

**HARBOR TRANSPORTATION OPERATION AGREEMENT**

This Harbor Transportation Operation Agreement (the "Agreement") is made this 20<sup>th</sup> day of June, 2019, by and between the **Government of the Virgin Islands, by the Virgin Islands Department of Property and Procurement, on behalf of the Department of Public Works** (the "Government") and **Cruise Ship Excursions Inc.**, a Virgin Islands Corporation, whose address is Building III, Upper Havensite, West Indian Company Dock, St. Thomas, Virgin Islands, 00802 (the "Operator").

WITNESSETH:

WHEREAS, the Operator, by and through its officers, employees, agents, representatives and affiliates, has expertise in the areas of maritime transportation services since 1997, in the United States Virgin Islands particularly, on the Islands of St. Thomas and St. John; and

WHEREAS, the Government recognizes the necessity for Harbor Transportation service within the Charlotte Amalie Harbor on the Island of St. Thomas, specifically between the Austin "Babe" Monsanto Marine Terminal, with stops at Water Front East and Havensite and future stops at Water Island and Waterfront West, as referenced in Scope of Service in Addendum 1; and

WHEREAS, the Operator has assured the Government of its ability to operate and maintain said service in a safe, seaworthy condition, and abide by the laws and rules and regulations of the Virgin Islands, to include those of the United States Coast Guard, and the laws of the United States as may apply, as well as applicable international maritime laws, rules, regulations and customs that are relevant to the marine operations of the ferryboats on the sea, and

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and conditions herein set forth, the parties hereto agree as follows:

**1. Term**

This Agreement shall be effective upon the execution of this Agreement by the Governor of the U.S. Virgin Islands (the "Effective Date") and shall terminate five (5) years thereafter ("Initial Term"). This Agreement may be renewed on the same terms and conditions for one (1) additional five (5) year term (the "Extension Term"), in the sole discretion of the Government.

Any such renewal or extension shall be contingent upon the satisfactory performance of the services by the Operator. The Government shall give written notice to the Operator of such extension and or renewal not less than sixty (60) days prior to the expiration of this Agreement.

RFP No. 015-2017(P)

Operator's Initials: AK

6004DPWT19

## 2. Scope of Services

Operator shall provide and maintain vessels to operate a Charlotte Amalie Harbor transportation services in compliance with the terms and conditions as described in this Agreement. Operator shall operate a safe and reliable service with the capacity to effectively service the proposed routes as described herein, in ADDENDUM I, attached hereto and made a part hereof.

## 3. Accounting and Compensation

a. The Operator shall be responsible for collecting all passenger fees and fares and shall maintain a detailed accounting record of such collections. The Operator shall pay all costs of operation and maintenance plus insurance and all other costs associated with the operation of the vessel(s).

b. Pricing of passenger fees and fares shall be based on the prices as established in the schedule shown in Addendum I, attached hereto and made a part hereof. Passenger fees and fares may be amended by the Operator with thirty (30) days prior written consent of the Government, which consent shall not be unreasonably withheld. In the event that the Government fails to provide written consent within thirty (30) days after notice, the passenger fare increase shall be deemed consented to by the Government. Under no circumstances, shall the passenger fees and fares be reduced below the rates established in Addendum I, as of the Effective Date.

c. All passenger fees and fares shall be the sole property of the Operator.

## 4. Government Fees & Obligations

a. The Government will secure an exemption for the Operator for all docking fees charged by the West Indian Company and the Virgin Islands Port Authority during the first year of the term of this Agreement, as shown in the schedule below. Thereafter, for the remaining term of this Agreement, and any and all Extension Terms, the Operator shall be responsible for docking fees, also shown in the schedule below. The Operator shall pay all applicable docking fees to the West Indian Company and the Virgin Islands Port Authority when due. Reference Addendums 1A and 1B from the West Indian Company and the Virgin Islands Port Authority, respectively, for details on the exemption, attached hereto and made a part of this Agreement.

- **Year 1:** 100% exemption from all docking fees;
- **Year 2:** 75% exemption from all docking fees;
- **Year 3:** 50% exemption from all docking fees;
- **Year 4:** 25% exemption from all docking fees;
- **Year 5:** No exemption from docking fees.

