon the Upland Area or Submerged Area, Operator shall ensure that said contractor (or subcontractor) obtains the insurance required pursuant to this Paragraph 27 and marine industry standards, as applicable, naming Operator and the Indemnified Parties as additional insureds.

28. DISCLAIMERS:

28.1. Operator shall store its personal property in the Submerged Area and Upland Area at its own risk. Operator shall also occupy the Submerged Area and Upland Area at its own risk.

28.2. Operator shall give prompt notice to the County and the Cities in case of fire or accidents or other casualties on or about the Submerged Area or Upland Area.

29. ASSIGNMENT: Operator shall not have the right to assign, transfer, convey, sublet or otherwise dispose of the Submerged Area or Upland Area or this Agreement or any part thereof, or of its right, title or interest therein or its power to execute this Agreement or any amendment or modification thereto, to any person, company or corporation.

30. DEFAULT BY OPERATOR:

30.1. Subject to Operator's right to notice and opportunity to cure specified in Paragraph 30.2, Operator shall be deemed to be in default of its obligations under this Agreement upon the occurrence of any of the following:

30.1.1. Operator's failure to pay the County's Revenue Share or any other sums due under this Agreement;

30.1.2. Operator's failure to perform any covenant, promise or obligation contained in this Agreement or comply with the terms and conditions of this Agreement including obligations related to public records;

30.1.3. The appointment of a receiver or trustee for all or substantially all of Operator's assets;

30.1.4. Operator's voluntarily 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;

30.1.5. The sale of Operator's interest under this Agreement by execution or other legal process;

30.1.6. The seizure, sequestration or impounding by virtue or under authority of any legal proceeding of all or substantially all of the personal property or fixtures of Operator used in or incident to its operations at the Submerged Area or Upland Area;

30.1.7. Operator's making an assignment of its assets for the benefit of creditors;

30.1.8. Any sale, transfer, assignment, subleasing, concession, license, or other disposition of this Agreement not authorized in this Agreement; or

30.1.9. Operator doing or permitting to be done anything that creates a lien upon the Submerged Area or Upland Area and shall fail to obtain the release of any such lien or bond off any such lien as required herein.

30.2. The County may immediately terminate this Agreement if a default pursuant to Paragraph 30.1, above is not cured within ten (10) days after receipt of notice from the County. In the event of termination pursuant to this Paragraph 30.2, payments and refunds shall be governed by Exhibit D.

31. DEFAULT BY COUNTY:

31.1. Subject to the County's right to notice and opportunity to cure specified in Paragraph 31.2, the County shall be deemed to be in default of its obligations under this Agreement upon the occurrence of any of the following:

31.1.1. The County's failure to make any required payments to Operator as described in Exhibit C; or

31.1.2. The County's failure to perform any covenant, promise or obligation contained in this Agreement or comply with the terms and conditions of this Agreement.

31.2. Operator may immediately terminate this Agreement if a default pursuant to Paragraph 31.1, above is not cured within ten (10) days after receipt of notice from the Operator. In the event of termination pursuant to this Paragraph 31.2, payments and refunds shall be governed by Exhibit D.

32. ENVIRONMENTAL COMPLIANCE:

32.1. For purposes of this Agreement, the following words and phrases shall have the following meaning except where the text clearly indicates a contrary intention:

32.1.1. "**Environment**" shall mean soil, surface waters, groundwater, land, stream and sediments, surface or subsurface strata, ambient air, interior and/or exterior of any building or improvement and any environmental medium.

32.1.2. "**Environmental Condition**" shall mean any condition of the Environment with respect to the Submerged Area that results from Operator's possession, use, occupation, construction and/or improvement to or operation of Operator's business on the Submerged Area or Upland Area.

32.1.3. "**Environmental Laws**" shall mean the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (RCRA); the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (original act known as CERCLA or "superfund", the amendments are known as SARA); the HSWA amendments to RCRA regulating Underground Storage Tanks (USTs), 42 U.S.C. Sections 6991-6991(I), as amended; the Clean Air Act of 1963, 42 U.S.C. Sections 7401, et seq., as amended (Clean Air Act); the Federal Water Pollution Control Act of 1977 and 1987, 33 U.S.C. Sections 1251, et seq., as amended (Clean Water Act); the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601, et seq., as amended (TSCA); the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq., as amended (HMTA); the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended (OSHA); the Act to Prevent Pollution from Ships, 33 U.S.C. Sections 1901 et seq., as amended; the Florida Resource Recovery and Management Act, Section 403.701, et seq., Florida Statutes, as amended; the Florida Pollutant Discharge Prevention and Control Act, Section 376.011-376.17 and 376.19-376.21, Florida Statutes, as amended; and Chapters 373, 376 and 403, Florida Statutes; and any other present or future federal, state, or local law, regulation, rule or ordinance implementing or promulgating the preceding federal and state statutes as well as any future federal, state, or local law whose purpose is to protect the Environment, together, in each case, with any amendment thereto.

32.1.4. "**Hazardous Material**" shall mean without limitation (1) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substance", or "solid waste" in any Environmental Laws; (2) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (3) any materials, waste, or substance which is (A) petroleum, petroleum by-products, residuals and petroleum degradation by-products; (B) asbestos; (C) polychlorinated biphenyls; (D) flammable explosives; or (E) radioactive materials; and (4) such other substances, materials, and wastes which are or become regulated or controlled under any Environmental Laws.

32.1.5. "**Release**" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

32.2. Operator shall not cause or permit any Hazardous Material to be used, stored, or generated on the Submerged Area or Upland Area, except for materials of types and quantities relevant to its business and customarily used for the operation of a passenger ferry service. Operator shall use, store, and transport materials in conformity with Environmental Laws, and all other applicable federal, state and local laws and ordinances, the National Fire Protection Association (NFPA) Code, United States Coast

Guard, Federal Maritime Commission, Federal Aviation Administration, local fire codes and regulations and Airport regulations and tariffs as they may be amended from time to time. The County reserves the right to terminate this Agreement immediately and without notice for any violation of the requirements concerning Hazardous Material and storage.

32.3. Operator shall not cause or permit the Release of any Hazardous Material, contaminant, or pollutant in, on, or under the Submerged Area or Upland Area or into any open surface water body, ditch, conduit, stream, storm sewer, or sanitary sewer connected thereto or located thereon.

32.4. The County shall promptly notify Operator of every demand, notice, summons, or other process received as to any Environmental Claims (as defined herein) or legal proceeding that involves Operator or the Submerged Area or Upland Area.

32.5. Operator shall promptly notify the County and the Cities of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material in or upon the Submerged Area or Upland Area or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party relating to any loss or injury resulting from any Hazardous Material in or upon the Submerged Area or Upland Area, and (iii) any matters where the Operator is required by Environmental Laws to give a notice to any governmental or regulatory authority respecting any Hazardous Material in or upon the Submerged Area or Upland Area. It is Operator's sole responsibility to be aware of and compliant with any additional notification requirements regarding the report of releases over or adjacent to open water to applicable federal, state and local agencies.

32.6. If any Hazardous Material is Released at, on or within the Submerged Area or Upland Area by the Operator or any other occupant of the Submerged Area or Upland Area in violation of Environmental Laws, Operator shall timely notify the County and the Cities and immediately, properly and in compliance with Environmental Laws clean up and remove the Hazardous Material from the Submerged Area or Upland Area and any other affected property. Such cleanup and removal shall be at the Operator's sole expense. For purposes of removal and disposal of any such Hazardous Material, Operator shall be named as the owner and generator, obtain a waste generator identification number, and execute all permit applications, manifests, waste characterization documents and any other forms required by the appropriate state or federal environmental authority and hold the County and the Cities harmless.

32.7. Operator shall defend, pay on behalf of, indemnify and hold harmless the Indemnified Parties from and against all claims, damages, expenses (including reasonable attorneys' fees), liabilities and all other obligations including, without limitation, third party claims for personal injury or real or personal property damage (collectively, "**Environmental Claims**") arising from or connected with the violation of Environmental Laws by the Operator or other occupants of the Submerged Area or Upland Area except to the extent any of the foregoing Environmental Claims are attributable to the violation of Environmental Laws by the County, its officers, directors, agents or employees. The County shall have control over the County's and Operator's involvement in legal proceedings resulting from Environmental Claims and covered by the indemnification agreement contained in this Agreement. Operator's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

32.8. Operator shall allow authorized representatives of the County and the Cities or state and federal environmental personnel, at a reasonable time and with reasonable notice, access to the Submerged Area and the Maritime Facilities for the following purposes:

32.8.1. Conducting an environmental audit or other inspections of the Submerged Area and the Maritime Facilities.

32.8.2. Reviewing and copying of any records that must be kept under any environmental permit.

32.8.3. Viewing the facilities, equipment, practices, or operations regulated or required under such permit.

32.8.4. Sampling or monitoring any substances or parameters at any location subject to any environmental permit or federal, state or municipal environmental law or regulation.

32.9. The Operator shall not be liable for any contamination of the Submerged Area or Upland Area caused by the Cities' activity on the Upland Area, or other County-owned property adjacent to the Submerged Area or Upland Area.

32.10. This Paragraph 32 shall survive the expiration or earlier termination of this Agreement.

32.11. Nothing in this Agreement shall be interpreted as limiting the County's ability to seek contribution from any potentially responsible parties for any environmental violation.

