

Law Offices of
TOM H. EVASHEVSKI, P.L.L.C.

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838 North State Street
P.O. Box 373
St. Ignace, MI 49781

October 9, 2013

RE: Winter Ferry Service Contract

Dear Mayor Doud and Aldermen:

Enclosed is an Agreement for Winter Ferry Service which is identical to the draft approved by the Transportation Committee except for changes indicated below. A number of changes were requested or suggested by Arnold Transit. They will be identified with my reasons for believing they are helpful changes.

1. Paragraph 2A. Our agreement simply referred to vessels that were identified in the ATC proposal. All of the vessels identified in their proposal are steel hulled and identified as such. Therefore, I feel adding language into the contract identifying the vessels as being steel hulled is acceptable.
2. Paragraph 2B. ATC asks that language be added that the determination that weather conditions caused ferry travel to be unsafe would be a determination made solely by ATC. Again, I feel this is an acceptable clarification for a number of reasons, including liability, maritime law and the fact that the same provision is in our franchise.
3. Paragraph 2C. This provides, in my opinion, clarification for exactly what the rates will be which, in essence, are:
 - The rates are set as indicated for five years subject to change only for "extraordinary" cost of living or fuel price increases which require prior approval of the council.
 - The use of any season pass, whether a resident or non-resident pass, will be valid during the winter season. ATC season passholders are not required to pay a surcharge as that is built into their pricing calculation. Non-ATC season passholders will have to pay the \$5.00 one-way surcharge.
 - The price for ATC commuter passes for the various ATC commuter passes is clarified. Commuter passes issued by other boat companies would not be honored during the winter service schedule.
4. In paragraph 4, the period in which ATC can cure a default for not operating was changed from one day to two days. That change does not seem unreasonable, especially in view of the

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fact that our franchise agreements allow a boat company to not operate for four days without there being any default.

If there are questions about any of these matters, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom H. Evashevski", with a large, stylized loop at the end.

Tom H. Evashevski

THE:dms
Enclosure

AGREEMENT FOR WINTER FERRY SERVICE

AGREEMENT made this ____ day of _____, 2013, by and between the City of Mackinac Island, hereafter CMI, and Arnold Transit Company, hereafter ATC.

WHEREAS, CMI has issued three identical non-exclusive franchises to operate public ferry boat services to and from the City of Mackinac Island, the three franchisees being Arnold Transit Company, Shepler's Mackinac Island Ferry and Star Line Mackinac Island Ferry, and

WHEREAS, the franchises granted provide, at Section 5, that CMI would seek proposals from all franchisees for providing winter ferry service for a five (5) year time period between November 1st, 2013 and April 20th, 2018, and

WHEREAS, CMI requested proposals for winter service from all three franchisees by April 1st, 2013, and received such proposals from Arnold Line and Shepler's but not from Star Line, and

WHEREAS, the Mackinac Island City Council approved the proposal for winter service submitted by ATC, a copy of which is attached hereto as Exhibit A, conditional upon the execution of a mutual agreed contract between CMI and ATC, incorporating the terms and conditions contained in Exhibit A and any other matters deemed relevant by either party, and

WHEREAS, the parties intend that this agreement memorialize their respective understanding and agreement relating to winter ferry service to and from Mackinac Island for the time period between November 1st, 2013 and April 20th, 2018.

WITNESSETH, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is acknowledged by both parties;

IT IS AGREED as follows:

1. Grant of Franchise for Winter Service. CMI hereby accepts ATC's proposal, attached as Exhibit A hereto, and grants to ATC a contract to operate and provide winter service to and from

Mackinac Island during the five year time period between November 1st, 2013 and April 20th, 2018, and ATC hereby accepts the same, subject to the terms and conditions of this agreement.

2. Standards of Performance.

A. Vessels and Equipment. ATC hereby agrees to provide and maintain all of the steel-hulled vessels, docks, parking and other facilities referenced in Exhibit A during the term of this agreement. Any change that would reduce or eliminate any of the steel-hulled vessels, docks, parking and other facilities identified in Exhibit A must be approved by CMI, said approval to not be unreasonably withheld.

B. Schedule. The winter service schedule of trips provided on Exhibit A shall be maintained by ATC during the term of this agreement. It is understood that the schedule is dependent on weather and ice conditions and that the schedule does not need to be met when such conditions prevent safe travel operations or undue damage to vessels. ATC is not obligated to provide service on any day of the winter service schedule when, in the sole judgment of ATC, acting in good faith, it would be unsafe to provide service because of the weather.

C. Rates. The following schedule of rates shall be maintained during the term of this contract subject only to changes representing extraordinary cost of living increases and/or fuel cost increases. No such increases shall be put in effect without approval of CMI, with said approval not being withheld unreasonably. Provided however, said increases shall not apply to the individual (one trip) ticket rates.

- Individual (one trip) tickets will cost the same as those charged during the preceding regular season.
- All Island resident season passes purchased for the preceding regular season will be valid during the winter service season, provided however, resident season passes issued by a franchisee other than ATC will pay a \$5.00 surcharge for each one-way trip. The rate for Island resident season passes shall be \$210.00.

- All non-resident season passes purchased for the preceding regular season will be valid during the winter service season, provided however, non-resident season passes issued by a franchisee other than ATC will pay a \$5.00 surcharge for each one-way trip. The rate for non-resident season passes shall be \$600.00.
- Commuter passes issued from ATC providing for 20 one-way trips during the winter service season shall be \$210.00.
- Commuter passes issued from ATC providing for 40 one-way trips during the winter service season shall be \$410.00.
- Commuter passes issued from ATC purchased for the regular season will be valid during the winter service season, but will be subject to the \$5.00 surcharge per one-way trip.