Notwithstanding the foregoing schedule, the Operator may, at its sole option, procure a third-party auditor of its choosing to review the docking fee exemption schedule as applied to the financial well-being of the Operator, and request an increase in the exemption applied during any year of the initial term based on the third-party auditor's findings. The Government agrees to make all reasonable accommodations based on the third-party auditor's report to adjust the docking fee exemption in any given year.

b. The Government hereby agrees that it shall be solely responsible for constructing and maintaining all passenger loading and unloading areas to legal, safe, and commercially reasonable standards, including but not limited to, ensuring that passenger waiting areas are covered and that loading areas are fully compliant with the Americans with Disabilities Act ("ADA") standards, that all walkways leading to and exiting from docking areas are clean, safe, and meet ADA standards.

c. The Operator hereby agrees that it shall be solely responsible for all embarkment ramps attached to the vessels for embarkment and disembarkment of the passengers and that these ramps are fully compliant with ADA standards. The Government hereby agrees that it shall be solely responsible for providing and maintaining the landing docks at the Government-owned and maintained drop off and pick up locations.

**5. Maintenance and Repairs.** The Operator is responsible for all maintenance, including preventative maintenance, repair maintenance, emergency repairs, emergency recovery, spare parts supply, cleanliness, appearance and general upkeep of their vessels.

**6. Maintenance Records.** The Operator will provide for and accomplish all maintenance which in its judgment is necessary to permit operation of harbor transportation services in compliance with U.S. Coast Guard safety standards, laws, regulations, policies and guidance. The Operator shall maintain records of its maintenance at its offices and shall permit the Department of Public Works ("DPW") to view the maintenance records during office hours, upon reasonable notice.

**7. Operation Schedule.**

a. The Operator shall be required to operate at least two (2) vessels at any time during the entire Initial Term of this Agreement. The Operator and the Government agree to the harbor transportation operation and fare schedule attached hereto, and made a part hereof, as **Addendum I**. This schedule may be amended or changed in its entirety from time to time by mutual signed agreement between the Operator and the Government. The Operator and the Government agree to meet within thirty (30) days of each anniversary of the Effective Date to

adjust **Addendum I** to commercially reasonable schedules that match the current demand for harbor transportation.

b. The Operator shall have the ability, in its sole and absolute discretion, to add destinations to its operating schedule, with the approval of the Department of Public Works at times and rates of its choosing.

c. In the event that the normal operation of the designated boat has been suspended or must be interrupted for a period in excess of one (1) day due to operational issues, maintenance, blockages, weather, or uncontrollable events, the Government must be notified in writing within one (1) hour of the suspension and the cause or reason thereof and within twenty-four (24) hours of the resumption of service, at the address stated herein below.

**8. Cleanliness and appearance.** The Operator shall, at the Operator's expense, maintain the vessel in a clean, sanitary, and aesthetically good condition, with no hazards or debris.

**9. Indemnification.** The Operator agrees to indemnify, defend and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by the Operator under this Agreement and arising from any cause, except the sole negligence of the Government.

**10. Liability of Others.** Nothing in this Agreement shall be construed to impose any liability upon the Government to persons, firms, associations, corporations, autonomous or semi-autonomous government agencies, boards or commissions engaged by the Operator, its agents, servants, or independent contractors or to whom the Operator is responsible in accordance with law. Nor shall the Government be liable, in law or equity, to any person, firm, association, corporation, autonomous or semi-autonomous agency, board or commission for the acts, omissions, liabilities, obligations, taxes, or fees of the Operator, of whatever nature, including but not limited to unemployment insurance or social security taxes for the Operator, its servants, agents, or independent contractors.

**11. Insurance.** The Operator shall be fully insured for commercial marine insurance, hull and machinery coverage, pollution insurance, and comprehensive liability insurance as reasonably required, with hull and machinery coverage in an amount equal to the value of the vessel used in the Harbor Transportation operation and with liability insurance in an amount no less than \$2,000,000.00 aggregate and such other coverage as the Government may reasonably require, naming the Government as an additional insured via endorsement on all liability insurance and

naming the Government as an additional insured via endorsement on all liability insurance and other coverage required to reasonably protect the Government and the Operator. The Operator shall maintain the required insurance during the term of this Agreement.

Evidence of insurance documenting the required coverage under this Contract shall be provided to the Government upon the execution of this Agreement.

The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until thirty (30) days after the insurer or Contractor gives written notice to the Government. If, during the performance period of this Contract, Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in this Section, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

Operator shall supply current coverage of worker's compensation under the Government Insurance Fund.

This Agreement may be terminated for failure of the Operator to maintain current insurance as stated herein.

The Parties understand and agree that Operator's liability insurance coverage will only be covering incidents that may occur on the vessels, or as a direct result of Operator's crew or equipment. Operator shall not be liable for, nor be required to get insurance coverage for incidents that may occur after passengers disembark the vessel and the ramp attached to the vessel.