33. GRAND PRIX RACE EVENTS: [INTENTIONALLY LEFT BLANK]

34. DAMAGE TO SUBMERGED AREA, MARITIME FACILITIES, UPLAND AREA AND VESSEL:

34.1. If any portion of the Submerged Area, the Maritime Facilities, Upland Area or Terminal Facilities are substantially damaged by fire, explosion, or other casualty or occurrence ("**Facilities Damage**"), the Cities or Operator may elect to repair or replace the affected facilities within thirty (30) days of the Facilities Damage. In the event the affected facilities are not repaired or replaced within thirty (30) days of the Facilities Damage or if neither the Cities or Operator elects to repair or replace the affected facilities, either party may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 34.1, payments or refunds shall be governed by Exhibit D.

34.2. If any portion of the Vessel is substantially damaged by fire, explosion, or other casualty or occurrence ("**Vessel Damage**"), Operator may elect to repair or replace the Vessel within thirty (30) days of the Vessel Damage. In the event Operator fails to repair or replace the Vessel within thirty (30) days of the Vessel Damage or if Operator elects not to repair or replace the Vessel, the County may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 34.2, payments or refunds shall be governed by Exhibit D.

34.3. Nothing contained herein shall limit the County's rights and remedies against Operator if any such damage was caused by Operator, its employees, agents or contractors.

35. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, the actions or decisions of any regulatory or legal authority not the fault of the party delayed in performing work or doing acts, or any other reason not the fault of the party delayed in performing work or doing acts ("**Permitted Delay**"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within five (5) days of the event causing the Permitted Delay, and the maximum period of time which a party may delay any act or performance of work due to a Permitted Delay shall be fifteen (15) days from the event causing the Permitted Delay. For purposes of this Paragraph 35, the Parties may send written notice via email to the email address identified in the notice paragraph of this Agreement. If a party delays any act or performance of work due to a Permitted Delay for a time period in excess of fifteen (15) days, either party may immediately terminate this Agreement. In the event of termination pursuant to this Paragraph 35, payments or refunds shall be governed by Exhibit D.

36. DISCRIMINATION: Operator shall not discriminate against anyone in the use of the Submerged Area, the Maritime Facilities, the Vessel or Upland Area on the basis of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.
37. RELATIONSHIP OF PARTIES: In conducting its business hereunder, Operator shall act as an independent contractor and not as an agent of the County. The selection, retention, assignment, direction and payment of Operator's employees shall be the sole responsibility of Operator, and the County shall not attempt to exercise any control over the daily performance of duties by Operator's employees.
38. SEVERABILITY: Should any section or part of any section of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other section or any part of any other section of this Agreement.
39. LAW, JURISDICTION AND VENUE: This Agreement shall be governed and interpreted in accordance with the laws of the State of Florida. Venue for any cause of action or claim asserted by either party hereto brought in state court, shall be in Hillsborough County, Florida. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
40. DUE AUTHORITY: Each party to this Agreement that is not an individual represents and warrants to the other party that (i) it is a duly organized, qualified and existing entity under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the party on whose behalf he or she is executing.
41. ACCESS TO SUBMERGED AREA: The Operator shall allow the County and Cities to enter upon the Submerged Area at all reasonable hours.
42. AMERICANS WITH DISABILITIES ACT OF 1990: Operator assumes all responsibility, including but not limited to, financial, construction and physical modification costs, provision of auxiliary aids, services and legal costs, for ensuring compliance with all aspects of the Americans with Disabilities Act of 1990 (ADA) and any amendments thereto.
43. SAFETY:
- 43.1. Operator shall remove the Vessel from the berth at the Maritime Facilities upon the request of the County or Cities if in the sole discretion of the County or Cities the Vessel poses an imminent threat to the safety of persons or property. Such a request by the County or Cities shall not be deemed a

disturbance of Operator's right of occupancy and use of the Submerged Area or Upland Area and shall not be a basis for a claim for damages or any legal action of any type against the County.

43.2. In recognition of the danger posed to other vessels, the Submerged Area, Upland Area and adjacent facilities by a shipboard fire while at the Submerged Area, and in recognition of the relative superior expertise and equipment possessed by the Cities' Fire & Rescue Department, Operator shall, as a condition of utilizing the Submerged Area:

43.2.1. Cooperate with the Cities' Fire & Rescue Departments in formulating a plan to fight shipboard fires while docked at the Submerged Area;

43.2.2. Permit, without exception, the boarding of the Vessel while at the Submerged Area by fire officials who are responding to a report of a shipboard fire;

43.2.3. Permit, without exception, the boarding of the Vessel while at the Submerged Area by firefighting units when required by fire officials who have boarded pursuant to Paragraph 43.2.2, above; and

43.2.4. Ensure that the management, captain, crew and security personnel are at all times aware of the permission contained herein in order to assure unfettered access by fire officials and units for the purpose of prompt, efficient response to a shipboard fire. Operator will provide the Cities' Fire & Rescue Department with a letter setting out the provisions of this Paragraph 43 and the permission contained herein.

43.3. The permission contained herein applies to any vessel owned or operated by Operator berthed at the Maritime Facilities.

43.4. Operator shall have a duty to warn all persons who enter on the Submerged Area and Maritime Facilities of any dangerous conditions thereon known to Operator.

44. **NO EXCLUSIVE RIGHTS:** Nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right other than right of use of the Submerged Area and Upland Area pursuant to the terms and conditions of this Agreement.

45. **SURVIVAL:** All obligations of Operator (including but not limited to indemnity obligations) and rights of the County arising during or attributable to the period prior to expiration or earlier termination of this Agreement shall survive such expiration or earlier termination.

46. **REPLACEMENT FACILITY:** The County and the Cities are under no obligation to locate or provide replacement facilities under any circumstances including, but not limited to, substantial damage to the existing improvements by fire, flood, hurricane, tornado, earthquake or other form of natural disaster, or termination of this Agreement.

47. **WAIVER:** The waiver by the County or Operator of any breach or default of any term, covenant or condition shall not be deemed to be a waiver of any subsequent breach or default of the same or any other term, covenant or condition, nor shall the acceptance or payment of the County's Revenue Share or other payment be deemed to be a waiver of any such breach or default. No term, covenant or condition of this Agreement shall be deemed to have been waived by the County or Operator, unless such waiver is in writing.

48. **NOTICES:** Unless otherwise provided in this Agreement, any notice, demand, request or other

instrument which may be or is required to be given or delivered under this Agreement shall be deemed to be delivered (i) whether or not actually received, five (5) days after deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (ii) when received (or when receipt is refused) if delivered personally or sent by a nationally recognized overnight courier, all charges prepaid, at the addresses of the County and Operator as set forth in this paragraph. Such address may be changed by providing written notice to the other party in accordance with this Paragraph 48. Except for Paragraph 35, the Parties acknowledge that copies of any notice sent by facsimile or e-mail are for convenience only, and shall not be deemed to be proper notice required hereunder.

<p>If to Operator, addressed to: HMS Ferries, Inc. c/o Matthew Miller, President 600 Ericksen Ave, Suite 350 Bainbridge Island, WA 98110 Email: mmiller@hmsgm.com</p>	<p>If to County, addressed to: Tom Fass, Assistant County Administrator Hillsborough County 601 E. Kennedy Blvd., 24th Floor Tampa, FL 33602 Email: fasst@hillsboroughcounty.org</p>
<p>HAZARDOUS MATERIALS SPILL CONTACTS Marina Supervisor on Duty (During Business Hours) (727) 893-7329 Marina Security Officer (After Hours) (727) 639-5790 Sea Tow/Sea Spill Services Tampa Bay (24/7) (727) 547-1868</p>	

49. PARAGRAPH NUMBERS AND CAPTIONS: The paragraph numbers and captions appearing in this Agreement are inserted for convenience and reference only, and shall not be considered or referred to in resolving questions of interpretation.
50. ENTIRE AGREEMENT: This Agreement including exhibits hereto if any, constitutes the entire agreement between the County and Operator and its professional advisors. No change will be valid, unless made by supplemental written agreement executed and approved by the Parties.
51. NO THIRD PARTY BENEFICIARIES: This Agreement sets forth the agreement between the Parties and all rights and benefits established herein are established solely for the benefit of the Parties and are not intended to establish any rights or benefits in any other person or entity.
52. RECORDING: This Agreement shall not be recorded in the public records by either party.
53. OPERATOR ENTITY: Operator shall do all things necessary to comply with all the legal requirements to be a business entity authorized to operate within the State of Florida including but not limited to active registration with the Florida Division of Corporations. If Operator is a foreign entity, it shall also do all things necessary to comply with all the legal requirements to be a business entity authorized to operate in its state of domicile, including but not limited to required registrations and filings with that state. Should Operator at any time fail to be in compliance with those legal requirements, said failure shall constitute a default of this Agreement and this Agreement may be immediately terminated by the County in its sole discretion.
54. CURRENT OFFICERS: Operator shall provide the County, in writing, with the name, title, address and telephone numbers of all of corporate members and officers at or before the Effective Date or within thirty (30) calendar days of their election or appointment to office. Should any members or officers reside at more than one residence, both addresses and telephone numbers shall be supplied to the County.

