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**AGREEMENT BETWEEN THE ST. JOHNS RIVER FERRY COMMISSION,
ON BEHALF OF THE CITY OF JACKSONVILLE,
AND HMS FERRIES, INC.
FOR OPERATION OF ST. JOHNS RIVER FERRY SERVICE**

THIS AGREEMENT is made and executed as of this 30th day of Sept., 2013, and effective as of the 1st day of October, 2013, by and between the ST. JOHNS RIVER FERRY COMMISSION, on behalf of the CITY OF JACKSONVILLE, a body politic and corporate of the State of Florida, pursuant to Section 93.105(h), *Ordinance Code*, (hereinafter referred to as "City"), and HMS FERRIES, INC., a Delaware corporation (hereinafter referred to as "HMS"), for operation of the St. Johns River Ferry Service (hereinafter referred to as the "Ferry").

WITNESSETH:

WHEREAS, City and HMS desire to enter into the agreement set forth below; and

WHEREAS, City desires that the Ferry be promoted, operated, and maintained, and managed by an experienced maritime service firm in order to increase revenues, decrease expenditures, and, in general, to maximize the utilization of the facilities by and for the benefit of the public; and

WHEREAS, City has selected HMS as the best and most qualified firm to operate, promote, and maintain the Ferry as above stated; and

WHEREAS, HMS desires to promote, operate, maintain and manage the Ferry for City according to the terms and conditions herein contained.

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, City and HMS hereby agree as follows (each of the above-stated recitals is true and correct, and, by this reference, each recital is incorporated herein and made a part hereof):

**Article 1.
DEFINITIONS**

In addition to other terms which are defined elsewhere in this Agreement, the following terms (whether capitalized or not), for purposes of this Agreement, shall have the meanings set forth in this Article.

1.1 "Affiliate" of a specified person shall mean a person or entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person or entity. For purposes of this definition "control" shall mean employment, agency relationship or contractual relationship with a person or the ownership either directly or indirectly of equity securities or other ownership interests which represent more than twenty percent (20%) voting power in the controlled entity.

1.2 “Agreement” shall mean this Agreement between City and HMS for operation, management, promotion and maintenance of the St. Johns River Ferry effective as of October 1, 2013.

1.3 “Annual Budget” shall mean a proposed detailed budget, comprised of (i) a proposed Income/Expense Budget, and (ii) a proposed Capital Improvement Budget for the ensuing Fiscal Year as prepared by HMS and submitted to City pursuant to Article 5 hereof, and as the same may be amended from time to time.

1.4 “Approved Budget” shall mean any Annual Budget as approved by the City Council of the City of Jacksonville pursuant to Article 5 hereof, and as the same may be amended from time to time.

1.5 “Authorized Representative” shall mean any one or more officer, agent, employee of, or independent contractor retained by, either City or HMS, acting within the scope of authority of the employment or acting within the terms and conditions of any contract with either of the parties thereto, who is authorized and directed to make all decisions and to take all actions for and on behalf of the party hereto which has designated such person for such purpose; provided, however, that any such person may not: (1) amend this Agreement without any required approval of its governing body, general partner(s) or board of directors or officer(s), as appropriate; (2) extend this Agreement beyond its Term; and (3) as to City’s Authorized Representative, approve or agree to any expenditure or payment which creates any new basis of expenditure which exceeds the amount of City funds appropriated and available for expenditure under the Income/Expense Budget for a Fiscal Year.

1.6 “Capital Expenditure” shall mean all expenditures for facilities, alterations or improvements, and for furniture, machinery or equipment replacement. Capital items shall be defined to include all fixtures, signs, displays, equipment, machinery, appurtenances, improvements, alterations, systems (including, but not limited to, plumbing system, electrical system, wiring and conduits, heating and air-conditioning systems).

1.7 “Capital Improvement Budget” shall mean all Capital Expenditures which are proposed during an Annual Budget review process for the ensuing Fiscal Year.

1.8 “Depository” shall mean the place in which HMS shall maintain its bank account or accounts for the receipt of all Gross Operating Revenues.

1.9 “Emergency Expenditure” shall mean any Expenditure, which is not included in the then applicable Capital Improvement Budget, and, due to time considerations is necessary to correct any condition that jeopardizes the facilities or public safety.

1.10 “Facilities” shall mean any and all portions or parts of the St. Johns River Ferry Service, its grounds, vessels, and all real property, including all ancillary components used in connection therewith.

1.11 “Fiscal Year” shall mean the year beginning October 1 and ending September 30.

1.12 “Gross Operating Revenues” shall mean any and all fees, commissions and other income, checks, drafts or other commercial instrument as described in Article 11 hereof tendered as payment to HMS pursuant to its performance under this Agreement.

1.13 “Expense Budget” shall mean for Fiscal Year 2013-14 the budget set forth on **Exhibit B** attached hereto and made a part hereof by this reference. For Fiscal Years 2014/15, 2015/16, 2016/17 and 2017/18, the Expense Budget shall be agreed to between the parties prior to the beginning of each Fiscal Year, subject to the approval of the St. Johns River Ferry Commission; provided, however, that the amounts set forth in any Expense Budget shall not exceed the amount of the Annual Contract Fee for the related Fiscal Year.

1.14 “Annual Contract Fee” shall mean for that portion of Fiscal Year 2013-14 from October 1, 2013 through September 30, 2014, an amount equal to \$1,434,761 Dollars, as shown in **Exhibit A** attached hereto, which is comprised of the Management Fee and the costs related for management and operation of the Ferry. For Fiscal Years 2014/15, 2015/16, 2016/17 and 2017/18, the Annual Contract Fee shall be agreed to between the parties, subject to the approval of the St. Johns River Ferry Commission. The Annual Contract Fee for the subsequent Fiscal Years will be agreed to by the parties by amendment to this Agreement in writing prior to the beginning of each Fiscal Year.

1.15 “Management Fee” shall mean for Fiscal Year 13-14 an amount equal to \$198,450 Dollars. For Fiscal Years 2014/15, 2015/16, 2016/17 and 2017/18, the Management Fee shall be increased by 2.5% per year at the beginning of each Fiscal Year.

1.16 “Operating Expenses” shall mean and include all expenditures or obligations of whatever kind or nature, as described in Section 11.2 hereof, incurred (directly or indirectly) or accrued by HMS in any Fiscal Year period during the Term of this Agreement in accordance with an Approved Budget under this Agreement, except Capital Expenditures.

1.17 “Term” shall mean the that period commencing as of the date of this Agreement and ending as of September 30, 2018, as the same may be renewed pursuant to Section 3.1 hereof.

1.18 “Vessel” shall mean the “Jean Ribault.”

Article 2. BASIC SERVICES

2.1 City hereby engages HMS to promote, operate, maintain and manage (herein “Management Services”) the St. Johns River Ferry Service, pursuant to all applicable laws and ordinances, and HMS hereby undertakes and agrees to perform all such management services and to comply with all the provisions of this Agreement. HMS shall strive to achieve the following goals:

(a) To provide high quality transportation service and a pleasant ridership experience to the Public.

(b) To maximize ridership of the ferry along with its revenue generating capacity, while minimizing net cost to City.

(c) To stimulate economic activity in eastern Duval County, particularly along Buccaneer Trail, between the cities of Fernandina Beach and St. Augustine.

(d) To protect City's interest in the St. Johns River Ferry Service facilities and assets through exercise of a high standard of maintenance.

