

# **CERTIFICATION OF ORDINANCE PUBLICATION/POSTING**

**RE: Ordinance Number:** #468

**Date Approved:** 6/27/2012

**Date Effective:** 7/01/2012

**Ordinance Title:** Franchise  
STAR LINE MACKINAC ISLAND PASSENGER SERVICE, INC.  
AND MACKINAW LAKESHORE DEVELOPMENT, INC.

I certify that I have caused a copy of the foregoing ordinance (~~which I have compared to this original~~) to be published in the \_\_\_\_\_  
(~~if applicable~~), a newspaper of general circulation within the City limits, on \_\_\_\_\_.

**OR**

I certify that I have caused the foregoing ordinance to be posted in the following four (4) public places within the City limits:

1. City Hall
2. Post Office
3. First National Bank
4. Central Savings Bank

**Dated:** 6/27/2012

Karen S. Lennard  
Karen S. Lennard, City Clerk

## 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 Star Line Mackinac Island Passenger Service, Inc. and Mackinaw Lakeshore Development, Inc., jointly and severally (hereinafter referred to as "Franchisee") by the City of Mackinac Island ("City") upon acceptance by the Franchisee of the terms and conditions stated herein.

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, 2032. 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.

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.

Section 4. Franchisee shall provide ferry boat service to and from the City during the regular ferry boat season which is the period of time between April 21 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 service during the winter ferry boat season, which is the period of time between November 1 of any calendar year and April 20 of the following calendar year, shall provide ferry boat service during that winter ferry boat season.

Section 5. For ferry boat service during the winter ferry boat seasons between November 1, 2013 and April 20, 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 ferry boat service during the winter ferry boat season in exchange for a \$100,000 per year credit from the City against the franchise fees owed by the company selected to provide the service during the winter ferry boat season. If no proposal is received by the City for adequate service during any winter ferry boat season, the City reserves the right to act in ways necessary or appropriate to ensure that service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July of every year, commencing on July 1, 2013, the \$100,000 per year credit 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.

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.

Section 8.

- a. 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 franchise fee determined as follows:

- (1) For calendar year 2012 or any part of 2012 a franchisee shall pay a sum equal to \$600,000 divided by the number of ferry boat franchises in effect. Provided, however, that any amount paid by a franchisee in 2012 as franchisee fees pursuant to City of Mackinac Ordinance No.454 shall be credited against that franchisee's obligation to pay franchisee fees under Ordinance No. 465 for 2012.
- (2) During all calendar years beginning on or after January 1, 2013, a franchisee shall pay a monthly fee equal to the base sum of \$50,000 divided by the number of ferry boat franchises in effect for the month the franchise fee is owed; 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.

- b. The monthly franchise fee shall be due and payable on the last day of each month, Provided, however, at the election of the franchisee, the total franchise fee owed by that franchisee for a calendar year, may be paid, without penalty, in six equal

installments on the 15<sup>th</sup> day of June, July, August, September, October and November of that year. Such franchise fee shall be paid at the treasurer's office of the City during regular business hours. If the City treasurer's office is closed on the due date, then payment may be made during regular business hours on the next following day on which the office is open for business.

- c. No acceptance of any 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 section or for the performance of any other obligation under this division.

Section 9. 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 10. 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 11. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. 465, 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 12. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 13. This franchise 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 14. 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 15. 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 16. 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 terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

Section 17. 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.
- 11) In the event that no competition is found to exist, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Approved and adopted as Ordinance No. 468, at the  
regular City Council meeting held June 27, 2012  
Posted in **Community Hall, Post Office, First National Bank  
and Central Savings Bank - All Mackinac Island**

Naron S. Lennard  
City Clerk

This franchise agreement entered into by the aforesaid parties this 27th day of June,  
20 12.

By: Margaret A. Dorel  
Title: Mayor, City of Mackinac Island

Witnesses:

Heather Bagley  
Dennis J. Dombrowski

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

\_\_\_\_\_

Witnesses:

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_