55. BROKERAGE FEES: Operator and the County warrant to each other that there is no broker or other individual entitled to any commission or fee by reason of this Agreement.
56. EXERCISING OF COUNTY'S RIGHTS: All rights reserved to the County under this Agreement shall be exercised in a reasonable manner and in a manner so as to minimize any adverse impact to Operator's business or Operator's use or enjoyment of the Submerged Area and Upland Area.
57. TIME REQUIREMENTS: Time is of the essence. Time periods herein shall include Saturdays, Sundays, and state and national legal holidays and shall end at 5:00 P.M. eastern time.
58. COUNTY CONSENT AND ACTION:
- 58.1. For the purposes of this Agreement, any required written permission, consent, approval or agreement by the County means the approval of the Board of County Commissioners or its designee unless otherwise set forth herein and such approval shall be in addition to any and all permits and other licenses required by applicable Laws or this Agreement.
- 58.2. For the purposes of this Agreement, any right of the County to take any action permitted, allowed or required by this Agreement, may be exercised by the Board of County Commissioners or its designee, unless otherwise set forth herein or required by applicable Laws.
59. NON-APPROPRIATION: The obligations of the County as to any funding required pursuant to this Agreement, shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential County services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the County shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the County pursuant to this Agreement.
60. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from the applicable county health department.
61. COUNTY AS A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA: Nothing contained in this Agreement shall be interpreted to require the County to take any action or refrain from taking any action that would be adverse to its status as a political subdivision of the State of Florida or to take or refrain from taking any action in its capacity as a political subdivision of the State of Florida not specifically required by this Agreement.
62. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT: This Agreement has been prepared by both parties. The County, Operator and Operator's professional advisors believe that this Agreement expresses their agreement and that it should not be interpreted in favor of either the County or Operator or against the County or Operator merely because of their efforts in preparing it.
63. NO LIENS: Operator shall not suffer any liens to be filed against the Submerged Area and Upland Area by reason of any work, labor, services or materials performed at or furnished to the Submerged Area or Upland Area, to Operator, or to anyone using the Submerged Area or Upland Area through or under Operator. Nothing contained in this Agreement shall be construed as a consent on the part of the County or Cities to subject the Submerged Area or Upland Area or any part thereof to any lien or

liability under the lien laws of the State of Florida.

64. [INTENTIONALLY LEFT BLANK]

65. [INTENTIONALLY LEFT BLANK]

66. JOINT PARTICIPATION AGREEMENT WITH FDOT: The County is pursuing a joint participation agreement with FDOT. If such an agreement becomes effective the Parties agree that this Agreement is subject to such Joint Participation Agreement between the County and FDOT, and all rights granted to the County and the FDOT thereunder. To the extent the Joint Participation Agreement sets forth terms and conditions that are required to be performed by Operator, the Operator shall comply with such terms and conditions.

67. AGREEMENT COMPONENTS AND ORDER OF PRECEDENCE:

67.1. This Agreement consists of this document and its exhibits.

67.2. In the event of an inconsistency or conflict between or among the documents referenced in this Agreement, the following order of precedence shall govern: (i) this Agreement, exclusive of its exhibits, (ii) the exhibits to this Agreement;

68. EXHIBITS: Each exhibit to this Agreement is an essential part hereof and is incorporated herein by reference.

REMAINING PORTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

ATTEST: CINDY STUART
Clerk of Circuit Court

COUNTY: HILLSBOROUGH COUNTY,
FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chair, Patricia Kemp
Board of County Commissioners

APPROVED BY COUNTY ATTORNEY
AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Senior Assistant County Attorney

ATTEST: (as to Operator) OPERATOR: **HMS FERRIS, INC.**

1st witness to signature

By: _____
Authorized signature

Printed name of 1st witness

(Printed name of signer)

2nd witness to signature

(Printed title of signer)

Printed name of 2nd witness

(Business address of Contractor)

(Phone number of signer)

Date

ACKNOWLEDGMENT OF AGREEMENT

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me by means of physical presence or online

notarization this _____ day of _____, 2021, by

(Name and Title of Officer or Agent)

of _____, a _____ corporation
(Name of Corporation) (State of Incorporation)

on behalf of the corporation. He/she is personally known to me or has produced:

(Type of Identification)

Signature of Notary

Name of Notary Typed, Printed or Stamped

Title or Rank

Serial Number, If Any

EXHIBIT A – Business & Operations Plan

Business and Operations Plan

The Cross Bay Ferry Inter-City Service

St. Petersburg - Tampa



Prepared For:

Hillsborough County
Deputy County Administrator
601 E Kennedy Blvd
Tampa, FL 33602

Prepared By:



June 1, 2021

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1 Inter-City Ferry Project Overview

On April 7, 2021 the Hillsborough County Board of County Commissioners voted 6-1 to:

- (a) Authorize staff to bring back for future Board consideration an Agreement with HMS Ferries, Inc. ("HMS") and South Swell Development Group, LLC ("South Swell") for the purpose of inter-city ferry services. The City of St. Petersburg and HMS entered into a License and Operating Agreement on August 3, 2018, for HMS to manage and operate the seasonal ferry service between St. Petersburg and Tampa for up to three seasons (i.e., November 1 through April 30) commencing in November 2018. With the pending expiration of the current License and Operating Agreement, the City of St. Petersburg is prepared to issue a new solicitation for continued inter-city ferry service. Commissioner Kemp discussed with Mayor Kriseman having Hillsborough County (the "County") take the lead for this Agreement. Additionally, HMS & South Swell are agreeable for the County to negotiate an Agreement in lieu of St. Petersburg issuing a new solicitation. The County's Public-Private Partnership (P3) solicitation for Ferry Service and the preceding unsolicited proposal from HMS & South Swell, included off-peak specialty service between South Hillsborough County, downtown Tampa and downtown St. Petersburg. As a result, the County is able to negotiate an Agreement with HMS & South Swell for continued inter-city service in lieu of the City of St. Petersburg issuing a new solicitation.
- (b) Develop for future consideration a Funding Agreement between Hillsborough County, the City of Tampa, St. Petersburg, Pinellas County, as well as other funding opportunities for funding the inter-city ferry service. There is no cost for development of these Agreements.

The following is the general concept of operations that HMS Ferries (HMS) recommends for the Cross-Bay Ferry Inter-City Service. As outlined, each year the service period increases and the per-month subsidy decreases, which equates to increasing service and decreasing subsidy. This is the result of expected annual increase in ridership during each subsequent year of operation, stemming from the ability of HMS to market, and for the market to rely upon, predictable service. As part of its partnership agreement, HMS is assuming this risk of ridership increases.

Summary of Project Scope

Task	HMS Responsibility	County Responsibility
Key Contracts	<ul style="list-style-type: none"> • Ferry Vessel Charter • Barge – Dock Contract(s) • Service Agreements • Docks and Gangways Installation • Marketing Contract 	<ul style="list-style-type: none"> • Development of contract for the Inter-City contract between Hillsborough County and HMS.
Marine Management	In HMS scope	N/A
Marine Operations	HMS scope	N/A
Marine Administration and Ticketing	In HMS scope	N/A
Project Customer Support	In HMS scope	N/A
Maritime Facilities Development	HMS lead in coordination with the City of St. Petersburg and the Tampa for dock permitting	N/A
Marketing Contractor Procurement and Support	In HMS scope	N/A
Scheduling	In HMS scope; will consult with the County in continual refinement of best overall schedule.	HMS will work in conjunction with the County to continually refine the best schedule to maximize ridership.
Fares / Pricing	In HMS scope; will consult with the County in continual refinement of best overall pricing.	County will work in conjunction with HMS to continually refine the pricing to cover the risks of expanded service.
Terminal - Marine Environmental Regulatory	Not in HMS scope, but will support the City of St. Petersburg as required.	N/A
Terminal - Landside St. Petersburg	HMS to support the City of St. Petersburg's efforts permitting temporary docks used in the Vinoy Basin.	N/A
Insurance	<ul style="list-style-type: none"> • Vessel Hull and Machinery, P&I and General Liability. • Docks, gangways, landside property, or P&I insurance. • Business interruption. 	N/A
Maintenance	Routine Maintenance	N/A

Coast Guard Inspections and Approvals	In HMS scope	N/A
Concession Services	In HMS original scope	N/A
Marketing & Advertising	In HMS scope	N/A
Routine Vessel Maintenance	In HMS scope	N/A
Major Mechanical	In HMS scope	N/A