(e) To meaningfully involve all segments of the community in the employment and business opportunities which arise as a direct or indirect consequence of the ferry service operation.

2.2 HMS represents and warrants that its performance of the services shall be rendered with promptness and diligence and shall be executed in a workman-like manner, in accordance with the practices and high professional standards used in a well-managed operation performing services similar to the services set forth in this Agreement. HMS represents and warrants it will use an adequate number of qualified individuals with suitable training, education, expertise, and skill necessary to perform the services and HMS represents and warrants it will perform the services in an efficient and cost-effective manner.

2.3 Buildings and real estate, vessels, technical and office equipment and facilities, furniture, displays, fixtures and similar property which are owned by City shall be and remain the sole property of City. Property rights will not accrue to HMS, with the exception of its proprietary software which shall be and remain the sole property of HMS. However, any computer software which is designed by either City or HMS, or both, specifically for use in regard to the Facilities will be and remain the sole property of City.

The office equipment and furniture listed on Exhibit C is owned by HMS and shall remain the property of HMS at the end of the term.

Any data, equipment or materials furnished by City to HMS and any such data, equipment or materials that may be acquired for City by HMS specifically for use in regard to the Facilities, shall remain the property of City, and when no longer needed for the performance of this Agreement or upon the expiration or termination of this Agreement, shall be delivered promptly to City by HMS.

2.4 If any services, functions or responsibilities not specifically described in this Agreement are necessary for the proper performance and provision of the services for the Facilities, they shall be deemed to be implied by and included within the scope of the services provided by HMS to the same extent and in the same manner as if specifically described in this Agreement. HMS shall be responsible for providing the equipment, supplies, personnel (including management, employees, and training), and other resources as necessary to provide the services.

Article 3. TERM OF AGREEMENT

3.1 This Agreement shall commence as of October 1, 2013, and shall continue and remain in full force until September 30, 2018, or until earlier termination as provided in Article 5 or 12 hereof. City shall have the option to renew this Agreement for one (1) five (5) year additional period.

Article 4. EMPLOYEES

4.1 HMS shall hire its own employees sufficient to perform the services. Such employees will be employees of HMS and not of City but shall be paid from the funds allocated by City for this purpose. HMS shall select the number, function, qualifications, compensation, including benefits and may, at HMS's reasonable discretion, periodically adjust or revise the terms and conditions relating to such employment. HMS shall be the employer of record for the following categories of workers:

- (a) Captains
- (b) Engineers
- (c) Deckhands
- (d) Toll collectors
- (e) General and Administrative Staff

4.2 Upon any termination of this Agreement City may employ or cause to be employed in similar positions at the Facilities and with similar compensation and benefits, through at least the last day of the then-current Fiscal Year, all those employees of HMS that (i) are employed at the Facilities at the time of such termination of this Agreement, and (ii) HMS has not notified City that HMS wishes to continue to employ elsewhere, and (iii) the cost of which has been included in the Income/Expense Budget. The provisions of this section shall survive termination of this Agreement.

4.3 HMS shall be responsible for all personnel costs (including, but not limited to salaries, benefits, and taxes) as described in the Income/Expense Budget. HMS shall be solely responsible for the payment of any and all employment taxes and/or assessments imposed on the account of the payment for the services of HMS's employees, including any unemployment insurance tax, federal, state, local and foreign income taxes, federal social security payments (FICA) and disability insurance taxes, as well as any and all contributions or payments required pursuant to any employee pension, welfare, bonus or other benefit plan, however defined or described, applicable to any of HMS's employees. HMS shall bear sole responsibility for maintaining and administering workers' compensation, unemployment and any other insurance required for HMS's employees under this Agreement, any law or any plan, as well as for compliance of all statutes and regulations applicable to the employer of HMS's employees. HMS recognizes and agrees that HMS's employees shall not be entitled to any benefits established and maintained by City for employees, and HMS shall so advise HMS's employees. Any severance payments payable to HMS's employees upon termination of their employment with HMS shall be the sole responsibility of HMS. HMS will make appropriate reporting of compensation paid to HMS's employees as required by the Internal Revenue Service ("IRS").

4.4 All the personnel assigned by HMS shall be authorized under state and local laws to perform such services, whether by appropriate license, registration, certification or other authorization.

Article 5. FUNDING

5.1 City shall pay HMS the Annual Contract Fee for Ferry operations and for services rendered under this Agreement, which shall include the Management Fee and reimbursement for expenditures made by HMS on behalf of the City for management and operation of the Ferry. For Fiscal Year 2013-2014 beginning on October 1, 2013 and ending on September 30, 2018, the Maximum Contract Fee shall be One Million Four Hundred Thirty Four Thousand Seven Hundred Sixty-One Dollars (\$1,434,761) payable in twelve (12) equal monthly installments by ACH no later than the 5th business day of the month

5.2 Once a month, HMS will transfer from its bank account, via ACH to a designated City bank account all Gross Operating Revenues received by HMS for each month. This ACH transaction shall be completed by HMS every month not later than the 5th business day of the month.

5.3 HMS shall submit to City not later than April 1 prior to the end of each Fiscal Year of the Agreement, an anticipated Annual Budget (in a form approved by City) for the ensuing Fiscal Year for budget planning purposes. Changes to the Approved Budget by HMS on line items relating to the following must be approved in writing by City: (1) base salaries for administrative employees and bonus; (2) travel expenses; (3) meals and entertainment expenses; (4) meetings, conventions, continuing education and similar expenses; (5) dues and subscriptions; (6) corporate travel which exceeds ten percent (10%) of the expense amount contained in the Budget; (7) changes which create new line items; (8) changes which increase the total amount of the Approved Budget; (9) ; insurance requirements. Any expenditures which are not included in the Approved Budget or exceed the above-noted budgeted items, other than for an Emergency Expenditure, shall be the financial responsibility of HMS unless approved in writing by City prior to the expenditure being made.

5.4 In the event that, in any Annual Budget review process or during any Fiscal Year, City reasonably believes it will not be able to make available sufficient funding to cover all costs set forth in the Income/Expense Budget, City shall request from HMS a plan for reduction of expenditures to a level consistent with and within the funding available to City, but in any event City shall have the right to restructure the service under reduced expenditures, without reducing HMS's Management Fee. After giving notification of insufficient funding during any fiscal year, City shall pay all Operating Expenses incurred or accrued by HMS prior to HMS's receipt of any such notice plus all Operating Expenses incurred or accrued after receipt of such notification to the extent that the aggregate amount does not exceed the aggregate amount in the reduced Income/Expense Budget.

5.5 Should City act hereunder to reduce expenditures, either by reduction of the proposed Annual Budget submitted by HMS during the Annual Budget review process or by reduction due to unavailability of other funds in accordance with Section 5.4 hereof, and such reduction of expenditures impairs, restricts or otherwise affects the ability of HMS to perform its duties hereunder, and providing HMS timely notifies City of such impairment in writing, then, any subsequent failure of HMS to fully perform its duties under this Agreement caused by any such reduction shall not be considered any event of default or breach by HMS of its obligations

under this Agreement. In this event, HMS shall, however, continue to utilize its best efforts to properly and safely continue operation of the Ferry within available funds.

