

FRANCHISE

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. A nonexclusive ferryboat franchise authorizing the Franchisee to operate a public ferryboat service to and from the City of Mackinac Island is hereby granted to _____ (hereinafter referred to as "Franchisee") by the City of Mackinac Island ("City") upon acceptance by the Franchisee of the terms and conditions stated herein.

Deleted: during the Ferry Boat Season

Section 2. The term of this Franchise shall be from July 1, 2012 to June 30, 2027, provided however, that for a thirty (30) day period commencing on June 1, 2017, the Franchisee shall have the option to terminate this Franchise and to enter into a new Franchise, the terms and condition of which shall be the same as this Franchise except the expiration date of the new Franchise shall be June 30, 2033. Said option shall be exercised by the Franchisee providing written notice of the exercise of the option sent to the City Clerk by certified U.S. mail, return receipt requested.

Deleted: The term of this franchise shall be from April 1, 2011 to March 31, 2013.

Section 3. Not later than November 15 of each year, the Franchisee shall file its schedule of services and rates for the next season with the City Clerk. The Franchisee shall operate in accordance with its schedule of services on file with the City Council ("Council"), although it may deviate from that schedule for up to four (4) days at a time without notice to the Council to meet short term operational necessities. The Franchisee shall file a schedule of services with the Council annually and whenever a change is made which will last for more than four (4) days. However, nothing herein shall be interpreted as limiting the Franchisee from offering ferryboat services in addition to the services contained in its filed schedule of services, except as provided in Section 4 below.

6/13/2012.1

Section 4. Franchisee shall provide ferry boat service to and from the City during the period of time between April 15 of any calendar year and October 31 of the same calendar year during the term, and during any extended term, of this Franchise. Franchisee agrees that only the ferry boat company franchisee selected to provide Winter Service, defined as service during the period of time between November 1 of any calendar year and April 14 of the following calendar year, shall provide ferry boat service during that Winter Service period.

[For the Arnold Transit Company Franchise this year only] Franchisee agrees to provide ferry boat Winter Service to and from the City during the period of time between November 1, 2012 and April 14, 2013. The City agrees to pay a subsidy to Arnold Transit Company in the total amount of \$100,000 for providing ferry boat service during this period of time, payable as follows: \$16,666.66 on each of the following dates: the first days of November and December, 2012 and the first days of January, February, March and April 2013.

Section 5. For Winter Service during the period of time between November 1, 2013 and April 14, 2018, and for each subsequent five year period after that period for so long as this Franchise is in effect, the City will seek proposals from all of the ferry boat company franchisees for providing Winter Service in exchange for a \$100,000 per year subsidy from the City to the company selected to provide the Winter Service. If no proposal is received by the City for adequate Winter Service, the City reserves the right to act in ways necessary or appropriate to ensure that Winter Service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July every year, commencing on July 1, 2013, the \$100,000 per year subsidy shall be increased by the same percentage CPI increase provided in Section 8 of this Franchise for franchise fees.

Section 6.

- a. During the original term and any extended term of this Franchise, the charge for City residents for off season ferry boat service shall be Five Dollars (\$5.00) per person one way, with any resident or seasonal pass previously purchased.
- b. During the period of July 1, 2012 through October 31, 2012, the Franchisee shall not increase its rates, fares and charges on file with the Council as of June 1, 2012.

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Deleted: The franchisee shall operate in accordance with the approved schedule of rates, fares, and changes on file with the Council. A ferry boat company may submit a written request to the Council to raise or lower any class or type of service in its approved schedule of rates, fares, and charges, and the Council may amend the schedule as provided for by ordinance.

Section 7. The Clerk is directed to issue a certificate evidencing the existence of this franchise, which certificate must be publicly displayed on all of the Franchisee's ferryboats providing ferryboat service.

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Section 8. During the term of this franchise, the Franchisee agrees to pay to the City of Mackinac Island in consideration of the granting of this franchise, a monthly franchise fee, determined as follows: For each month during the franchise term, commencing on July 1, 2012, the base sum of \$50,000 divided by the number of ferry boat franchises in effect for the month the franchise fee is due; provided, however, on July 1 of each calendar year after 2012, the \$50,000 base sum shall be adjusted by an increase equal to any percentage increase in the cost-of-living for the preceding one year period as reflected in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average published by the Bureau of Labor Statistics of the U.S. Department of Labor. If that Consumer Price Index is subsequently discontinued, the Council shall select comparable statistics on the cost of living as they are computed and published by the federal government. This franchise fee shall be due and payable on the last day of each month.