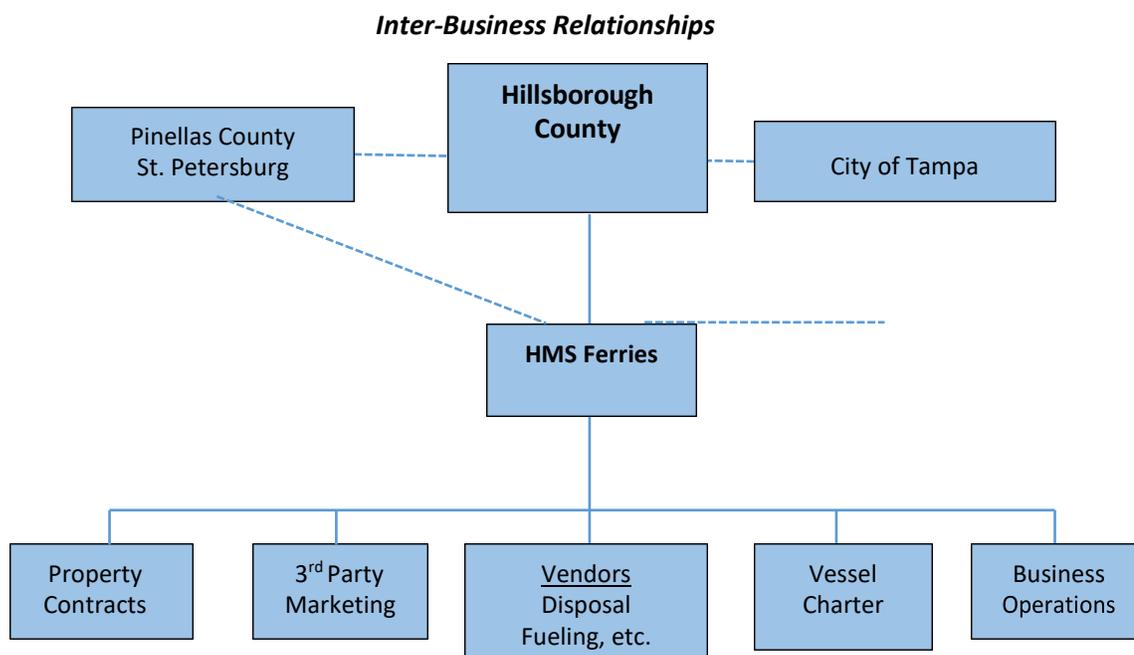
2 Business Overview

The Business Overview presents business related topics including:

- Parties involved and their relationships.
- Key Contract Items
- Summary of Services
- Project Objectives
- Summary of Financial

2.1 Parties Involved

The primary parties involved in this Project are Hillsborough County (the County) and HMS Ferries, Inc. (HMS). The following organizational chart illustrates relations between the parties:



2.2 Key Contract Items

- 2.2.1 Management and Operations Agreement – Hillsborough County and HMS Ferries, Inc.
- 2.2.2 Ferry Vessel Charter – HMS and Vessel Owner
- 2.2.3 Barge Dock Contracts – HMS and Barge Company
- 2.2.4 Property/Landing Contracts – City and terminal / land owners
- 2.2.5 HMS Services Agreements – HMS and Fuel, Pump out, Cleaning, and Concessions
- 2.2.6 City Service Agreements – Landside electrical and perimeter fencing
- 2.2.7 Marketing – HMS and Marketing Partner

2.3 Summary of Services

Inter-City Service will provide a minimum of 32 one-way, scheduled passenger ferry trips between St. Petersburg and Tampa per week. Charters or excursion demonstration services can be offered to maximize passenger totals and revenue.

The ferry's general operating schedule will be reviewed and approved by the County each year to ensure it meets the needs of the entire Tampa Bay community. This schedule is expected to be adjusted during the course of the service season to account for specific events and holidays.

2.4 Project Objectives

The primary objective of Inter-City Service is to provide safe and efficient passenger ferry transportation between St. Petersburg and Tampa Bay.

In providing no less than 32 one-way trips per week, HMS will adjust the *Cross Bay Ferry* Inter-City schedule and pricing to meet the market demand for each month, as events in the Tampa Bay community influence ridership.

In addition, Inter-City Service will gain a wide range of information and data that can be used to further measure ridership demand. This information can further be used to define future service options and vessel design specifications, including such factors as optimal vessel size, speed, configuration, and amenities for future Tampa Bay ferry operations.

2.5 Financial Summary

HMS is proposing a four-year Business and Operations Plan, with the County' and participating government's monthly subsidy decreasing each year due to increased ridership and revenue.

See the attached Proforma.

3 HMS St. Petersburg Operations

3.1 HMS Ferries – Management Team

The management support team offered by HMS will be the exact same professional On-Site management team off-site Management Support team as was provided during the previous years of Cross Bay Ferry service. The on-site team's only job is to make the *Cross Bay Ferry* Inter-city service a success and will not be pulled for other work.

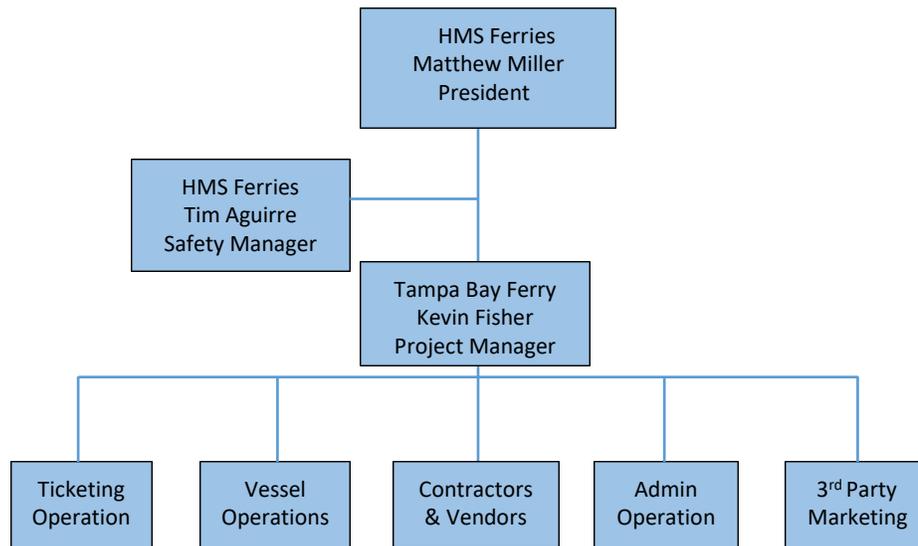
3.1.1 (OFF-SITE) Project Support Team HMS

- Ferries – Headquarter Support
- Contract Management
- Fleet Safety Officer
- Administrative Support
- Fleet Technical Support

3.1.2 (ON-SITE) Project Management

- HMS St. Petersburg Office
- Project Manager
- Customer Service Manager
- Senior Master
- Safety Officer

**HMS Ferries
Project Organization Chart**

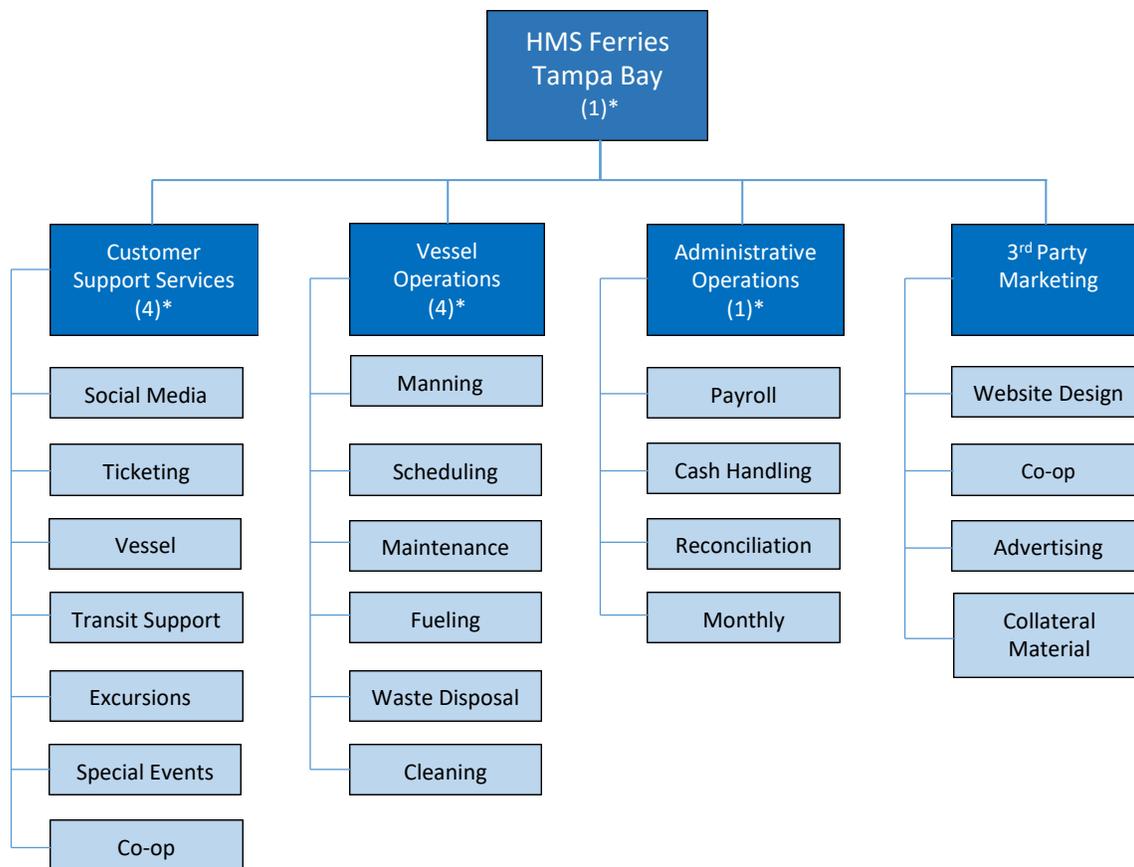


3.2 Tampa Bay Functional Operations

HMS local operations management and support team will be located in St. Petersburg as it is the only location that can accommodate overnight storage and support of the chartered ferry vessel. Key personnel will support administrative operations, customer services, and vessel operations, as well as manage third-party contracts and services and community outreach.