5.6 In the event that City reduces the availability of funds either by reduction of the Annual Budget proposed by HMS or by a reduction required by City at any other time, then HMS shall continue management of the ferry utilizing revenues made available by City and the funds generated at the Facilities. Alternatively, all parties may mutually agree to terminate this Agreement as of a time certain but not more than 60 days after the effective date of any such reduction with written notice thereof being given by HMS to City not less than 30 days prior to such time certain. However, in the event of termination at any time in which more than one year remains in the term of the Agreement, HMS shall have the right of first refusal for a period of one (1) year after the date of such written notice, to resume continued operation, promotion and management of the Ferry at such time as City first shall restore the budget to previous operating levels, except such first refusal shall not apply in the event that City determines to continue management with City-employed personnel. If City notifies HMS of the restoration of the budget, HMS shall have sixty (60) days to exercise said right of first refusal, and if not exercised, then such right of first refusal shall expire and be terminated.

5.7 Capital Expenditures, including any Capital Expenditures relating to the Vessel, shall be the responsibility of City. Any Capital Expenditures paid by HMS shall be reimbursed by City, provided that such Capital Expenditures have been approved in writing by City, including approval through City's procurement process, prior to being incurred by HMS.

Article 6. HMS'S SERVICES AND RESPONSIBILITIES

6.1 HMS hereby agrees to perform and furnish management services, systems and materials needed to operate, supervise, manage, market, and maintain the Facilities in the most efficient manner consistent with operations of other similar first class facilities with a similar or comparable budget, and City agrees to provide the funds budgeted for and reasonably required to carry out such purposes during the term of this Agreement. It is the intent of the parties that HMS will have authority over the day-to-day operations and management of the Facilities and all activities therein, but recognizing that City is in the process of reorganizing all Ferry operations, City retains the right to change or modify policies and guidelines reasonably intended to improve the operation or efficiency of the Ferry service. Such current and future policy shall not unreasonably interfere, impede or impair the ability of HMS to effectively manage the Facilities.

6.2 In the performance of its duties under this Agreement for management, supervision, maintenance, marketing, and operation of the Facilities, HMS shall:

(a) Supervise and direct all employees and personnel consistent with the provisions of this Agreement, including hiring and termination.

(b) Maintain and supervise detailed, accurate and complete financial and other records of all of its activities under this Agreement in accordance with generally accepted accounting principles. In furtherance of its services to be provided, pursuant to this

subsection, and elsewhere in this Agreement, HMS may use its own proprietary computer software which shall remain the sole property of HMS.

(c) Submit a written report to City at least monthly, or at such other period as otherwise agreed upon between City and HMS, concerning its activities in the operation, management, supervision and maintenance of the Facilities. Such report shall, inter alia, set forth receipts from all sources, expenditures and such other and further information as City may reasonably require. Such report shall be due on or before the 20th day of each month for the period covering the prior month.

(d) Submit a quarterly report reviewed and signed by the President, or his corporate designee, that reflects the revenue and expenses of HMS.

(e) To the extent that City has made budgeted funds available, maintain the Facilities in the condition received, reasonable wear and tear excepted. Advise City in writing, at least quarterly, of any unusual and/or unbudgeted maintenance issues which it foresees and anticipates will affect the Ferry service in some significant way.

(f) To the extent approved by City in the Approved Budget, and in accordance with established City purchasing guidelines, rent, lease or purchase all non-capital, ordinary maintenance supplies and equipment for the operation and maintenance of the Facilities.

(g) To the extent approved by City in the Approved Budget, and in accordance with City purchasing guidelines, administer, assure compliance with, negotiate and enter into service contracts required in the ordinary course of business in operating the Facilities, including, without limitation, contracts for engineering services, telephone, staffing personnel including security guards, extermination and other services which are reasonably necessary. With the approval of City, HMS shall have the right to contract with, or expense to, its parent, affiliates or related entities for necessary services. No service contract shall have a term of longer than the then remaining Term of this Agreement without the prior written approval of City. Any contract entered into between HMS and a parent, subsidiary and/or affiliate company shall be at terms and for prices as customarily charged by such non-affiliated third parties for comparable goods and services in the Jacksonville area and as are competitive within the industry, subject to prior written approval of City (such approval not to be reasonably withheld) and submittal of documentation evidencing the competitive nature of the goods and services submitted.

(h) Furnish such supervisory services, as are herein set forth, to ensure that the Facilities and services shall be operated in a first class manner and with standards comparable to similar first class facilities, elsewhere with comparable budget. The best standards for the industry shall apply to the maintenance of all mechanical equipment.

(i) Assist City in the establishment of prices, rates and rate schedules for the aforesaid licenses and agreements, advertising contracts and concession agreements and

any other Facilities commitments to be negotiated by HMS in the course of its management of the Facilities.

(j) After consultation with City's General Counsel, institute in its own name as the Facilities Manager and for the benefit of City, but in any event, at the reasonable expense of City, any and all legal actions or proceedings to collect fares, charges, rents or other income generated by and due to City, or to cancel or terminate any license, use or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire of City after consultation with City.

(k) Hold the master set of all records. Commencing soon thereafter the execution of this Agreement, HMS shall review operating schedules and recommend any necessary changes to City.

(l) Cause such acts and things to be done in and about the Facilities as HMS shall determine to be necessary to its operation, control, supervision and maintenance. Both HMS and City shall, throughout the term of this Agreement, comply with all statutes, ordinances, laws, rules, regulations, orders and requirements applicable thereto, and imposed by any federal, state, local government agencies, departments, commissions, boards and offices having proper jurisdiction, in respect to the use or manner of the use of the Facilities or the construction, maintenance and operation thereof, as well as with all orders and requirements of City's Policies and Directives. To the extent changes in applicable law or regulations occur after completion of an Income/Expense Budget and result in increased cost to HMS, HMS may request an equitable adjustment to the Income/Expense Budget to offset such increased costs. If such increased costs exceed Ten Percent (10%) of the Annual Contract Fee for the current Fiscal Year, and if City and HMS cannot reach agreement as to an equitable adjustment to offset such increased costs, HMS shall have the right to terminate this Agreement upon providing City with at least sixty (60) days prior written notice.

(m) Have the right to act without consent of City, in situations which it determines to be an emergency, for the safety, welfare and protection of the general public. Immediately following such action, HMS shall inform City of the situations and the action taken.

(n) Be reimbursed by City for the full amount of any Emergency Expenditure.

(o) Cause all vessels and equipment used in the provision of the service to be certified by the United States Coast Guard ("USCG") prior to use. HMS shall provide evidence of valid USCG certification and shall maintain full certification for the duration of this agreement. The use of vessels in connection with a passenger for hire service that are not properly certified by the USCG may result in the withholding of the Management Fee of the period of time the vessel is in service, and is cause for termination of this Agreement by City. All vessels used must be insured in accordance with Article 9, Indemnification and Insurance. Failure to insure any vessel may, at the sole discretion of City, result in termination, cancellation or suspension of this Agreement.

(p) Operate the service in full compliance with all requirements of the USCG. HMS shall provide City with a copy of USCG permits and licenses for all vessels and personnel. It is HMS's responsibility to provide City with updated certificates and licenses in a timely manner.

(q) Have the license to use, for the Term of this Agreement, City's name and logo on stationary, in advertising and whenever conducting business for the Facilities with the form of such logo subject to the prior written approval of City. However, nothing herein shall provide any ownership rights in City's name or logo to HMS.

Article 7.

