

Stipulation Agreement
For Ferryboat Operator Subsidy Funding
U.S. Virgin Islands

This agreement entered into on this 7th day of OCTOBER, 2014 by and between the Government of the United States Virgin Islands through the Department of Public Works, Division of Transportation, Charlotte Amalie, St. Thomas, Virgin Islands, (hereinafter referred to collectively as the Government) and Varlack Ventures, Inc. d/b/a M/V Venture Pride, M/V Capitol Venture, M/V Lady Venture, M/V Red Hook I, (hereinafter referred to as "Varlack Ventures" or "Ferryboat Operator").

WHEREAS, the Government recognizes the need for ferryboat Varlack Ventures between the islands of St. Thomas and St. John;

WHEREAS, Varlack Ventures provides ferryboat transportation to residents and visitors of the Virgin Islands;

WHEREAS, the Government desires to assist ferryboat operators in the operation of the ferryboat service through certain appropriations when available;

WHEREAS, the Government considers these appropriations to be a "subsidy" upon the receipt of which the Ferryboat Operator assumes certain rights from and obligations to the Government;

WHEREAS, Varlack Ventures is presently on of the passenger ferryboat operators that operates service between the islands of St. Thomas and St. John from Red Hook, St. Thomas to Cruz Bay, St. John;

WHEREAS, the Ferryboat Operator acknowledges that as part of its obligations in accepting the subsidy, it will abide by any rules and regulations promulgated by the Virgin Islands Public Service Commission ("PSC");

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the parties agree as follows:

1. Subject to appropriations and availability of funds, Varlack Ventures will receive a proportional share of subsidy funding pursuant to Act No.7535, Bill No. 30-209 from the Government of the Virgin Islands through the Department of Public Works in an amount not to exceed \$191,250.00. The purpose of this subsidy is to subsidize operations between the St. Thomas Red Hook and St. John Cruz Bay route only. *No portion of the subsidy funds shall be use for any capital acquisitions.* With the acceptance of this subsidy, the ferryboat operator is responsible for the reporting requirements as stipulated in this document. The ferryboat operator also shall open a separate bank account entitled "Subsidy Account" to deposit any and all proceeds received from the Government pursuant to this Agreement.

GC002DPW15

2. The term of this agreement is one year from the execution of this document by the Governor. This Agreement may be extended for an additional year by executing an Exercise of Option To Renew.
3. Varlack Ventures agrees to comply with any and all requirements of the PSC, which include, but is not limited to remaining in good standing with the PSC and submitting any regulatory reports in a timely manner. In addition to the termination provisions set forth in paragraph 15, failure to adhere to all PSC requirements shall be cause to terminate this Agreement, if after notice and an opportunity to cure any such failure, Varlack Ventures fails to do so.
4. Varlack Ventures shall maintain at all times during the term of this Agreement, insurance coverage acceptable to the Government. A copy of an insurance binder, contingent upon payment of the premium shall be provided to the Commissioner of Public Works prior to the receipt of any of the subsidy funds.
5. Any and all disputes between the parties first shall be addressed through mediation. Each party shall contribute one-half the costs of any mediation, if necessary. If the parties cannot resolve the dispute with mediation, then the parties may pursue the appropriate legal action in a court of law in the U.S. Virgin Islands.
6. Varlack Ventures is responsible for preparing a Subsidy Disbursement Report which includes the following information:
 - a. Narrative of Subsidy Report
 - b. Expenditure Summary
 - c. Actual Cash Flow Statement
 - d. Outstanding Debts Report
 - e. Confirmation of Debt Service Payments

The Subsidy Disbursement Report shall be submitted ninety (90) days following receipt of any subsidy disbursement.

Upon 48 hours notice to the ferryboat operator, the Government may inspect the books and records between the hours of 8 am and 5 pm, Monday through Friday or upon the agreement of the parties.

7. In addition to the Subsidy Disbursement Report set forth in paragraph 6, the ferryboat operator is required to submit an Annual Report which must contain the following information:
 - a. Audited Financial Statements prepared by a CPA for the past year Revenue Report; such expenses shall be borne by the ferryboat operator;
 - b. Operating Expenses;
 - c. Fuel consumption for each vessel used on the franchise route;

6002DPW15

- d. Ridership which shall include fee structure and number of passengers traveled at each fee;
- e. Schedules with Operating Hours; and
- f. Missed Trips (Including those trips missed as a result of unforeseen events).

The Annual Report should be submitted 180 days after January 1, 2015 or within sixty (60) days of the execution of this Agreement. In the event that an audited financial statement is not available at the Annual Report is submitted, a financial statement certified to be accurate by Varlack Ventures shall be submitted until the audited financial statement is delivered by the company's CPA.