The following diagram outlines functional operations that are supported by the HMS St. Petersburg office:

Tampa Bay Functional Operations Diagram



*Asterisk represents number of persons in each role

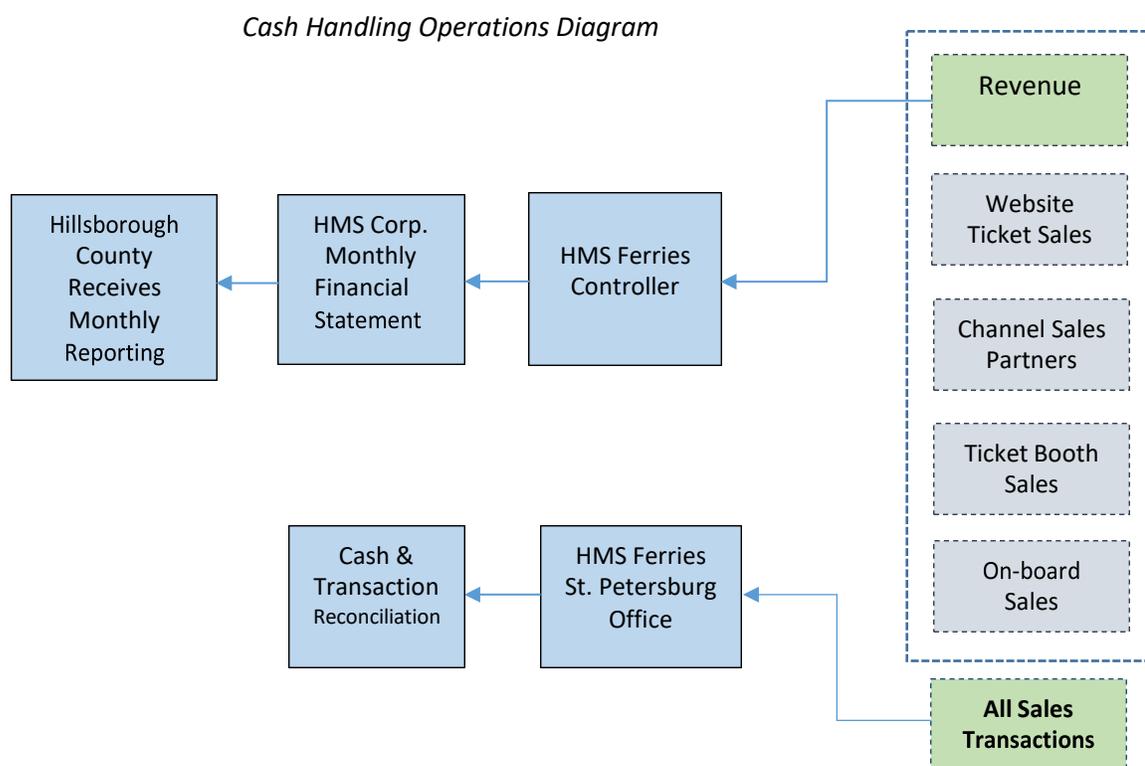
3.2.1 Project Manager

The Inter-City Service Manager is responsible for all operations both onshore and afloat and insures effective and efficient controls are in place to insure safe and efficient vessel operations and accurate accounting of all business operations. The Inter-City Service Manager is also responsible for implementing and overseeing all relevant terms of project development and implementation as

identified in the scope of the Operating Agreement. Regular reporting and communications will be maintained between the HMS Tampa Bay Office, HMS Corporate Offices, and the County. The Inter-City Service Manager has no other duties other than management of the inter-city, which is not a model that many operators can offer.

3.2.2 Administrative Operations

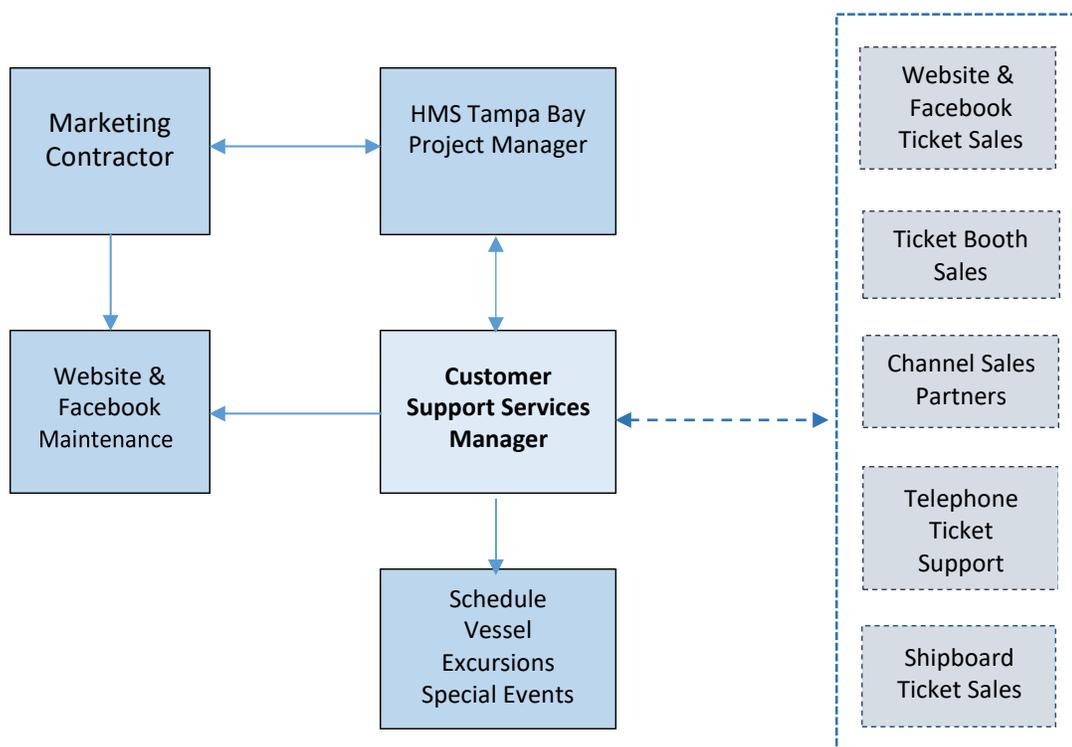
The Administrative Support person is responsible for ensuring all cash handling, reconciliation, monthly reporting and interfacing with the HMS Corporate Controller and client are accomplished accurately and efficiently. Standard Operating Procedures specifically describe every step of the cash-handling operation.



3.2.3 Customer Support Services

The Customer Support Manager oversees the customer support line, and ticket booth operations, as well as interface with the co-op marketing participants. Additionally, this department has day-to-day responsibility for Social Media content, the ferry operation’s ticketing system, and interface with Third Party support vendors.

Customer Support Services Diagram



3.2.4 Marketing Team

HMS will also handle all the marketing for the project in conjunction and consultation with the County. HMS will ensure government partners are recognized in all their marketing materials.

The Marketing Plan: HMS continues to build upon the positive branding and the exceptional advertising and marketing associated with the past years of *Cross Bay Ferry*. HMS’ marketing plan includes continuing to work with stakeholders that include Visit St. Petersburg/Clearwater, Visit Tampa Bay, the Tampa Downtown Partnership, the St. Petersburg Chamber of Commerce, and the greater Hillsborough County business associations.

3.2.5 Vessel and Vessel Operations

In support of Inter-City Service, HMS has entered in a charter agreement with Bay State Cruise Company to provide the *Provincetown III* passenger ferry. There are very few high-speed passenger ferries in the United States that meets the pristine quality and condition of the *Provincetown III*.

The basic outline of inclusions and terms offered by Bay State Cruise Company include:

- Delivery of the vessel to Tampa Bay prior to the start of each season
- Ensure U.S. Coast Guard Certificate of Inspection to conduct passenger operations in Tampa Bay
- Provide Master and Mate
- Provide crew housing, as well as travel costs to support crew rotation
- All vessel insurance required to operate, carrying passengers for hire, and indemnifying: City of St. Petersburg, City of Tampa, Hillsborough County and HMS Ferries
- Fuel for round-trip delivery of vessel to and from Tampa, as well as all regular preventative maintenance.



3.2.6 Chain of Command

The Chain of Command is the line of authority and responsibility along which orders are passed throughout the operation. Pertaining to vessel operations, the ship's Master has the overriding authority and is directly and ultimately responsible for the safety of the passengers, crew, and vessel. All vessel crew report directly to the Master, and issues related to the safety of the vessel, crew and passengers are brought to his or her immediate attention. The Master shall report all pertinent information to Inter-City Service Manager who in turn provides guidance and support to the Master for the safe operation of the vessel.

4 Service Description

4.1 St. Petersburg to City of Tampa Weekend Scheduled Service

Scheduled weekend transit between St. Petersburg and downtown Tampa is intended to run Friday, Saturday and Sunday.

4.2 St. Petersburg-Tampa Scheduled Weekday Service

In learning from the passenger demand from previous years, HMS plans to continue to provide flexible and adaptive scheduling throughout the performance period.

The Tampa terminal will be located at the Tampa Convention Center. This site is served by the Tampa Streetcar line, and the St. Petersburg site is served by several PSTA transit routes. HMS will continue to schedule weeknight schedule to provide connections between downtown entertainment and events venues, and continue to operate service on all nights when the Tampa Bay Lightning is playing home games.

4.3 Charter and Specialty Cruises

Special ferry operations will be available for private and special events in Tampa Bay that originate out of St. Petersburg. Private events may include businesses or private parties who wish to contract the entire vessel. Special events may include New Year's Eve, Gasparilla, major sporting events, and the St. Petersburg Grand Prix. Such service would be outside of the regular operating schedule and not affect the overall budget of this Project.