CITY AUTHORIZED REPRESENTATIVE AND HMS GENERAL MANAGER

7.1 City's Authorized Representative shall be the St. Johns River Ferry Commission. The St. Johns River Ferry Commission has designated Tom Goldsbury, Public Works Office as its designee for communicating on day-to-day operations with HMS. The City may change the City Authorized Representative or designee at any time by notifying HMS of such change in writing.

7.2 City's Authorized Representative shall have the authority to take all actions and to give all approvals for City under this Agreement with the exception of items expressly requiring the action or approval of the City Council, the St. Johns River Ferry Commission or another City authorized representative, including without limitation any approval of the Annual Budget, any changes in the Approved Budget which create new line items or which increases the total amount of funds under the Approved Budget to fund the operating deficit for a Fiscal Year, and renewal hereof. City's Authorized Representative:

(a) Shall be the liaison between HMS and City on all matters relating to this Agreement.

(b) Shall be responsible for ensuring that any information supplied by HMS is properly distributed to the appropriate City department or agencies or personnel.

(c) Shall be responsible for the day-to-day monitoring and assessment of the quality of services and maintenance of Facilities provided by HMS and contract compliance by HMS.

7.3 HMS shall name, by written notice to City, an individual as its General Manager of the Facilities by HMS's Authorized Representative, upon execution of this Agreement. The General Manager shall be authorized to take all actions and give all approvals for HMS under this Agreement, with the exception of items which are expressly prohibited or limited in the written notice from HMS's Authorized Representative to City. The General Manager:

(a) Shall be the liaison between City and HMS on all matters relating to this Agreement.

(b) Shall be responsible for the day-to-day management and supervision of the Facilities.

(c) Shall be responsible for providing supervision and direction to HMS's employees.

The General Manager may be removed within thirty (30) days of the date of written request or recommendation of City's Authorized Representative; provided, however, the General Manager may be suspended or removed immediately if such General Manager is charged with a crime, theft of funds, conduct unbecoming a general manager of the Facilities or any act or omission which brings discredit or reflects unfavorably upon City as determined by City.

Article 8. FINANCIAL/RECORDS/AUDIT/REPORTS

8.1 HMS shall establish and maintain current, accurate and complete financial records on an accrual basis of accounting relating to its activities at the Facilities. The systems and procedures used to maintain these records shall include adequate books of account with respect to its management and operation of the Facilities and a system of internal controls, and all accounting records shall be maintained in accordance with generally accepted accounting principles. In addition, HMS shall maintain all contracts, leases, vouchers, checks, invoices, receipts and other documents and information necessary and reasonable to support its financial transactions arising from or in connection with this Agreement. While under this agreement with City, all such financials records, documents and information must be maintained in the principal business office of HMS in the City of Jacksonville, Duval County, Florida, (or at such other location or locations as approved in writing by City), and retained in accordance with applicable Florida Statutes. In the event of termination for whatever cause, HMS shall deliver all records to City.

City shall have the right to inspect and audit all financial records, documents and information required to be maintained under this Agreement. HMS shall assure that these records shall be subject at all reasonable times to inspection, review, copying or audit by the Council Auditor's Office or other personnel duly authorized by the City and upon demand, at no additional cost to the City, HMS will facilitate the duplication and transfer of any records or documents during the required retention period.

Article 9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification. HMS and its subcontractors (individually or collectively referred to as the "Indemnifying Parties"), shall hold harmless, indemnify, and defend City of Jacksonville, including the St. Johns River Ferry Commission, and City's members, officers, directors, employees, representatives and agents (individually or collectively referred to as the "Indemnified Parties") from and against:

(a) General Tort Liability, including without limitation any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons (including death) or damage to property, arising out of

or incidental to the Indemnifying Parties' performance of the Agreement or work performed hereunder; and

(b) Environmental Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees), arising from or in connection with (a) the Indemnifying Parties' actions or activities under the Agreement that result in a violation of any environmental law, ordinance, rule or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with the Agreement by the Indemnifying Parties at any time on or prior to the effective date of the Agreement, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. The City will be entitled to control any remedial action and any legal proceeding relating to an environmental claim; and

(c) Intellectual Property Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs; fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees), arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right and will pay all costs (including, but not limited to attorney's fees and court costs), damages, charges and expenses charged to the Indemnified Parties by reason thereof. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to City, so that the Service or product is non-infringing; and

(d) Violation of Laws Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees) arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, rules or regulations, by the Indemnifying Parties or those under their control; and

(e) Liability from Breach of Representations, Warranties and Obligations, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof

including, but not limited to, court costs, reasonable expert witness fees and attorney's fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the Indemnifying Parties in connection with the Agreement or in any certificate, document, writing or other instrument delivered by the Indemnifying Party, or (b) any breach of any covenant or obligation of the Indemnifying Parties set forth in the Agreement or any other certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to the Agreement.

The indemnifications in this Section 9.1 are separate and apart from, and are in no way limited by, any insurance provided pursuant to the Agreement or otherwise. This Section 9.1 shall survive the expiration or termination of the Agreement.

To the extent an Indemnified Party exercises its rights under this Article 9, the Indemnified Party will (1) provide reasonable notice to HMS of the applicable claim or liability, and (2) allow HMS to participate in the litigation of such claim or liability (at HMS's expense) to protect its interests. Each Party will cooperate in the investigation, defense and settlement of claims and liabilities that are subject to indemnification hereunder, and each Party will obtain the prior written approval of the other Party before entering into any settlement of such claim or liability, which consent shall not be unreasonably withheld, delayed or conditioned.

9.2 Notwithstanding any provision in this Agreement to the contrary, nothing in this Agreement shall act or be construed in any manner as either altering or waiving City of Jacksonville's sovereign immunity under Florida Statutes 768.28, nor shall it be construed to expand beyond sovereign immunity the liability of City of Jacksonville or to impose any liability on City of Jacksonville for which it would not otherwise be responsible by law.

9.3 HMS and/or its subcontractor shall procure and maintain during the term of this Agreement, insurance of the types and in the minimum amounts stated below:

Schedule

Limits

Worker's Compensation/Employers Liability

Worker's Compensation
Employer's Liability

Florida Statutory Coverage
\$1,000,000 Each Accident
\$1,000,000 Disease Policy Limit
\$1,000,000 Each Employee/Disease

HMS insurance shall cover HMS (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act,

where appropriate, coverage is to be included for the **Federal Employers' Liability Act, USL&H and Jones Act, and any other applicable federal or state law.**

Marine Package - This policy provides coverage for damage to the ferry vessels, damage to other property in the event of a collision, and liability coverage, etc.

Watercraft Hull Coverage – Coverage for direct damage to vessels written on American Institute Hull clauses form, specifically including Running Down clauses, Agreed Valuation clauses, Loss Payees as their respective interests may appear and Lessors Interest clauses to protect the City of Jacksonville under a breach of warranty loss.

<i>Jean Ribault – 1996/(153' Passenger & Car Ferry)</i>	\$4,000,000 Hull Limit
<i>(Five Crew, Vehicles 40 and 199 Passengers)</i>	\$ 40,000 Deductible

Hull conditions shall include American Institute Clauses (6/2/1977), American Institute Liner Negligence Clauses (6/2/1977) SP 7, Liner Repair Clause, Additional Assured's City of Jacksonville, Waiver of Subrogation in favor of the City of Jacksonville, Equipment Away from Vessel, Leased Equipment Clause and Amendments to the American Institute American Institute Hull Clauses (6/2/77).