- 8. Nothing in this subsidy agreement shall be construed to impose any liability upon the Government to persons, firms, associations, or corporation engaged by the ferryboat operator its servants, agents or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such person, firms, associations, or corporations for the acts, omissions, liabilities, obligations, and taxes of the ferryboat operator of whatsoever nature, including by not limited to unemployment insurance and social security taxes for the ferryboat operator, its servants, agents or independent contractors.
- 9. This subsidy agreement shall not be subcontracted or assigned to any other party.
- 10. Varlack Ventures agrees to investigate, defend, indemnify and hold harmless the Government from and against all loss, damage, liability, claims, suits, actions, judgments, demands, detriments, cost, charges and expenses (including attorney fees) or which the Government may incur, sustain or be subjected to, to the extent caused by or arising out of the services to be performed by the ferryboat operator under this subsidy agreement and arisen from any cause, except the sole negligence of the Government.
- 11. This subsidy shall be governed by the laws of the U.S. Virgin Islands without regard of conflict of laws principles. Any and all suits for the enforcement of this subsidy agreement shall be filed and maintained in a court of competent jurisdiction in the U.S. Virgin Islands.
- 12. No waiver, modification or amendment of any tem, condition or condition of this subsidy agreement shall not be valid or of any force of effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions or provisions of this subsidy agreement, the same shall be strictly limited and restricted to the extent and occasion specified in such a signed writing or writings.

GC002DPW15

13. If any term or condition is not performed under this subsidy agreement, the Government will have the right to withhold any payment or appropriation due to the ferryboat operator. The Government will notify the ferryboat operator in writing in the event that it elects to exercise its right to withhold under this paragraph.
14. This subsidy agreement is expressly conditioned and subject to the availability and appropriation of funds and to the approval of the Governor.
15. The Government shall have the right to terminate this subsidy agreement with or without cause upon thirty (30) days written notice to the ferryboat operator specifying the date of termination. In the event of such a termination, future distribution of subsidies shall be suspended but any subsidy previously distributed shall be unaffected.
16. No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of the subsidy agreement on account of race, creed, color, sex, religion, disability or national origin.
17. Varlack Ventures covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this subsidy agreement. Varlack Ventures further covenants that it is not a territorial officer or employee and none of its officers or employees and that the ferryboat operator has read and familiarized itself with V.I. Code Ann. Tit., 3, chapter 37, section 1108, and has not influenced this agreement in any manner.
18. The effective date of this subsidy agreement shall be the day of execution by the Governor.
19. All official documents must be addressed to or delivered to the following parties:

Department of Public Works

Darryl A. Smalls
Commissioner
8244 Subbase
St. Thomas, VI 00802-5805

Franchise Ferryboat Operator

Delrise Varlack
Vice President
Varlack Ventures, Inc.
5G Cruz Bay
Cruz Bay
St. John, VI 00831-0028

60020PW15


20. The ferryboat operator covenants that it has obtained all applicable licenses or permits, permanent, temporary or otherwise as required by V.I. Code Ann. tit. 27 pertaining to profession and occupations. The ferryboat operator further covenants that it has obtained all federal and territorial operating licenses or permits required for a business in the maritime transportation operations.

In witness whereof, the parties have hereto set their signatures on the day written above.

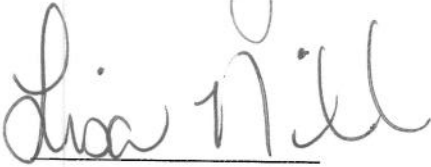
Witnesses:

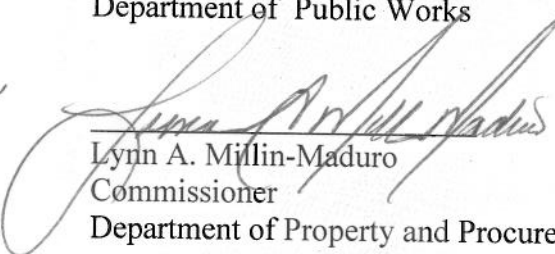
Government of the Virgin Islands




Darryl A. Smalls
Commissioner
Department of Public Works

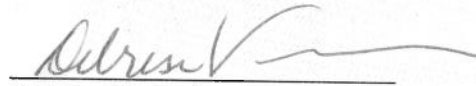
Date: 9/23/14




Lynn A. Millin-Maduro
Commissioner
Department of Property and Procurement

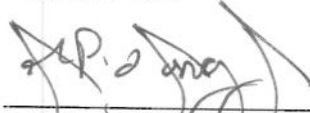
Date: 10/7/14




Delrise Varlack
Vice President
Varlack Ventures, Inc.

Date: 9/19/14

APPROVED:



John P. de Jongh, Jr.
Governor of the Virgin Islands

Date: 10/11/2014

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: 

Date: 10-6-14

MED. NO. _____

ACCOUNT CODE NO. _____

GC002DPW15