4.4 Spring Sports Service

The potential for Tampa Bay Lightning games and the start of the regular baseball season presents unique opportunities for event service in the spring of each year. It may be desirable to adjust schedules to coincide with sports fan travel for these events during mid-week. Weekend schedules will be met to meet the travel demands for these games.

4.5 Fare Pricing

Fare pricing will range from \$8-12 for a one-way adult ticket, and lower fare for children, disabled, military, and seniors.

5 Facilities and Terminals

5.1 St. Pete

The following is a description of the primary ferry landing and includes required modifications, at St. Petersburg

5.1.1 Location of St. Petersburg landing

A temporary 20' x 80' landing will again be provided by using four (4) 10' x 40' barge units, which will be secured into place with "spuds" in the Vinoy Mooring Basin, in the similar fashion to the Pilot Project. The bathometric (underwater) survey for this area shows the depth quickly drops to 7.5' within several feet of the shore, then continues to drop to 13.7'. The vessel and landing would sit in approximately 11.7' of water. As in past years, HMS will coordinate with the City of St. Petersburg to secure any regulatory approvals for this dock, as well as enter into appropriate agreements.



Birdseye view of Vinoy Boat Basin.

Southwest View of Vinoy Basin



Northern Downtown View of Vinoy Basin



5.1.2 Barges - Modifications Required

Barge modifications include installing “D-rubber” style fenders mounted on steel “H” beams to the sides of the barges. HMS will continue to manage the logistics for contracting the barges, their delivery to the Vinoy Basin location, and required barge modifications. The St. Pete dock is part of the HMS budget. This configuration has proved extremely customer friendly during previous years of operation.

5.1.3 Potential Adverse Conditions

Below is an eastern view of the entrance to Vinoy Mooring Basin. An eastern or northeast wind can generate chop that will carry into the basin. Chop can deflect and cause choppy wave action that would have adverse impacts on the ferry vessel and barges. The full severity of such action is unknown, particularly in the event of strong or gale-force winds. In the event it is viewed that such conditions represent a danger to the ferry vessel, it may be necessary to move the vessel to the Tampa Landing until such conditions lessen.

Eastern Exposure to Vinoy Basin



5.1.4 Loading Ramps

Passenger boarding ramps are required to facilitate transfer of passengers between the shore and ferry vessel at the Vinoy Basin Landing. An existing ramp will be used to connect the barge to the shore (provided a professional design review is accomplished), while a smaller ramp will be constructed to facilitate passenger loading from the barge to the vessel.

All ramps and brows are ADA compliant and are of the same design and specifications used in the Pilot Project.

5.1.5 Utilities – Upgrade for water and electricity activation

HMS will work with the City of St. Petersburg (through the Engineering department) for providing utilities that include water and power. **Power requirements are 50-amp, 240VAC, single phase. The power station needs to accommodate a standard marine Hubble Style Connector.**

5.1.6 Fueling and Waste Disposal

HMS shall be responsible for fueling operations that are conducted via truck at the Vinoy Basin location subject to U.S. Coast Guard's continued approval. The ferry vessel requires as much as 1,200-gallons of diesel fuel every other day. Additionally, a vacuum truck is contracted for daily black-water/sewage pump outs.

5.1.7 Upland Facilities – Passenger Staging

A secure ticket booth will be located at the foot of the dock, and additional minor sidewalk and passenger amenities have previously been addressed. Additional restroom facilities are not envisioned since permanent facilities are located near (a few hundred feet) the terminal.

5.1.8 Parking and Intermodal Transportation

Public parking spaces are available in both the St. Petersburg and Tampa area. There is ample parking adjacent to the St. Petersburg Terminal that can serve as the primary parking area. HMS will provide ferry terminal and parking wayfinding signage. Links to transit and other related transportation infrastructure will include The Downtown Looper and the Central Avenue Trolley, which originate at the location of the St. Petersburg ferry terminal. The Downtown Looper provides circulator services within the downtown area, while the Central Avenue Trolley provides service down Central Avenue to the beaches. Both have free fare zones within the downtown core area. The Downtown Looper Service, otherwise, is a nominal \$.50 per passenger. The Central Avenue Trolley costs \$.50 per person to the Grand Central Station, and \$2.25 per person out to the Tradewinds Resort and Pass-A-Grille. Pinellas Suncoast Transit Authority (PSTA) has indicated that it would work in conjunction with the Pilot Project on developing a seamless marketing package and would evaluate the potential for discounted fares. There may also be significant opportunities to package combination bus and ferry tickets for beach hoteliers and destinations.

An HMS ticket agent is staged at the Vinoy Dock during regularly scheduled transit hours or to support special events. Ferry advertising encourages patrons to use the online ticketing system and/or Mobile Application, which allows the person to reserve a route for a specific date and time. Patrons will also be able to purchase tickets at the ticket booth on a first-come, first-serve basis, or purchase tickets for a later date.

5.1.9 Dock/Shore Side Regulatory Issues

Proposed marine improvements associated with the St. Petersburg Terminal require review and approval by the Army Corps of Engineers (USACE), Florida Department of Environmental Regulation and possibly other agencies. HMS will coordinate with the City of St. Petersburg for dock/shore side permitting.

5.2 Tampa

5.2.1 Landing

HMS will coordinate with the City of Tampa to allow the ferry to dock alongside several different locations depending on the service. Routine service is accomplished on the Seawall directly in front of, and managed by, the Tampa Convention Center (TCC). The ferry operation benefits from ancillary amenities at this location including a covered public area with bathroom facilities, as well excellent visibility during convention events. This dock configuration was used several times during the Pilot Project.

Tampa Convention Center Ferry Landing



5.2.2 Identify landing modifications for ferry vessel

Minor, temporary modifications by HMS are required to land at the TCC's Seawall prior to each season. Temporary modifications include mounting three "D" style fenders directly to the face of the seawall, which have been approved by the Port and used in previous years.



The Seawall has proper bollards and cleats installed to accommodate docking.

5.2.3 Specifications to manufacture aluminum loading ramp

Loading and unloading is accommodated by both forward and aft loading gates. To facilitate boarding, upon arriving at the slipwall, two 6' boarding ramps will be positioned to accommodate passenger loading and unloading. All ramps are ADA compliant.



Boarding ramp for Tampa Convention Center

5.2.4 Utilities

Both power and water are available at the Seawall if needed. The convention center can accommodate either 208V 3-phase or 480 VAC.

5.2.5 Upland Facilities – Passenger Staging - Covered Areas / Benches

Passenger comforts, including bathroom facilities, are readily available in the immediate area.



5.2.6 Parking – Identify public parking for Ferry Operations

In Tampa there is a need for approximately 200 parking spaces during ferry operating hours. There is an abundance of parking facilities proximate to the TCC terminal. These include the public and privately-owned parking facilities in the table below.

Parking Options for Tampa Convention Center Ferry Landing

Facility	Owners	Spaces	Rates
Tampa Convention Center	City of Tampa	465	\$1.60/hr. - \$9.50 max
South Regional Garage	City of Tampa	1000	\$1.60/hr. - \$9.50 max
Ft. Brooke Garage	City of Tampa	2500	\$1.60/hr. - \$9.50 max
Lightning Florida/Water Street Surface Lot	Lightning Properties Limited	> 250	Variable

While there is an abundance of supply, parking capacity can be quite limited, and street congestion is significant on weekend nights when there is an event at Amalie Arena and/or concurrent event at the TCC. Generally speaking, the Ft. Brooke Garage has parking spaces available even during these peak times. HMS has also identified opportunities for remote private sector parking lots at the south end of downtown. These options can be further identified and developed if the need arises. In addition, the availability of high quality transit connections to the TCC terminal during operating hours provides an opportunity for additional remote parking as part of a ferry/transit coordination program.

5.2.7 Links to Transit

The TCC Terminal is directly proximate to the Tampa Streetcar system, which operates during the same operating hours as the St. Petersburg-Tampa weekend ferry service. The Greco Plaza Streetcar stop is a few minutes' walk from the TCC Ferry Terminal. Service is provided to Channelside and Ybor City.

Future operations of the Tampa Downtowner are in flux. However, based upon passenger surveys over the past three years, this has been a rarely used option, and its discontinuation would not have a material impact on ferry ridership or operations.

There are several water taxi companies operating at or near the TCC. These include the Tampa Pirate Water Taxi service, which provides scheduled service during the Pilot Project operating hours. An all-day pass is \$15/adult, \$8 per child. The Pirate Water Taxi operates from its own dock at TCC.

