

WATER TAXI OPERATING LICENSE
AGREEMENT

THIS LICENSE AGREEMENT, entered into this _____ day of _____, 2017, by and between the **CITY OF POMPANO BEACH**, a municipal corporation existing under the laws of the State of Florida, of 100 West Atlantic Blvd., Pompano Beach, Florida 33060, hereinafter referred to as "City," and **POMPANO BEACH WATER TAXI INC.**, a Florida corporation, of 125 N. Riverside Drive, Pompano Beach, Florida 33062, hereinafter referred to as "Licensee."

WHEREAS, the City desires to provide water taxi services connecting various areas that are exclusively within Pompano Beach, along the Intracoastal Waterway from Atlantic Boulevard to the Hillsboro Inlet, and potentially connecting the service to neighboring cities south and north of the City, hereinafter referred to as "Areas"; and

WHEREAS, the City issued Request for Proposals (RFP) No. L-17-17 seeking an experienced, appropriately equipped, staffed, licensed and insured water taxi service provider; RFP No. L-17-17 is incorporated by reference hereto; and

WHEREAS, the Licensee's proposal was deemed by city staff to be responsive and responsible to the RFP to provide exclusive water taxi service to the aforementioned areas as more particularly described in the RFP and the Licensee's proposal which shall also be incorporated into this Agreement by reference hereto; and

WHEREAS, this proposed exclusive water taxi service is in the best interest of Pompano Beach as it will help alleviate traffic to and from the aforementioned Areas; and

WHEREAS, this Agreement details the operation of such water taxi service within the City and how the City intends to subsidize a portion of this alternative public transportation system during the initial phase of this pilot program.

NOW THEREFORE, in consideration of the promises stated herein, the City and the Licensee mutually agree as follows:

1. **RECITALS.** The recitals above are incorporated herein by reference.

2. **PROVISION OF WATER TAXI SERVICE.**

The Licensee agrees to provide scheduled Water Taxi services connecting the Areas as detailed in Exhibit "A," License Area, charging the public fees for this service as specifically set forth in Exhibit "B," Schedule of Fees, approved by City, and as initially agreed to by City and Licensee. In the event of ambiguity between this Agreement and the Exhibits, the RFP and Proposal, this Agreement shall prevail.

The Licensee will have two vessels dedicated to providing Water Taxi Service exclusively within the City of Pompano Beach. The vessels are identified as a 1990 Aluminum and a 1985 Fiberglass Hull Passenger Inspected Vessel. The Licensee contemplates utilizing the City's subsidy to help cover the initial start-up costs associated with providing this alternative public transportation system during the initial phase of this Pilot Program. A detailed breakdown of such costs and allocation over the term of the Agreement is provided for in Exhibit "C," Subsidy Breakdown.

If the Licensee fails to provide, ceases to provide Water Taxi Service after commencement, and/or fails to cure any defaults, pursuant to the terms and conditions of this Agreement, then the City may terminate this Agreement. In the event of a material breach termination initiated by the City, the Licensee shall refund all money provided by the City.

The CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to LICENSEE in accordance with Section 17 herein. LICENSEE may terminate this Agreement, in whole or in

part, for cause, default or negligence upon forty-five (45) day advance written notice to CITY in accordance with Section 17 herein.

3. TIME OF PERFORMANCE

The initial Contract Term shall be for five (5) years from approval of this Agreement by the City Commission or execution by both parties, whichever occurs later. At the end of the initial term, the City and Licensee may initiate one five (5) year renewal, subject to a mutual agreement of terms. The City and/or the Licensee must give written notice of their intention to renew this Agreement no later than ninety (90) days prior to its expiration.

4. COMPENSATION

The City will pay the Licensee a sum not to exceed \$422,635.00 in the manner described in attached Exhibit "C," Subsidy Breakdown. The City may, from time to time, require changes in the Scope of Work performed by the Licensee hereunder. Such changes may include any increase or decrease in the amount of the Licensee's compensation and changes to the Scope of Work included in the RFP, this Agreement and the Licensee's Proposal, which are mutually agreed upon by and between City and the Licensee and shall be effective when such changes are incorporated via written amendment to this Contract. At the conclusion of this Agreement, the Licensee may retain the cumulative monthly subsidies provided during the term of this Agreement, presuming the Licensee complied with all terms and conditions.

5. METHOD OF PAYMENT

The Licensee's invoices for the monthly subsidy, as detailed in Exhibit "C," shall be submitted to the City for approval for payment on a Net 30 basis. The City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation of the City's budget and the Licensee complying with the terms of this Agreement and Section 91.14, Water Taxes, of the City's Code of Ordinances.