Protection & Indemnity – Form "SP23" – Coverage for Ferry Operations (including events) with coverage (no exclusion) as included in "SP23" for damage to any harbor, graving, piers, bumpers, etc.; including but not limited to Crew, Passenger and Coverage for property and liability from land while loading and unloading the Ferry and on-board during navigation.

(Includes Collision, Cargo Legal Liability, Dock Liability, Premises, Pollution Exclusion Buyback Endorsement A, Personal Effects, Medical Payments and Dock Liability)

\$ 1,000,000	P & I Limit
\$ 5,000	Personal Effects
	Passengers
\$ 25,000	Medical
	Payments
\$ 250,000	Voluntary Wreck
	Removal
\$ 5,000	Deductible

The policy shall be endorsed to delete the "as owners" and charterers' limitation clauses.

War Risks

American Institute Hull War Risk and Strikes Clause, American Risk Protection and Indemnity Clauses SP 22B, and Missing Vessel Clause and include Terrorism coverage.

Comprehensive Marine General Liability- Broad Form Endorsement (including but not limited to Land Base Operations, Host Liquor/Liquor Liability (when applicable Special

Events), Contractual, Non-Owned Watercraft (when applicable), Ship Repair Liability, etc. (per HMS' current form).

\$2,000,000 General Aggregate
\$2,000,000 Products & Completed Ops Agg.
\$1,000,000 Personal/Advertising Injury
\$1,000,000 Each Occurrence
\$ 100,000 Fire Damage
\$ 5,000 Medical Payments
\$ 5,000 Deductible Anyone Acc.
\$ 10,000 Deductible Any One accident or
occurrence per each pollution claim

Automobile Liability \$1,000,000 Total Any One Accident
(Coverage for all automobiles, owned, hired or non-owned)

ISO Form CA0001 as filed for use in the State of Florida without any restrictions endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Vessel Pollution Liability (Occ. Form)
Including clean-up cost

\$5,000,000 Anyone Scheduled Vessel, any one incident for IOA 90, CERCLA, Spill Management, Firefighting and Salvage and Defense Cost including damage to Property Ashore.

Sublimits:

\$ 250,000 Limited Administrative Penalties
\$ 250,000 Public Relations Per Incident/Per Vessel
\$ 50,000 Criminal Defense
\$ 250,000 Vessel General Permit Occ./Agg.
Within policy limit

\$ 5,000 Deductible for Each Claim

(Including Water Quality Insurance Syndicate or similar form Per Statutory coverage and limits).

Storage Tank Liability

(Two above ground storage tanks \$1,000,000 Each Incident
10,000 gallon capacity each) \$1,000,000 Aggregate
\$ 5,000 Deductible

Location of Storage tanks: 4760 Ocean Avenue, Atlantic Beach, FL 32233.

Retroactive Date: April 4, 2001

Conditions: Storage Tank Third Party Liability including
Corrective Action and Clean-up Cost

Pollution Liability and Storage Tank Liability: If the Services provided require the disposal of any hazardous or non-hazardous material off site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this contract.

Bumbershoot/Umbrella Liability \$14,000,000 Per Occurrence, Combined
Single Limit (Inclusive of Defense Cost)
\$ 25,000 Self-Insured Retention, Any
one Occurrence

(The Bumbershoot/Umbrella Liability policy shall be in excess form of all above (although it may be on other pages) listed underlying coverages and limits on a per occurrence without any gap).

Crime and Employee Dishonesty Bond Coverage \$ 100,000 Per Employee or
Limits presently insured by HMS with approval of the City)

(Blanket coverage for loss due to theft or embezzlement by employees of the insured.)

9.4 Rail Road. In the event that any part of the work to be performed hereunder shall require HMS or its Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-ways of a railroads, HMS shall before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad company shall require.

The original of such policy shall be delivered to the railroad involved, with copies to the City, if applicable, the City's Program Manager and Office of Risk Management. HMS shall not be permitted to enter upon or perform any work on the railroad's property until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the City and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.

9.5 Waiver of Subrogation. All insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City, and its members, officials, officers,

employees, agents and the St. Johns River Ferry Commission. All Waiver of Subrogation endorsements shall be reviewed and approved by the City.

9.6 Additional Insured: **All insurance** obtained by HMS shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees, agents and the St. Johns River Ferry Commission, except additional insured does not apply to Worker's Compensation and, Crime. All Additional Insured's endorsements provided by HMS will be reviewed and approved by the City.. **All insurance** obtained by the City shall be endorsed to name HMS Ferries, Inc. and its officers, employees, agents and HMS Global Maritime, Inc. and its officers, employees, agents. All Additional Insured's endorsements provided by the City will be reviewed and approved by the HMS.

9.7 HSM's Insurance Primary. The insurance provided by HMS for shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City, St. Johns River Ferry Commission, or an City's member, official, officer or employee.

9.8 Deductible or Self-Insured Retention Provisions. Except as authorized in this Agreement, the insurance maintained by HMS shall apply on a first dollar basis with only the application of the deductible and Self-Insured Retention (Bumbershoot) approved by the St. Johns River Ferry Commission and the City's Office of Risk Management. Except as authorized specifically in this Agreement, no self-insurance, any other deductible or self-insured retention for any required insurance provided by HMS pursuant to this Agreement will be allowed. The City will be responsible for self-insurance, deductibles or self-insured retentions o as well as the deductibles shown in this Agreement.

9.9 HMS's Insurance / Additional Remedy. Compliance with the insurance requirements of this Agreement shall limit the liability of HMS, or its Subcontractors or Sub-subcontractors, employees or agent, in the amounts identified in 9.3, to City, and St. Johns River Ferry Commission, or others. Any remedy provided to City, the St. Johns River Ferry Commission, or City's members, officials or employees shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

9.10 No Waiver by City Approval/Disapproval. Neither approval by City nor failure to disapprove the insurance furnished by HMS shall relieve HMS of HMS's full responsibility to provide insurance as required under this Agreement.

9.11 Said insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better. Prior to commencing any work on the Project, Certificates of Insurance approved by the City's Division of Risk Management demonstrating the maintenance of said insurance shall be furnished to the City. HMS shall be responsible for providing continuation certificate of insurance 30 days prior to each for the length of the Agreement. HMS shall provide to the City of Jacksonville thirty (30) days' prior written notice of any change in the above insurance coverage, limits or cancellation, including expiration or non-renewal.

9.12 Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City or HMS may, require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured, and in all such cases the City shall bear the costs, or reimburse HMS, of same

9.13 The City of Jacksonville understands that the ferry vessel may have to be surveyed for the purpose of establishing new insurance coverage under the contract operator. This will be accomplished if necessary during the term of the Agreement. Cost of this service will be reimbursable to HMS..

9.14 The City shall insure all movable and immovable property constituting the Facilities. All Risk of Physical Damage is subject to the terms and conditions of the insuring agreements, including coverage for loss or damage by water and flood and replacement cost.

Article 10. YEAR END SETTLEMENT

10.1 This Article establishes a year-end, or upon termination review of actual expenses incurred by HMS, compared to the approved Operations/Expense Budget for each fiscal year, including a Year End Settlement Process, whereby both parties agree to be made whole. If this settlement process results in a net positive budget variance, HMS will refund to City of Jacksonville the amount of savings from the annual payments. If, however, the process results in a net negative budget variance, City of Jacksonville will fund this amount to HMS to cover the additional Operating Expenses.