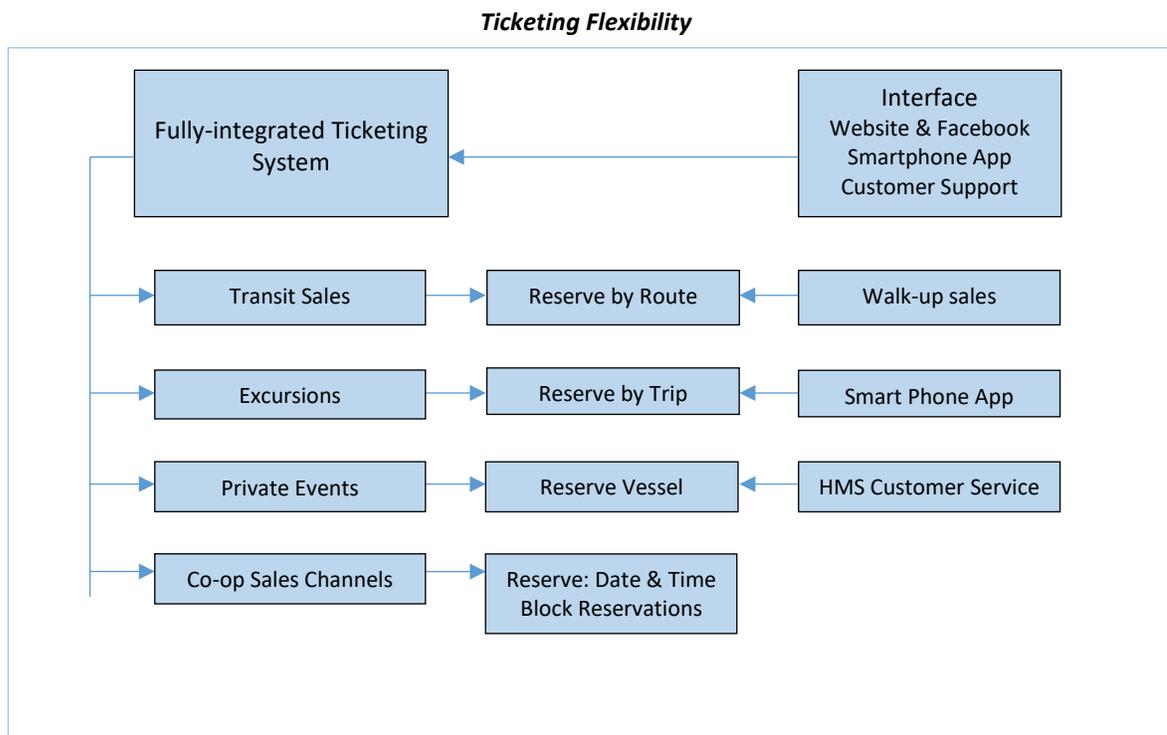
The Tampa Water Taxi Company operates on an on-demand basis and provides both tours and group transportation. It can pick up passengers at the TCC docks.

5.2.8 Ticket Services

A ticket booth will be located in vicinity of the vessel, either outside under covered area or inside in the public area. It will consist of a desk on casters, iPad, credit card scanner, and a Bluetooth printer for printing tickets.

6 Ticketing System

Key functionality, required when sourcing a ticketing system, is the ability to reserve individual runs by date and time. Additionally, the ticketing system will serve to support Inter-City Service’s marketing and sales program. An overview of the ticketing system functionality is provided below.



Specialized functionality

- **Design / Customization:** HMS will use the same mobile app and online ticketing and reservations systems it has used in previous years.
- **Channel Sales Tracking:** Track ticket sales and transactions by each sales channel such as each ticket booth or other ticketing stations.
- **Automated Email:** Completely customize automated emails (follow-up, confirmations, reminders, lists co-op marketing participants in the area traveling), help drive more TripAdvisor reviews.
- **Mobile-Optimized:** In addition to the website sales functionality, the ticketing system provides smartphone optimization.
- **Mass Emails & Refunds:** Email all parties under a specific reservation at one time (cancellation, bad weather, etc.). Full or customized refunds with just one click
- **Others:** Promo codes, *digital gift card system*, complete customer lists, etc.

7 Marketing & Advertising

7.1 Overall Approach

Brand – HMS will be responsible for all inter-city ferry branding and marketing.

Website – HMS will maintain the current website that has full functionality and integration capabilities with the ticketing system adopted by HMS.

Social Media – HMS will be responsible for developing and implementing a robust social media campaign that integrates with both Market Stakeholders and co-operating marketing partners.

Public Relations and Communication Plan – HMS will develop and execute a public relations and communications strategy. Part of this may entail a public education component related to water transportation, Tampa Bay Estuary, and water quality issues.

Sponsorship Program – HMS will evaluate and develop a sponsorship program.

8 Routes

8.1 Distances between Ferry Landings

The following routes will continue to support scheduled service and excursion routes:

Route	1-Way Travel Time	Distance in NM
St. Petersburg to Tampa	55-minutes	18.13 NM

8.2 Summary of Route

The route cross shallow open bay waters and intersect with deep water channels.

Route Distances	11.23 ~ 31.07 nm
Route Description	Crossing open bay waters (average 12-ft) to intersect with major channel (Deep Water Range) connecting St. Petersburg with Downtown Tampa.
Speed Restrictions	No wake zone from southern tip of Harbour Island to Platt Street Bridge. During winter months vessel operator needs to be especially careful of manatees. Speed restrictions also in place in the manatee WWAA in and around Apollo Beach.
Weather Routing	Local USCG may shutdown service due to heavy sustained winds or weather conditions. Shallow waters are susceptible to heavy chop occurring rather quickly with NE or SW winds.
Navigational Hazard	Generally, only other commercial traffic, including containerships, tug-barge, commercial fishing vessels, and miscellaneous recreational vessels. Depending on lunar cycle and wind direction, semi-diurnal tides can cause lower or higher than regular tides.
Hurricane Preparedness	While hurricane and tropical storms are likely from June through November, the Tampa Bay area seems most vulnerable in June and October. During the months of operations, cold fronts may bring one or two freezes. These fronts may produce showers and strong, gusty winds; gales remain infrequent. HMS is responsible for hurricane preparation and evacuation of the vessel. Respective owners of shoreside facilities are responsible for hurricane preparation of their facilities.

9 Regulatory Issues

Location	Regulatory Agency	Permit Type	Proposed Deadline	Processing Time Frame	Responsible Party
St. Petersburg	DEP Army Corps	Environmental Resource Permit	September 1 of each season	30 Days	St. Pete
U.S. Coast Guard	Sector St. Petersburg	New to Zone COI	Sept 28 of each season	30 Days	HMS

10 Ferry Vessel

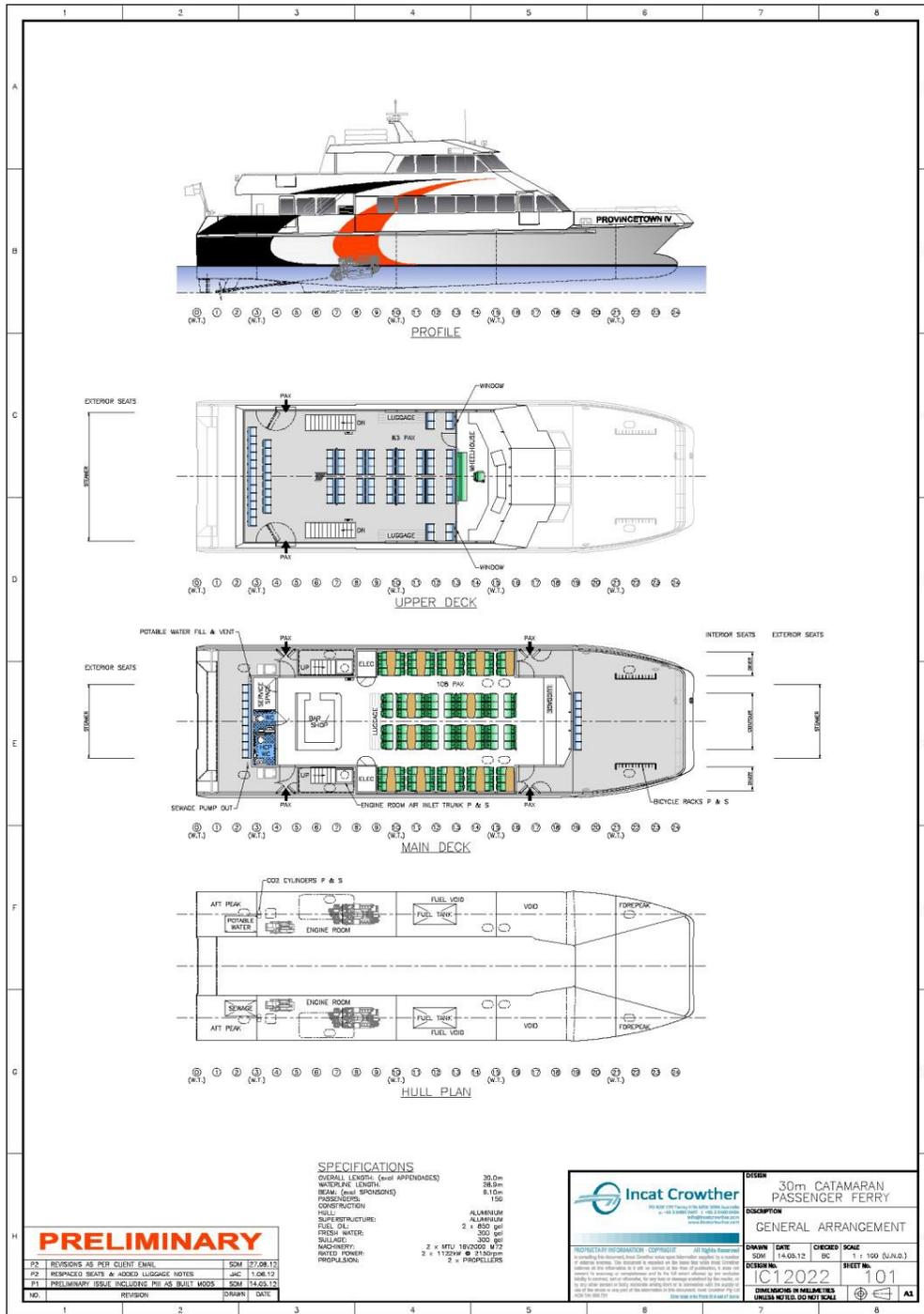
HMS has again secured the *Provincetown III* for this Project and has an agreement with the vessel owner. It is a state of the art, high-speed, 149-passenger catamaran ferry that provides a world class customer experience, that includes food and beverage service. She is a U.S.-built, U.S. Coast Guard certified vessel, inspected under the requirements of 46 CFR, Sub-Chapter T (Small Passenger Vessels). Any deviations from use of the *Provincetown III* shall require approval of the County.