6. NOTICES AND CHANGES OF ADDRESS

Any notice required or permitted to be given by the provisions of this Agreement shall be conclusively deemed to have been received by a party hereto on the date it is hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid) on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

AS TO LICENSEE:

Pompano Beach Water Taxi Inc.
Milton Smith, President
125 N. Riverside Drive
Pompano Beach, FL 33062
954-901-1833
mgsiiimaritime@gmail.com

AS TO CITY:

City of Pompano Beach
Gregory P. Harrison, City Manager
100 W. Atlantic Blvd.
Pompano Beach, FL 33061
954-786-4601
greg.harrison@copbfl.com

7. LICENSE TO USE CITY DOCKAGE AND UPLAND AREA

The City grants the Licensee a revocable exclusive license to occupy and use the City's dockage and adjacent City upland area land reasonably related to the Licensee's provision of Water Taxi Service, including all ingress, egress and approaches to and from such dockage and upland area. The dockage and upland areas are those illustrated in Exhibit "A."

8. LICENSEE'S DUTIES RELATED TO CITY DOCKAGE AND UPLAND AREA

The Licensee shall control and assume responsibility for the use, operation and security of the upland area, as defined in Exhibit "A," during Water Taxi Operating Hours,

such responsibility includes controlling access to the upland area and associated dockage, ticketing, guest service functions, security, cleaning and general operational organization. The Licensee shall continually evaluate the condition and suitability of the City dockage and upland area for water taxi activities. The Licensee shall properly secure the city dockage and upland area at the conclusion of daily water taxi service. The Licensee shall notify the City of any potential or actual hazardous conditions immediately upon notice by any of its pilots or employees.

9. THE CITY'S DUTIES RELATED TO CITY DOCKAGE AND UPLAND AREA

At times other than Water Taxi Operating Hours, the City shall maintain the city dockage and upland area in a clean and orderly condition. The City shall be responsible for all maintenance and repairs to the city dockage and upland areas, but the Licensee understands that the City is under no obligation to repair city dockage or the upland areas in the event that the City Commission, in its sole discretion, determines that it is not in the City's best economic interest to repair such impacted areas due to substantial damage. The City will, however, make a good faith effort to avoid or mitigate substantial damage to City dockage and upland areas.

10. PROHIBITED USE

The City dockage and associated upland area shall not be used by the Licensee for any use other than the use necessary to provide Water Taxi services. No occupation or alternative use shall be available to the Licensee, which, at the sole discretion of the City, is deemed hazardous, inconsistent with this Agreement, or increases the City's liability.

11. PUBLIC RECORDS

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Licensee shall comply with Florida's Public Records Law, as amended. Specifically, the Licensee shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Licensee does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Licensee, or keep and maintain public records required by the City to perform the service. If the Licensee transfers all public records to the City upon completion of the contract, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensee keeps and maintains public records upon completion of the contract, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Licensee to provide the above-described public records to the City within a reasonable time may subject Licensee to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

12. RIGHT TO AUDIT AND PROVISION OF MONTHLY OPERATIONS REPORTS

The Licensee shall prepare, in accordance with generally accepted accounting practice, accurate books of account, along with other records as required by law. All records including, but not limited to tax returns, with respect to the Licensee's business conducted pursuant to this Agreement shall be kept by the Licensee and shall be available to the City for examination or audit during the term of this Agreement and for a period of five (5) years following the expiration or earlier termination of this Agreement.

In conjunction with providing the City an invoice for payment on a Net 30 basis, as detailed section 5 above, the Licensee shall also provide monthly operations reports, and such reports shall include, but not be limited to, Water Taxi ridership numbers, revenues

generated, and copies of the Licensee's submitted Florida Department of Revenue Form DR-15.

13. INDEMNIFICATION AND INSURANCE

The Licensee agrees to comply with all terms, provisions, and requirements contained in Request for Proposal (RFP) No. L-17-17, Water Taxi Services, and the Licensee agrees to designate the City as an additional insured under its own insurance policy.

The Licensee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract.

14. TAXES, FEES, AND COSTS

The City shall not charge the Licensee fees for usage of the city dockage and associated upland areas identified in Exhibit "A." The Licensee will be solely responsible for payment of its own income and sales taxes. The Licensee's storage and fuel costs remain the Licensee's responsibility.

15. CONSTRUCTION AND ALTERATION OF CITY DOCKAGE AND UPLAND AREAS

The Licensee shall not make or permit to be made any alterations, additions, improvement or changes to the city dockage or associated upland area nor permit the painting or placing of any signage, placards or other related advertising media without obtaining prior written consent of the City, which shall be at the City's sole discretion.

16. ASSIGNMENT

The Licensee shall not have the right to assign, transfer, convey, sublet or otherwise dispose of its license to utilize city dockage and associated upland areas or its rights or obligations under this Agreement.

17. DEFAULT AND TERMINATION

Subject to the Licensee's right to notice and an opportunity to cure, as specified herein, the Licensee shall be deemed in default of its obligations under this Agreement upon the occurrence of any of the following:

- A. The Licensee's failure to perform any covenant, promise, or obligation contained in this Agreement or comply with the terms and conditions of this Agreement;
- B. The appointment of a receiver or trustee for all or substantially all the Licensee's assets;
- C. The Licensee's voluntary petition for relief under any bankruptcy or insolvency law, or the filing of an involuntary bankruptcy petition, which is not dismissed within sixty (60) days;
- D. The sale of the Licensee's interest under this Agreement by execution or other legal process;
- E. The seizure, sequestration, or impounding by virtue of or under authority of any legal proceeding of all or substantially all of the personal property or fixtures of the Licensee used in or incident to its operations in providing the Water Taxi Service.
- F. The Licensee making an assignment of its assets for the benefit of creditors;
- G. Any sale, transfer, assignment, subleasing, concession, license, or other disposition of this Agreement that is not authorized by this agreement;

H. The Licensee doing or permitting anything that creates a lien upon the City's dockage or associated upland areas or any Vessels Purchased; or

I. Utilizing Purchased Vessel(s) to provide Water Taxi Service in a manner not contemplated in this Agreement or related Exhibits.