10.2 HMS will continue to make every effort to accurately project estimated Operating Expenses or obligations of whatever kind or nature as described in Section 11.2 of the Agreement. Operating Expenses shall be responsibility of HMS as set forth in **Exhibit B**, attached herein, and shall consist of all funds required to operate and manage the Ferry, with the exception of Emergency Expenditures, which are not included in the applicable approved Operations Expense Budget for each fiscal year.

10.3 The approved Operations/ Expense Budget at **Exhibit B** is designed to determine the total City Operating Expenses for any given budget fiscal year period, including specific expense categories to be paid by HMS or City as defined in **Exhibit B**. For example, the City will pay fuel costs directly and HMS will pay all salary costs directly. The overall objective of defining specific categories is to maintain efficient operations and leverage on individual buying power of both companies.

A settlement of expenses at the end of each Fiscal Year for any underages or overages incurred by HMS will allow for these spending decisions to be made without precise considerations as to whose line item expense is being impacted. Accordingly, the purpose of the year end settlement process is that both parties will be made whole, soon after the applicable Fiscal Year ends. Ferry revenues are not included as part of this settlement process.

10.4 The settlement period will occur within 60 days after Fiscal Year end, beginning after the Fiscal Year 2012/2013 contract term ending on September 30, 2013. The HMS financial statements when completed by HMS at year end will be submitted to City for review. After all expenses are reviewed and audited for accuracy, a net settlement will occur to determine a total "net settlement" which includes all expense categories compared to budgeted totals. The net settlement represents the total of all HMS actual expense compared to the HMS budget for the Fiscal Year. Settlement of any underages or overages will be paid in the form of a check to the appropriate party due the settlement amount.

10.5 The Management Fee shall not be impacted by the Year End Settlement process.

Article 11.
REVENUES, EXPENSES AND CAPITAL ITEMS

11.1 Gross Operating Revenues shall mean any and all monies derived from operation of the facilities by HMS as contemplated herein including, but not limited to:

- (a) fare revenues;
- (b) concession revenues;
- (c) merchandise sales revenue;
- (d) advertising sales revenue;
- (e) equipment rental fees;
- (f) miscellaneous operating income;
- (g) interest income.

11.2 Operating Expenses shall be the responsibility of HMS as set forth in **Exhibit B** and shall consist of all funds required to operate and manage the Facilities, including, but not limited to:

- (h) payroll, HMS benefits (including any customary HMS employee bonus but which shall be payable only upon completion of City's audit and only in the last payment for a Fiscal Year and only if previously included in the Income/Expense Budget) and related costs;
- (i) purchase of operating supplies;
- (j) advertising costs;
- (k) cleaning expenses;
- (l) data processing costs;

- (m) business-related dues, subscriptions and membership costs;
- (n) insurance costs and performance bond;
- (o) professional fees (Professional fees will be incurred only if properly qualified experts in the areas necessitating such services are not present within the staffs of either City or HMS and only upon prior approval of City);
- (p) printing and stationery costs;
- (q) postage and freight costs;
- (r) equipment rental costs;
- (s) repairs and maintenance costs;
- (t) security expenses;
- (u) cost of office supplies;
- (v) utility and telephones charges;
- (w) cost of employee uniforms;
- (x) exterminator and trash removal costs;
- (y) concessionaire expense and profit;
- (z) Reasonable out of county travel expenses in accordance with City's travel policy;
- (aa) HMS Management Fee; and
- (bb) reasonable relocation expenses as approved by City.

11.3 Operating Expenses listed in Section 11.2 above shall not include deductions for depreciation, interest or debt service; real estate taxes (or any other similar occupancy tax or federal and state income taxes); or Capital Expenditures.

Article 12. TERMINATION

12.1 City shall have the right to terminate this Agreement, with or without cause, and without penalty upon at least 90 days prior written notice.

12.2 HMS shall be in default hereunder for any default specified in Section 12.7 hereof and either party shall be in default hereunder if (i) such party shall fail to pay any sum payable herein within thirty (30) business days after same is due and payable; or (ii) such party shall fail

to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure shall continue for more than thirty (30) days after written notice thereof from the non-defaulting party. In the event that the non-defaulting party reasonably determines that an event of default is not susceptible to being cured within the thirty (30) day period by the defaulting party, the defaulting party shall not be considered in default if it shall, within such thirty (30) day period, have notified the non-defaulting party in writing, of its intent to cure said default, and shall have commenced with due diligence and dispatch to cure such default and thereafter complete with dispatch and due diligence the curing of such default.

12.3 In the event of termination pursuant to Sections 5.5, 12.1 or 12.2 hereof, HMS will endeavor in good faith to control expenditures to the lowest reasonable amount from the date of the notice of termination until the date of termination but not so as to unnecessarily impair necessary services or the quality thereof and HMS will be paid for expenses actually incurred to the date of termination, plus the pro rata portion of any fixed fee earned to date of termination, less, in the event of termination by City pursuant to Section 12.2 hereof, the cost to City, if any, of making good any deficiencies, correcting all work improperly performed, and any additional cost to City for removing or replacing HMS, exclusive of fees to firm(s) hired to replace HMS.

12.4 Upon the effective date of an expiration or any termination, HMS shall (unless the notice directs otherwise) promptly discontinue all services affected and promptly surrender and deliver to City, the Facility and all equipment, supplies and records, including all books of accounts relating to the operation of the Facilities, escrow accounts and inventories which are the property of City, as received, normal wear and tear excepted, and City shall simultaneously make all payments due HMS as set forth in this Agreement. HMS agrees to provide its proprietary software, and sufficient training, for a period of not less than 180 days at a specified monthly charge to allow City a transitional period for computer conversion.

12.5 The parties recognize and agree that City is subject to the provisions of the Florida Public Records Law, as codified in Chapter 119, Florida Statutes. Therefore, any covenant of confidentiality made or implied by City to HMS is subject to the provisions of said Public Records Law, and accordingly, any release of confidential information or proprietary materials by City shall not be considered a breach or default under this Agreement. In the event City receives a public records request for materials HMS has indicated in writing to City it desires to keep confidential, City agrees to use reasonable efforts to timely notify HMS of such public records request, at which time HMS may independently pursue (at its sole cost and expense and not a cost – indirect or direct – under this Agreement) a court order protecting the disclosure of such information. The foregoing shall not be deemed City's guaranty of the non-disclosure of any and all information provided by HMS to City pursuant to City's legal obligation to comply with a Public Records request.

12.6 In the event of termination pursuant to Section 12.2 above, City may, in its discretion, assume the work and see that the same is completed by agreement with another party, including subcontractors of HMS, or otherwise, and may charge HMS for any reasonable expenses that exceed the amount City would have paid to HMS for the performance of this Agreement if the Agreement had not been terminated for default by HMS.

12.7 Termination of HMS by City for default, under the provisions of Section 12.2 above shall be permissible for any one or more of the following events of default:

(a) The occurrence of any act or omission on the part of HMS that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized;

(b) The filing by or against HMS of any petitions in bankruptcy either voluntary or involuntary, or the making by which the actions shall automatically be basis for termination and bar the passing of any benefits to creditors, assignees or transferees of HMS;

(c) The abandonment or discontinuance by HMS, without written consent of City, of any or all of the operations and services permitted or required except to the extent permitted under Section 5.6 hereof;

(d) The failure of HMS to account for, and pay to City, as provided in any and all amounts of Gross Operating Revenues due and owing to City from HMS; and

(e) The cessation or deterioration of services to be provided by HMS for a period that in the reasonable opinion of City, materially and adversely affects the operation of the public services required to be performed by HMS except to the extent permitted under Section 5.6 hereof.