10.1 Vessel Description - Provincetown III



Passenger Ferry *Provincetown III*

Year Built:	2013, Gladding Hearn Shipyard
Length:	98'
Beam:	33'
Draft:	7'
Propulsion:	Propellers
Speed:	27 knots cruise, 29 knots top speed
Fuel Consumption:	140 gph at 29 knots
Engines:	MTU 162000 M72
Horsepower:	2 x 1,950 hp
Electrical Service:	Two Onan 30kw generators
Seating:	108 interior, 100 exterior
Passenger Capacity:	149 (USCG Sub-Chapter T regulations)
Additional Features:	Full Galley/Bar, Luggage Racks, MDI Ride Control,



Bicycle Racks



Interior and Exterior Seating



Food & Beverage Bar



10.2 Vessel Maintenance

10.2.1 Preventative Shore-side Support

Time will be scheduled to ensure sufficient time is available for preventative maintenance. The ship's Master is responsible for maintaining the vessel and Inter-City Service Manager is responsible for scheduling. Maintenance will include shore-side, fueling, main engine, and auxiliaries servicing. While a 3rd party contractor is budgeted for weekly interior cleaning, the ship's crew will conduct routine cleaning and exterior cleaning of the vessel.

10.3 Crew Manning

The ship's crew consists of USCG licensed and unlicensed crew:

10.3.1 Licensed Crew

The ship's Master is a USCG licensed crew. The vessel is staffed with two rotating crew, scheduled 6-weeks on duty and 2-weeks off-duty. Two additional crew will be hired locally.

10.3.2 Deckhands

While the crew are trained deckhands and must complete rigid qualifications, USCG licensing is not required. Depending on local availability of crew, they may be local or rotating personnel.

11 Budget

The budget for Inter-City Service consists of two main areas.

11.1 HMS Fixed Costs

The HMS Fixed costs budget include:

- Vessel Ops: Ferry vessel charter and crew, including routine maintenance, fuel, oils and insurance.
- Mobilization: Preparing the vessel and docks; hiring and training of shipboard and shoreside crew; administrative logistics; fueling; deliver of the vessel; pre-operation training; ticketing and website update; advertising and marketing.
- Operations Management and Administration: Includes program management and administration, including office expenses and general liability included.
- Terminals: Includes construction of St. Pete dockage and Tampa seawall configuration, ramps, gangways, ticket booths.
- Marketing, Sales, Survey.

11.2 Client Costs

The Proforma for each of the next four-plus seasons is attached.

EXHIBIT B

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EXHIBIT C

PROJECT COST SUMMARY

Inter-City Service
Project Cost Summary (2021-2022)
October 1, 2021 - April 30, 2022

Proforma				Notes	
Vessel Ops		\$ 685,598		Turn-Key: Includes vessel deliver and redelivery; vessel crew; fuel; oils; supplies.	
Operational Mgmt and Admin		\$ 104,112		Includes: A dedicated, on site team, working just for this project; administrative reporting; ops reporting; customer service; ticketing; scheduling; community outreach.	
Sub-Total		\$ 789,710			
Additional					
Terminals		\$ 82,622		Includes: Dock construction in St. Pete and Tampa; insurance; terminal supplies; terminal tent; ticket booths.	
Marketing, Sales and Survey		\$ 27,668			

Inter-City Service
Project Cost Summary (2022-2023)
October 1, 2022 - May 30, 2023

<u>Proforma</u>				<u>Notes</u>	
<u>Vessel Ops</u>		\$ 685,598		Turn-Key: Includes vessel deliver and redelivery; vessel crew; fuel; oils; supplies.	
Operational Mgmt and Admin		\$ 104,112		Includes: A dedicated, on site team, working just for this project; administrative reporting; ops reporting; customer service; ticketing; scheduling; community outreach.	
Sub-Total		\$ 789,710			
Additional					
Terminals		\$ 82,622		Includes: Dock construction in St. Pete and Tampa; insurance; terminal supplies; terminal tent; ticket booths.	
Marketing, Sales and Survey		\$ 87,668			

Inter-City Service
Project Cost Summary (2023-2024)
October 1, 2023 - June 30, 2024

Proforma				Notes	
Vessel Ops	\$	735,598		Turn-Key: Includes vessel deliver and redelivery; vessel crew; fuel; oils; supplies.	
Operational Mgmt and Admin	\$	104,112		Includes: A dedicated, on site team, working just for this project; administrative reporting; ops reporting; customer service; ticketing; scheduling; community outreach.	
Sub-Total	\$	839,710			
Additional					
Terminals	\$	82,622		Includes: Dock construction in St. Pete and Tampa; insurance; terminal supplies; terminal tent; ticket booths.	
Marketing, Sales and Survey	\$	87,668			

Sub-Total		\$	170,290			
TOTAL PROJECT COSTS		\$	1,010,000			
Credits:						
Revenue Credit		\$	200,000			
Subsidy		\$	810,000			
PAYMENT TERMS						
Mobilization: Preparing the vessel and docks; hiring and training of shipboard and shoreside crew; administrative logistics; fueling; deliver of the vessel; pre-operation training; ticketing and website update; advertising and marketing.						
				\$	150,000	Per Section 10.2
For each month of service				\$	73,333	Per Section 10.2
				\$	73,333	Per Section 10.2
				\$	73,333	Per Section 10.2
				\$	73,333	Per Section 10.2
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				\$	73,333	Per Section 10.2
				\$	73,333	Per Section 10.2
				\$	73,333	Per Section 10.2
				\$	810,000	

Inter-City Service
Project Cost Summary (2024-2025)
October 1, 2024 - September 30, 2025

Proforma				Notes	
Vessel Ops		\$ 945,598		Turn-Key: Includes vessel deliver and redelivery; vessel crew; fuel; oils; supplies.	
Operational Mgmt and Admin		\$ 104,112		Includes: A dedicated, on site team, working just for this project; administrative reporting; ops reporting; customer service; ticketing; scheduling; community outreach.	
Sub-Total		\$ 1,049,710			
Additional					
Terminals		\$ 82,622		Includes: Dock construction in St. Pete and Tampa; insurance; terminal supplies; terminal tent; ticket booths.	
Marketing, Sales and Survey		\$ 87,668			

				\$	72,500	Per Section 10.2
				\$	72,500	Per Section 10.2
				\$	1,020,000	

EXHIBIT D

In the event of termination of the Agreement, payments to Operator or refunds by Operator shall be in accordance with the following:

Scenario 1: If the Operator fails to mobilize and initiate services due to no fault of the Operator, and does not cure in accordance with and pursuant to the Agreement, Operator will refund all funds paid by the County minus any documented expenses, acceptable to the County, which are not reimbursable by others.

Scenario 2: If Operator is solely at fault for failing to launch the Ferry Service and does not cure in accordance with and pursuant to the Agreement, Operator will refund all funds paid by the County.

Scenario 3: After operations commence if Operator fails to deliver the Ferry Service in accordance with the Agreement and does not cure in accordance with and pursuant to the Agreement, Operator will be paid on a pro-rata basis based on the number of days the Ferry Service operated times the seasonal ferry service daily rate. The seasonal ferry service daily rate shall be calculated in accordance with this Agreement by taking the total maximum cost for the season divided by the number of days for such season.

Scenario 4: If the County fails to perform its obligations and does not cure in accordance with and pursuant to the Agreement, payment to Operator shall be as described in scenario 3 plus up to \$50,000 for any documented and County authorized expenses.

Scenario 5: If termination due to a Force majeure event, payment to Operator shall be as described in scenario 3 plus up to \$50,000 for any documented and County authorized expenses, including a pro-rata portion of the \$200,000 revenue credit provided for in Exhibit C.

Scenario 6: If termination because Vessel is damaged, by no fault of the Operator, and not repaired/replaced in thirty (30) days, payment to Operator shall be as described in scenario 3 plus up to \$50,000 for any documented and County authorized expenses.

Scenario 7: If termination because Vessel is damaged and not repaired/replaced in thirty (30) days due solely to the fault of Operator, payment to Operator shall be as described in scenario 3.

Scenario 8: If termination because damage to Submerged Area and/or Upland Area, by no fault of the Operator, and not repaired/replaced pursuant to the Agreement, payment to Operator shall be as described in scenario 3 plus up to \$50,000 for any documented and County authorized expenses.

For Scenarios 1 & 3 through 8 above, in the event the amount of the payments made by the County to Operator pursuant to the Agreement is more than the amount that Operator is owed for termination based on such scenarios, Operator shall refund the County the amount equal to the difference of payments made by the County minus the amount owed to Operator for termination based on scenarios 1 & 3 through 8. Operator shall pay such amount within thirty (30) days after the effective date of termination.