### **12. Independent Contractor.**

The Operator, its agents, servants, officers, consultants and employees shall perform the services contemplated by this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with such status or relationship.

### **13. Taxes.**

The Operator covenants that it shall be liable for all United States Virgin Islands and federal taxes applicable to the Operator and shall timely pay all such taxes, including, but not limited to, gross receipts taxes under 33 V.I.C. § 43, unless otherwise exempt therefrom under any valid provision of law or regulatory action.

**14. Assignment.**

The Operator shall not subcontract or assign any part of the services under this Agreement without the prior written consent and approval of the Government, which consent shall not be unreasonably withheld.

**15. Records and Record Keeping.**

The Operator shall maintain and keep precise records of the Harbor Transportation services named herein for the duration of the Agreement, such records to include, but not be limited to, schedules of operation, passenger receipts, payments from charter operations (if any), financial records, audits, dates of trips, costs for maintenance and repairs, number of passengers, cargo, fuel consumption, and accidents. Said records shall be in writing, digitalized and made available within a reasonable timeframe to the Government upon demand. The records for the operation shall be separate from the Operator's other records of its other existing or future boat operations.

The Operator shall maintain a reliable financial management system that meets generally accepted accounting principles for the purpose of audit and examination of records in connection to this Agreement.

The Operator shall maintain and make available at its office at all reasonable times the records, materials, and other evidence described in this paragraph, for examination, audit, or reproduction, for a period of not less than two (2) years after final Agreement or for any longer period required by statute. If this Agreement is completely or partially terminated, the Operator shall make available the records relating to the work terminated for a period of not less than seven (7) years following such termination.

**16. False Claims.**

The Operator warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

**17. Non-Discrimination.**

No person wishing to lawfully make use of the Operator's harbor transportation services shall be denied transportation aboard the vessels on account of race, creed, color, sex, sexual orientation, age, religion, disability or national origin. The Operator shall comply with all

requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the U.S. Department of Transportation ("DOT") issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the Operator pursuant thereto, to the end that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the DOT.

In connection with the execution of this Agreement, the Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The Operator shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, national origin, age, or disability. Such actions shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection of training, including apprenticeship. The Operator will incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this Agreement.

Further, the Operator agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating thereto, issued by the DOT, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving financial assistance covered by this Agreement and by providing access to all facilities.

## 18. Termination

- a. The Government shall have the right to terminate this Agreement with or without cause on sixty (60) days written notice to the Operator.
- b. If a party materially breaches this Agreement, the non-breaching party may provide written notice of such material breach, and may immediately terminate this Agreement if such breach is not cured within fourteen (14) days after delivery of such written notice; provided, however, that if any breach is not reasonably curable within fourteen (14) days, and if the breaching party is making bona fide efforts to cure such breach, such termination shall be delayed for a time period to be agreed by both parties in order to permit the breaching party a reasonable period of time to cure the breach. If no time period can be agreed upon, either party shall have the right to terminate the Agreement on sixty (60) days written notice to the other party.

**19. Force Majeure.**

The Operator shall be excused from performance under this Agreement for any period that the Operator is prevented from performing any services in whole or in part as a result of acts of God, actions or inactions of the Government which actually interrupt boat transportation, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or any weather that causes the U.S. Coast Guard or the Virgin Islands Port Authority to direct that the ferryboats not operate. Such non-performance (collectively, a Force Majeure Event) shall not be deemed breach of the Agreement. This Section shall not relieve the Operator of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties.

The Operator shall immediately notify the Government by telephone (to be confirmed in writing, via hand delivery return receipt, email or telefax, within forty-eight (48) hours of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform. It is understood, however, that should a Force Majeure Event occur which makes delivery of such notice impossible or impractical; the time for doing so shall be appropriately extended until notice can reasonably be given.

**20. Incidents/Accidents.**

The Operator must immediately report any major incident or accident to the Department of Public Works, Division of Transportation or its representatives by telephone (to be confirmed in writing, via hand delivery return receipt, email or telefax, within twenty-four (24) hours of the occurrence).

**21. Dispute Resolution.**

If a dispute arises between the parties in relation to this Agreement, or out of this Agreement, the parties agree that the following dispute resolution process must be used:

A meeting must be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. During the attempt to resolve the dispute, the Operator shall continue to perform the services described herein.



If, within thirty (30) days after such meeting, or such further period agreed to by the parties in writing, the parties have not succeeded in negotiating a resolution of the dispute, the parties agree to submit the dispute to mediation. Mediation shall take place on St. Thomas as the parties may agree before a certified mediator chosen in accordance with procedures followed in the Superior Court of the Virgin Islands. Each party shall bear one-half the cost of the mediator and their own attorney fees and costs.