The City may immediately terminate this Agreement if a default pursuant to this Agreement is not cured within thirty (30) days after receipt of notice from the City. In the event of early termination of this Agreement due to the Licensee's default, the Licensee shall refund all money provided by the City.

18. DAMAGE TO CITY DOCKAGE, ASSOCIATED UPLAND AREAS, AND VESSELS

If any portions of the city dockage or associated upland areas are substantially damaged by fire, hurricane or other casualty, the City or the Licensee may elect to repair or replace the affected facilities within thirty (30) days of the casualty or occurrence. In the event the affected facilities are not repaired or replaced within thirty days of the casualty or occurrence or if neither the City or the Licensee elects to repair or replace the affected facilities, either party may immediately terminate this Agreement. In the event of termination pursuant to this section, the Licensee may keep the monthly subsidies that it had earned up to the casualty or occurrence.

If any portion of the Purchased Vessel(s) is substantially damaged by fire, hurricane, or other casualty or occurrence, the Licensee may elect to repair or replace the affected Purchased Vessel within thirty (30) days of the casualty or occurrence that caused the vessel damage. In the event that the Licensee fails to repair or replace within thirty (30) days of the vessel damage or the Licensee elects not to repair or replace the affected vessel(s), then the City may immediately terminate this Agreement. Nothing contained herein shall limit the

City's rights and remedies against the Licensee for any such damage caused by the Licensee, its employees, agents or contractors. Licensee shall be responsible for any damages to City dockage facilities or associated upland facilities as a direct or indirect result of its provision of Water Taxi Services.

19. RELATIONSHIP OF PARTIES

The relationship between the Parties is that of Licensor and Licensee. In conducting the Water Taxi Service hereunder, the Licensee shall act as an independent contractor and not an agent of the City. The selection, retention, assignment and direction of the Licensee's employees shall be the sole responsibility of the Licensee, and the City shall not attempt to exercise any control over the daily performance of the duties of the Licensee's employees.

20. NO EXCLUSIVE RIGHTS

Nothing contained in this Agreement shall be construed to grant or authorize the granting of exclusive right other than right of use of the city dockage and related upland properties pursuant to the terms of this Agreement.

21. NO LIENS

The Licensee shall not cause any liens to be filed against the Purchased Vessels, the city dockage, and/or the associated upland properties by any reason of work, labor, services, or materials performed at or furnished to the Licensee related to this Agreement. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the Purchased Vessels, the city dockage, and/or associated upland properties to any lien or liability under the lien laws of the State of Florida.

22. CONFORMANCE WITH LAWS

The Licensee agrees to comply with all applicable federal, state and local laws during the life of this Contract.

23. ATTORNEY FEES.

In the event that either party seeks to enforce this Agreement via legal action, then the parties agree that each party shall bear its own attorney fees and costs.

24. GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Broward County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

"CITY"

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of

Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Stamped)

(Name of Acknowledger Typed, Printed or

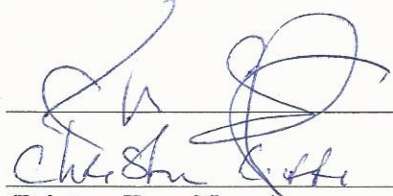
Commission Number

"LICENSEE"

POMPANO BEACH WATER TAXI INC.

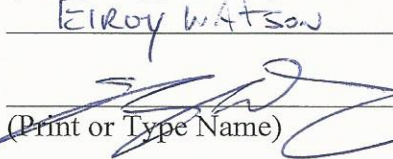
a Florida corporation

Witnesses:



Elroy Watson

(Print or Type Name)



Elroy Watson

(Print or Type Name)

By: _____

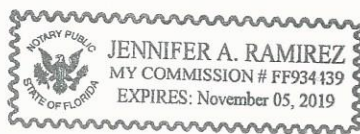
MILTON SMITH, President

STATE OF FLORIDA

COUNTY OF BROWARD


The foregoing instrument was acknowledged before me this 18 day of July, 2017, by **MILTON SMITH**, as President of **POMPANO BEACH WATER TAXI INC.**, a Florida corporation on behalf of the corporation. He is personally known to me or who has produced DL#5530547781710 (type FL of identification) as identification.

NOTARY'S SEAL:



Stamped)

NOTARY PUBLIC, STATE OF FLORIDA



(Name of Acknowledger Typed, Printed or

FF934439

Commission Number

CLS:jrm

7/17/17

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