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Deleted: in the amount of 7% of the gross receipts from providing a ferryboat service to and from the City of Mackinac Island less those revenues attributable to the transportation of freight, and to parking and other income not directly related to the operation of a ferryboat service (hereinafter "franchise fee")

Section 9. The franchise fee is to be paid at the Treasurer's Office of the City of Mackinac Island during regular business hours. If the City Treasurer's Office is closed on the last day of the month, then payment may be made during regular business hours on the next following day on which the office is open for business.

Deleted: in which any ferryboat service is performed, except as provided in Section 7

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Deleted: The franchise fee shall be paid monthly during the existence of the franchise on or before the 15th day of the month following the month for which the franchise fee is due except that franchise fees accrued from January through June of each year shall not be due until July 15.

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Section 10. In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Section 11. This franchise may not be sold, transferred or assigned unless such transaction is first approved by the Council after receipt of a written application therefor, containing the same information as to the transferee as would be required of an original applicant.

Section 12. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. _____, being the Ferry Boat Code, as well as the laws and Constitution of the State of Michigan, and shall, whenever possible, be construed as consistent with them.

Section 13. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 14. This franchisee shall not be given any value by any court or other authority, public or private, in any proceeding of any nature or character whatsoever, wherein or whereby the City of Mackinac Island shall be a party or affected therein or thereby.

Section 15. Should any section, clause or provision of this franchise be declared to be invalid by a court of record, the same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 16. This franchise shall be of no effect unless and until the Franchisee accepts the franchise and agrees to abide by all terms and conditions thereof.

Section 17. Franchisee and the City agree to abide by the terms of the June 2, 2012 Memorandum of Understanding, the terms of which are set forth below, to the extent that those

Deleted: Section 8. At the time of each payment of the monthly franchise fee, a statement setting forth in detail the computation of the franchise fee, including the gross receipts for the period for which payment is made and certified under oath by the Franchisee or an officer thereof, shall be filed with the City of Mackinac Island auditor.¶

Deleted: Section 9. The City shall have the right to have its auditor inspect during regular business hours upon reasonable notice the records of the Franchisee from which its franchise fee payments are computed, and the City shall have the right of audit and recomputation of any and all franchise fees paid. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this franchise or for the performance of any other obligation hereunder.¶

Section 10. The council may examine any and all books, accounts, records and papers of any ferry boat company, and audit the same; and it shall be the duty of any such ferry boat company to furnish to the council, the council's proper officers, employees and representatives, any and all data, in such form as the council shall require, in relation to the ferry boat company's investment, income, operating expenses and such other statistical data as the council may require.¶

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terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

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Section 18. This franchise shall become a binding and enforceable contract, upon the signing of both parties. The Mayor of the City of Mackinac Island is hereby authorized and directed to sign this franchise on behalf of the City.

MEMORANDUM OF UNDERSTANDING

- 1) 15 year franchise with the understanding that after five years, there is a right to enter into a new 15 year franchise.
- 2) All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City. There is a commitment by not less than two of the lines to maintain not more than their present maximum rate for the summer season of 2012.
- 3) \$600,000 annual franchise fee with an annual CPI Adjustment to be split equally among all operating boat lines.
- 4) \$100,000 subsidy to boat line operating ice to ice in exchange for their providing exclusive passenger service in the off-season. Off-season service will be placed up for bid annually with the guarantee of the \$100,000 subsidy. In the event there are no bidders for winter service, the City reserves its right to act in ways *necessary* or appropriate to ensure that off-season services are offered. The charge for local residents for off-season service will be \$5.00 per person one way, with any resident or seasonal pass previously purchased.
- 5) Year round freight services may be offered by any franchisee.
- 6) On July 1, the 7% franchise fee ends along with the current franchises. New franchises will be issued immediately containing the provisions contained in this memorandum. The \$600,000 will be pro-rated this season and paid in full beginning in the summer season of 2013.
- 7) Plante Moran study will not go forward.
- 8) Action on any proposed legislation will be suspended until at least June 12, 2012. If the City Council adopts the content of this memorandum, the legislation will be permanently postponed or tabled.
- 9) The Mayor will ask the City Council to act on the proposed new agreement during the week of June 4, 2012.

10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.

Approved and adopted as Ordinance No. _____, at the
regular City Council meeting held _____.
Posted in _____.

City Clerk

This franchise agreement entered into by the aforesaid parties this _____ day of _____,
20____.

Witnesses:

By: _____

Title: Mayor, City of Mackinac Island

THE FRANCHISEE HEREBY ACCEPTS THIS FRANCHISE AND EXPRESSLY AGREES
TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

Witnesses:

By: _____

Title: _____