If any dispute cannot be resolved by the foregoing means, the parties shall be entitled to pursue their customary legal remedies.

## **22. Professional Standards.**

The Operator agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

## **23. Conflict of Interest.**

- a. The Operator 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 Operator's ability to perform the services required to be performed under this Agreement.
- b. The Operator further covenants that it is:
  - (1) not a territorial officer or employee (i. e., the Governor, Lieutenant Governor, member of the legislature, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or Agreement basis); or
  - (2) a territorial officer or employee and, as such, has:
    - (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
    - (ii) not made, negotiated or influenced this Agreement, in its official capacity;
    - (iii) no financial interest in the Agreement as that term is defined in section 1101 (1) of said Code chapter.

## **24. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Agreement, are merged herein.

**25. General Provisions.**

(a) No amendment or waiver of any provision of this Agreement, or consent to any departure by either party from any such provision, shall be effective unless the same shall be in writing and signed by the parties to this Agreement, and, in any case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Any and all notices hereunder shall, in the absence of receipted hand delivery, be deemed duly given when mailed, if the same shall be sent by registered or certified mail, return receipt requested, with a copy sent via email, and the mailing date shall be deemed the date from which all time periods pertaining to a date of notice shall run. Notices shall be addressed to the parties at the following addresses:

To Boat Operator:

Address:

Cruise Ship Excursions, Inc.  
Building III, Upper Havensite, Suite 315/316  
West Indian Company  
St. Thomas, VI 00802  
Tel.: 340-775-5055  
Email: [a-reeve@hotmail.com](mailto:a-reeve@hotmail.com)

To Government:

Address:

Anthony D. Thomas  
Commissioner Nominee  
Department of Property and Procurement  
8201 Subbase, Suite 4  
St. Thomas, Virgin Islands 00802  
Tel.: (340) 774-0828  
Email: [anthony.thomas@dpp.vi.gov](mailto:anthony.thomas@dpp.vi.gov)

Nelson M. Petty, Jr.  
Commissioner  
Department of Public Works  
No. 8244 Subbase  
St. Thomas, Virgin Islands 00802  
Tel: (340) 776-4844  
Email: [nelson.petty@vi.gov](mailto:nelson.petty@vi.gov)

(c) This Agreement shall be governed by, and enforced in accordance with, the laws of the U.S. Virgin Islands. The parties to this Agreement hereby agree to submit to the jurisdiction of the federal and territorial courts located in the Territory of the Virgin Islands in any action or proceeding arising out of or relating to this Agreement. This Agreement shall inure to the benefit of, and be binding upon, the Operator and the Government (including any present or future directors, equity owners, who are not signatories hereto), and their respective successors and assigns.

(d) This Agreement may be executed in three or more counterparts, and by different parties on separate counterparts. Each set of counterparts showing execution by all parties shall be deemed an original and shall constitute one and the same instrument.

(e) The waiver by any party of any breach of this Agreement shall not operate as or be construed to be a waiver by such party of any subsequent breach.

#### **26. Licensure.**

The Operator covenants that it has obtained all applicable licenses or permits, temporary or otherwise, as required under Virgin Islands and federal law and regulations to perform under this Agreement and that it shall timely renew and pay all fees and taxes associated with such licenses or permits.

#### **27. Debarment Certification**

By execution of this contract, the Operator certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Operator shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT". In the event the Operator or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Operator or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Operator or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

#### **28. Notice of Federal Funding**

Operator acknowledges that this Contract is funded, in whole or in part, by federal funds. Operator warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Operator acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

IN WITNESS WHEREOF, the parties have hereunto set their signatures on the day written above:

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Cande L. Davis

Magdalena A. Morandi

Kunal

St. Stapleton

Bonnie Christmas

William J. ...

Anthony D. Thomas

Date: 6.13.19

Anthony D. Thomas  
Commissioner Nominee  
Department of Property and Procurement

Nelson M. Petty, Jr.

Date: 5/29/19

Nelson M. Petty, Jr.  
Commissioner  
Department of Public Works

Adam Reeve

Date: 5/16/19

Adam Reeve, Vice President  
Cruise Ship Excursions, Inc.  
Building III, Upper Havensite  
West Indian Company  
St. Thomas, VI 00801

APPROVED:

Honorable Albert Bryan, Jr.

Honorable Albert Bryan, Jr.  
Governor of the Virgin Islands

Date: 6/20/19

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

Cecil M. ... Date: 6/19/19  
AAG

RFP No. 015-2017(P)

Operator's Initials: AM

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