3. Credit. In consideration of providing winter service, ATC will receive an annual credit of \$100,000.00 toward the annual franchise fees otherwise owed by ATC to CMI pursuant to its franchise during the non-winter service period. The credit shall be applied during summer season following each winter season during which ATC provides services pursuant to this contract. For years 2 through 5 of this contract, the annual credit shall be adjusted each year 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 city council may select comparable statistics on the cost of living as they are computed and published by the Federal Government.

4. Default. In the event ATC defaults in any of the provisions of this agreement, CMI shall provide written notice to ATC identifying the nature of the default and a time period of not more than three (3) days in which to cure said default. Provided however, if the default by ATC involves a failure to provide or maintain the schedule of services set forth in Exhibit A, the time period to cure said default

shall be not more than two (2) day. If the default is not cured within the stated time period, the city may terminate this Agreement.

Notwithstanding any other provision in this paragraph, CMI may terminate this agreement if there are three or more incidents of default, that occur during a single winter season, that are subsequently cured by ATC after receiving written notice of default. Further, CMI may also terminate this agreement if ATC becomes the subject of a bankruptcy or receivership proceeding.

Upon termination of this agreement, ATC's annual credit against its franchise fee will be pro-rated over the term of the annual service period (165 days) with said credit being limited to the number of days between November 1st of a winter service season and the date of default.

5. Insurance. ATC shall maintain liability insurance at all times during the period in which winter service is provided with policy limits of \$1,000,000.00, and shall provide CMI with proof thereof.

6. Amendment. Any amendment to this agreement must be in writing executed by both parties.

7. Severability. If any term or provision of this agreement, which is not in itself material to the transactions contemplated hereby, or the application of any such term or provision to any circumstances shall, to the extent be in valid or unenforceable, the remainder of the agreement shall not be affected thereby and each term and provision hereof shall be enforced to the fullest extent permitted by law.

8. Binding Effect. This agreement shall bind the parties, their heirs, executors, personal representatives and assigns.

CITY OF MACKINAC ISLAND

BY:

ARNOLD TRANSIT CO.

BY: JAMES F. WYNN
ITS: PRESIDENT

ARNOLD MACKINAC ISLAND FERRY

BOX 220 • MACKINAC ISLAND, MI 49757
(800) 542-8528 • www.ArnoldLine.com



Mackinac Island City Council
City Hall
7538 Market Street
Mackinac Island, Michigan 49757-0455

Re: Future Winter Service Proposal

Mackinac Island City Council,

April 1, 2013

The Arnold Transit Company (ATC) has been providing the City of Mackinac Island with safe reliable winter passenger service for over 100 years. To many people the Arnold Transit Company and its service to Mackinac Island are as nostalgic to the Island as Fort Mackinac itself. ATC is submitting the following information and proposal for consideration of the next five years of winter passenger ferry service to Mackinac Island. ATC asks as you read and compare assets, schedules, amenities, and fares that you also take into consideration what the Arnold Transit Company's name and past mean to the history of Mackinac Island.

I. ATC Vessels, facilities, docks, and parking

A. ATC Steel Vessels:

- i. The Huron is a single screw, steel hull vessel with a recently remodeled heated passenger cabin and restrooms. The Huron has provided safe and reliable winter service to Mackinac Island since 1955. Maximum passenger capacity is 400.
- ii. The Chippewa is a steel hull vessel that is available as a winter service back-up.
- iii. The Ottawa is a steel hull vessel that is also available as a winter service back-up.
- iv. The Beaver is a steel hull freight vessel that ATC will leave at the Island for emergency situations, such as gasoline supply shortage.

B. ATC Facilities:

- i. Mackinac Island Main Dock maintains a heated lobby, heated offices, and a restroom all within 30 seconds of passenger loading/unloading ramp.
- ii. ATC's Mackinac Island Coal Dock has material storage capabilities and also maintains the Island fueling station.
- iii. St. Ignace Dock #1 maintains a heated lobby, heated offices and heated restrooms less than 30 yards from the passenger loading/unloading ramp.
 1. St. Ignace Dock #1 is closer to late open water in the Fall and the early open water in the Spring.

IV. ATC April 1st-April 20th Winter Schedule

(Weather & Ice Permitting)

A. April 1st-April 20th

i. Four trips per day (Monday-Saturday)

- a. Depart St. Ignace: 7:30am, 11:00am, 2:00pm, 4:00pm
- b. Depart M.I.: 8:30am, 12:00pm, 3:00pm, 5:00pm

ii. Three trips per day (Sunday)

- a. Depart St. Ignace: 11:00am, 2:00pm, 4:00pm
- b. Depart M.I.: 12:00pm, 3:00pm, 5:00pm

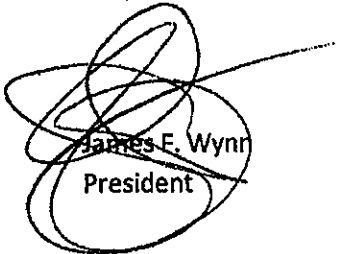
V. ATC Winter Rate Schedule*

A. Passes and Winter Rates

- | | |
|-----------------------------|---------------------------------|
| i. Adult Pass: | Standard rate of current season |
| ii. Adult 1-way: | Standard rate of current season |
| iii. Child Pass: | Standard rate of current season |
| iv. Child 1-way: | Standard rate of current season |
| v. Commuter Season Pass: | \$600.00 |
| vi. Commuter 40 Ride Pass: | \$410.00 |
| vii. Commuter 20 Ride Pass: | \$210.00 |
| viii. Island Resident Pass: | \$210.00 |

***Rates subject to extraordinary COLA and fuel costs increases**

Respectfully Submitted this 1st day of April, 2013.


James F. Wynn
President