(f) Breach of any covenant or duty of HMS set forth in this Agreement.

12.8 The exercise by City or HMS of any one or more remedies and rights provided herein shall in no way affect any other right or remedy available to City or HMS.

Article 13. GENERAL CONDITIONS

13.1 Prior to the commencement of this Agreement, the parties shall together conduct an inventory of all expendable supplies and fixed assets of the Facilities and such inventory shall be signed by an Authorized Representative of each party.

13.2 Except as otherwise provided, neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by (a) fire not caused by the negligence of either party, hurricane, flood, act of God, major mechanical or structural failure or delays resulting from HMS's compliance with applicable Florida public procurement requirements, unless determined to be caused by deliberate malicious or negligent acts of HMS or its employees, civil commotion adversely affecting the facility or its reasonable operation or management, (b) any law, rule, regulation or order of any public or military authority stemming from the existence of economic or emergency controls, hostilities, war or governmental law or regulations, or (c) any of the circumstances described in Section 13.19; provided, however, that any such occurrence or the adverse effects of such occurrence are not reasonably foreseeable and are beyond the reasonable control of the affected party. The party claiming relief from

performance due to any of the foregoing shall exercise due diligence to overcome the effects of any such occurrence in order to resume performance at the earliest reasonable time.

13.3 In the event of a labor dispute which results in a strike, picket or boycott affecting the Facilities or services described in this Agreement, HMS shall not thereby be deemed to be in default or to have breached any part of this Agreement unless such dispute shall have been caused solely by labor practices or violations by HMS of applicable collective bargaining agreements. City reserves the right to take whatever action may be necessary to help open or to reopen the Facilities as it may deem to be in the best interests of City and the public.

13.4 HMS shall have the obligation to establish all terms and conditions of all contracts necessary for the operation, management and promotion of the Facilities. HMS shall notify City of any contemplated contract between itself and any subsidiary and/or affiliate not less than ten (10) days prior to such execution.

13.5 In carrying out its obligations herein HMS shall observe all applicable laws concerning the awarding of contracts for services at the Facilities.

13.6 HMS in performance of its duties and obligations under this Agreement shall comply with Equal Employment Opportunity Commission (EEOC) guidelines. Neither HMS nor any Affiliate performing services hereunder pursuant hereto will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or physical handicap.

13.7 City recognizes and expects that HMS will seek to increase Gross Operating Revenues to help offset Operating Expenses by introducing various marketing strategies and other revenue producing ideas including but not limited to other excursions. In the event that HMS engages in any activities, including other excursions, other than those specifically identified and as set forth in this Agreement, HMS shall provide and maintain additional insurance of the type to be specified by City. HMS will submit any such ideas to City in writing for approval prior to commencement. Any third party agreement entered into by HMS which produces revenue, as the result of matters related to the Facilities shall be included in Gross Operating Revenues, and any expenses relating thereto shall be included as Operating Expenses, provided such expenses have been approved by City, and approved as necessary through City's procurement process, in writing prior to such expenses being incurred.

13.8 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if delivered personally or sent by registered or certified United States mail, postage prepaid, or to such other notice person or address as may be specified by written notice as follows:

(a) If to City

City of Jacksonville
Office of the City Council
117 W. Duval Street, Suite 425
Jacksonville, Florida 32202
Attn: St. Johns River Ferry Commission

with copies to:

Office of General Counsel
City of Jacksonville
117 W. Duval St., Suite 480
Jacksonville, Florida 32202

(b) If to HMS

Mr. Gregory Dronkert, President & COO.
HMS Ferries, Inc.
115 E. Market Street
New Albany, Indiana 47150

13.9 This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party except that HMS may assign the Agreement to its current principals.

13.10 Each provision of this Agreement shall be considered to be separable, and, if for any reason any such provision or any part thereof is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

13.11 This Agreement may be amended only by the written agreement of the parties and executed with the same formalities as this Agreement.

13.12 This Agreement, including the attached exhibits, contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement.

13.13 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. HMS shall comply with all applicable federal, state and local laws, rules and regulations in its performance under this Agreement. The applicable venue for any suit filed by one party against the other arising from or in connection with this Agreement shall be in the Fourth Judicial Circuit in and for the Middle District of Florida, as the case may be. It is specifically understood that City intends to comply with Internal Revenue Services Laws, regulations, rulings, notices or procedures ("IRS requirements"), issued prior or subsequent to the date of this Agreement, governing the management of governmental facilities financed with the proceeds of tax exempt bonds, and in particular any such IRS requirements which implement Section 1301(e) of the Tax Reform Act of 1986. Notwithstanding any other provision of this Agreement, if any provisions of this Agreement conflicts with any IRS requirements and City so informs HMS, then the parties agree to amend this Agreement appropriately to the extent necessary to avoid such conflict.

13.14 City shall provide HMS with necessary and reasonable office space in the Facilities and such furniture and equipment, as is currently available in the Facilities. Any data, equipment or materials furnished by City to HMS and any such data, equipment or materials that may be acquired from City by HMS for use at the Facilities shall remain the property of City, and when no longer needed for the performance of this Agreement shall be returned to City for such use or disposal as City may determine.

13.15 City shall provide HMS with unrestricted egress and ingress to the Facilities. City shall provide no cost parking for HMS personnel at the Facility.

13.16 The buildings and real estate, vessels, technical and office equipment and facilities, furniture, displays, fixtures and similar property shall remain the sole property of City. Property rights in these assets shall not accrue to HMS. Property and assets brought to the Ferry operations by HMS as part of its management and administrative responsibilities shall be and remain the sole property of HMS. It is understood that HMS, in the course of its normal businesses has prepared many products for its customers in the forms of marine site risk assessments, emergency disaster plans, contingency plans, safety manuals, operations manuals and maintenance and servicing manuals. Should HMS in the normal course of business for City prepare these manuals for the vessels City owns, these manuals shall become property of City. HMS shall be free to use the format and contents of these products that they have developed prior to the Jacksonville Port Authority on an ongoing basis.

Any data, equipment or materials furnished by City to HMS and any such data, equipment or materials that may be acquired for City by HMS specifically for use under this Agreement, shall be and remain the property of City, and when no longer needed for the performance of this Agreement, shall be delivered promptly to City by HMS.

All data developed and accumulated by HMS during the course of this Agreement in whatever form shall become and remain the property of City.

13.17 City will cooperate to the extent reasonably required to secure all licenses and permits needed for the operation and use of the Facilities. HMS agrees that it has the sole responsibility to obtain all licenses and permits needed for the operation and use of the Facilities.

13.18 HMS shall not subcontract any component or functions of its responsibility under this Agreement to another firm/entity without prior approval in writing by City, which approval may be given or withheld at City's sole discretion.

13.19 HMS shall not be charged nor shall City demand from HMS, damages resulting from failure to provide the services indicated in this Agreement due to unforeseeable causes beyond the control and without the fault or negligence of HMS. Such causes of excusable delay may include acts of public enemy, military attack, and/or other actions, fires, floods, snow storms, other severe weather, perils of the sea, earthquakes, epidemic, quarantine, restrictions, strikes, freight embargoes, public road closures, but in every case the delay is excusable only for so long as, and to the extent that, the excusable delay continues.

HMS shall be entitled to no compensation for any service, other than its Management Fee, the performance of which is excused pursuant to this Section 13.19. In the event that HMS

is unable to provide the service indicated due to any cause, it shall make reasonable attempts to so notify the public including notification to local newspapers, and if appropriate, local radio and television stations.

Whenever HMS has knowledge that any actual or potential force majeure may delay or prevent performance of this Agreement, HMS, on a timely basis, shall notify City of the facts and thereof shall report to City all relevant information when known to HMS and shall continue to report.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

HMS Ferries, Inc.

ATTEST :

HMS Ferries, Inc.

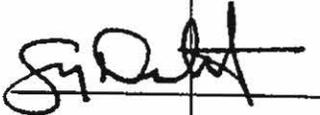
Witness:

By:

Becky L. Wright

Print Name:

Becky L. Wright



Gregory A. Dronkert
President & COO

9/30/13

9/30

ATTEST:

By Merriane G. Lahmeur
Signature

Merriane G. Lahmeur
Type/Print Name

Legal Assistant, OGC
Title

St. Johns River Ferry Commission

By [Signature]
John Crescimbeni, Chairman, for and on
the behalf of the **CITY OF JACKSONVILLE**
pursuant to Section 93.105(h), Ordinance Code.

Form Approved:

By [Signature]
Office of General Counsel

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

C. Ronald Belk
Director of Finance
City Contract Number: 9765-01

[Signature]

Exhibit A – Annual Contract Fee for FY14
Exhibit B – Expense Budget FY14
Exhibit C – Office Furniture and Equipment owned by HM

EXHIBIT A

St Johns River Ferry Service Operations Agreement

1.14 Annual Contract Fee

The annual fee was developed based on the "Approved Budget" for operation of the St John River Ferry for FY 2014 (October 1, 2013 to September 30, 2014).

HMS Ferries, Inc. estimated FY 2014 operating expenses at:	\$1,910,389
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The City of Jacksonville reduced this estimate by:	\$120,272
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The City of Jacksonville's Approved Budget is:	\$1,790,117
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This breaks down as follows:

The City provided fuel - estimated at:	\$305,062
--	-----------

Other City expenditures - estimated at:	\$50,294
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Contractual Service (HMS Ferries)	\$1,434,761
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Thus, the Annual Contract Fee is:	\$1,434,761
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The Annual Fee is payable in 12 installments of \$119,563.41 due not later than the 5th business day of the month.

Note: The annual fee does not include any Capital Expenditures.

EXHIBIT B

St Johns River Ferry Service Operations Agreement

1.13 Expense Budget FY14

5001 · Direct Costs - Labor & Benefits	
5002.68 · Salary & Wages - Captain	174,694
5003.68 · Salary & Wages - Engineer	174,694
5004.68 · Salary & Wages - Deckhand	255,517
5005.68 · Salary & Wages - Toll collector	62,733
5006.68 · Salary & Wages - Office	174,980
5007.68 · Salary & Wages - Maintenance	36,600
5020.68 · FICA	41,581
5030.68 · FUTA	1,461
5048.68 · SUI - FL	4,264
5301.68 · Health Insurance	30,979
5311.68 · Dental Insurance	5,704
5321.68 · Life Insurance	4,591
5341.68 · 401(K) Expense	6,032
Total 5001 · Direct Costs - Labor & Benefits	973,830

5505 · Direct Costs - Other	
5505.68 · Advertising & Promotion	0
5515.68 · Bad Debt Expense	0
5520.68 · Business - Licenses & Permits	0
5530.68 · Charges - Bank	3,300
5535.01 · Credit Card Cost	0
5565.68 · Computer - Equipment/Supplies	4,000
5590.68 · Employee - Continuing Education / Training	5,000
5600.68 · Employee - Incentives	0
5610.68 · Employee - Recruitment	2,500
5605.68 · Employee - Medical Claims	0
5620.68 · Employee - Uniforms & Apparel	4,500
5627.68 · Employee - Random Drug Screens	1,500
5 xxxx Employee - Medical Exams	2,250
5 xxxx Vessel Management Software	3,696
5630.68 · Insurance - Bumbershoot	6,926
5635.68 · Insurance - Business Auto	3,679
5640.68 · Insurance - Comp Marine Liab	4,718
5645.68 · Insurance - Executive Risk	1,090
5650.68 · Insurance - Hull & Machinery	39,693

5660.68 · Insurance - Other	1,890	
5665.68 · Insurance - Professional Liab	3,300	
5675.68 · Insurance - P&I	20,475	
5680.68 · Insurance - Vessel Pollution	2,862	
5685.68 · Insurance - War Risks	1,260	
5690.68 · Insurance - Worker's Comp	2,507	
5700.68 · Office - Dues & Subscriptions	0	
5710.68 · Office - Miscellaneous	0	
5715.68 · Office - Postage & Delivery	900	
5 xxxx Office - Professional Services / Legal	1,000	
5 xxxx Office - Equipment	1,918	
5726.68 · General - Grounds Maintenance	6,000	
5727.68 · General - Slip Maintenance	5,000	
5728.68 · General - Armored Car	1,200	
5 xxxx · General - Auto M&R and fuel	4,200	
5735.68 · Office - Supplies	2,500	
5736.01 · Ticket Books (NIOB)	0	
5785.68 · ADP fees	4,800	
5825.68 · Travel - Other	2,500	
5840.68 · Utilities - Electric	14,000	
5855.01 · Septic Services (NIOB)	3,000	
5 xxxx Tank M&R	0	
5 xxxx Waste Disposal	0	
5860.68 · Utilities - Telephone/IT	9,817	
5865.68 · Utilities - Water	0	
5890.68 · Vessel - Fuel & Lube Oil		paid by City
5896.01 · Vessel Inspections (NIOB)	21,000	
5900.68 · Vessel - Repairs & Maintenance	42,000	
5905.68 · Vessel - Security	0	
5910.68 · Vessel - Supplies (deck, engineering, pax)	20,000	
5950.68 · Vessel - Moorage	0	
5 xxxx · Vessel - Safety	5,000	
5 xxxx - Vessel shipping (critical parts)	0	
5 xxxx - Terminal Supplies	2,500	
Total 5505 · Direct Costs - Other	262,481	
7001 · Management Fee Expense		
7001.68 · Management Fee Expense.	198,450	
Total 7001 · Management Fee Expense	198,450	
TOTAL REVISED ESTIMATE	1,434,761	

Note 1: These estimates cover FY14 Operating Expenses.

Note 2: Capital Expenditures are not included in these Operating Expenses.

Note 3: The final Operating Expenses estimate provided by HMS Ferries, Inc. was \$1,910,389. This was reduced by the City in the amount of \$120,272.

Note 4: These estimated Operating Expenses do not include the City's expenditures for management and administration of the ferry system.

Note 5: These estimated Operating Expenses do not include additional Capital or Operating costs associated with a new ticketing and toll collection system.

Note 6: The insurance requirements stated by the City in the Operations Agreement exceed the cost estimates contained in above estimate.

EXHIBIT C

St Johns River Ferry Service Operations Agreement

Office Equipment, Furniture and Other Items Owned by HMS-Florida, Inc.

1. Toshiba Satellite Laptop – L655