

## City Clerk

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**From:** erinevashevskilaw@gmail.com  
**Sent:** Wednesday, January 24, 2024 1:38 PM  
**To:** City Clerk  
**Subject:** FW: Mackinac Island MITA Funding  
**Attachments:** MI MITA AGREEMENT REGARDING APPLICATION FOR FUNDING.docx; MI MITA Assignment of WSA.docx; MI MIFC Executed WSA 2023.pdf

Danielle,

Please see attached the proposed Agreement Regarding Application for Funding, a draft of the Assignment of the Winter Service Agreement “WSA”, and a copy of the fully executed WSA which will be an exhibit to both documents. The Agreement Regarding Application for Funding is an agreement between the City and MITA for MITA to make application for 2025 funding in anticipation of the Assignment of WSA interest. The Assignment of the WSA will not be executed until the fiscal 2025 year begins – October 1, 2024.

Below is an email that I sent to MDOT to ensure that we have written responses to any concerns regarding this application process.

Please send this to Council and put on the agenda for today’s meeting.

Sincerely,

Erin

**Erin K. Evashevski**

### **EVASHEVSKI LAW OFFICE**

838 N. State Street, PO Box 373  
St. Ignace, MI 49781  
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F: 906.643.1533

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**From:** erinevashevskilaw@gmail.com <erinevashevskilaw@gmail.com>  
**Sent:** Wednesday, January 24, 2024 11:29 AM  
**To:** MoliternoD@michigan.gov  
**Cc:** 'Mayor's Assistant' <assistant@cityofmi.org>; 'Andy McGreevy' <amcgreevy@mackinactransit.org>; 'Mike Cavanaugh' <mcavanaugh@fraserlawfirm.com>; mkoerner@fosterswift.com  
**Subject:** Mackinac Island MITA Funding

Dear Dave,

As you know, the City of Mackinac Island is looking to assign the City’s rights and obligations under the Agreement for Winter Ferry Service (“WSA”) to MITA in order to allow all funding to flow through MITA, rather than have two applicants to MDOT funding. Because the City is in control of MDOT funding through fiscal year 2024, it

needs to retain control of the WSA through September 30, 2024 and therefore cannot assign its interest to MITA until October 1, 2024.

My question is: will MITA making application for the MDOT funding for fiscal year 2025 in February 2024 (prior to said assignment) have a negative impact on MITA's ability to receive said funding? The City is planning to sign the attached Agreement Regarding Application for Funding to grant this authority to MITA in anticipation of the Assignment of the WSA (a draft of said assignment I have also attached as it will be an exhibit to the Agreement).

My other concern is: in the event that MITA's application is submitted after the February 1, 2024 deadline, will that impact the funding?

I will make myself available if you would like to discuss any of these items anytime.

Sincerely,

Erin

**Erin K. Evashevski**

**EVASHEVSKI LAW OFFICE**

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## **AGREEMENT REGARDING APPLICATION FOR FUNDING**

This Agreement Regarding Application for Funding is made this \_\_\_\_ day of January, 2024, by and between the **City of Mackinac Island (CMI)** and the **Mackinac Island Transportation Authority (MITA)**.

Whereas, the City of Mackinac Island (CMI) and Mackinac Island Ferry Company (MIFC) are parties to an Agreement for Winter Ferry Service, dated 10/18/2023 (hereafter referred to as the “Winter Service Agreement”), a copy of which is attached hereto as Exhibit A; and

Whereas, Section 9 of the Winter Service Agreement allows CMI to assign its rights and obligations to the Mackinac Island Transportation Authority (MITA) only to facilitate winter service, through the services of MIFC, under the terms of the Winter Service Agreement and subject to certain terms and conditions; and

Whereas, PA 51 of 1951 (“Act 51”) created the Michigan Transportation Fund (“MTF”) which directs MTF revenue to state transportation funds and to local units of government including the CMI and the MITA; and

Whereas, CMI and MIFC agreed to allow funding to flow through the MITA under the terms and conditions of the Winter Service Agreement; and

Whereas, CMI and MITA are in the process of negotiating an assignment of the Winter Service Agreement (Assignment), a draft of the proposed Assignment is attached hereto as Exhibit B; and

Whereas, in order for MITA to apply for MTF funding for fiscal year 2025, the application must be submitted by February 1, 2024.

WITNESSETH, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is acknowledged by both parties, the Parties agree that the MITA shall have the authority and ability to make application for the 2025 fiscal year funding under the following terms and conditions:

- A. MITA shall have the permission and authority to make application for MTF funds for the fiscal year 2025 in anticipation of CMI assigning its rights and obligations under the Winter Service Agreement to MITA beginning October 1, 2024.
- B. Until such assignment is executed, CMI shall retain all rights and obligations of the Winter Service Agreement.
- C. CMI shall retain all rights to receive and distribute MTF funds during the fiscal year 2024.
- D. MITA shall be responsible for properly and timely making application for 2025 MTF funds and ensuring that the funds are secured and dispersed according to the Winter Service Agreement.

**CITY OF MACKINAC ISLAND, By:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
MARGARET DOUD, its Mayor

**MACKINAC ISLAND TRANSPORTATION  
AUTHORITY, By:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
ANDREW McGREEVY, its Chairperson

## **ASSIGNMENT OF AGREEMENT FOR WINTER FERRY SERVICE**

Whereas, the City of Mackinac Island (CMI) and Mackinac Island Ferry Company (MIFC) are parties to an Agreement for Winter Ferry Service, dated 10/18/2023 (hereafter referred to as the "Winter Service Agreement"), a copy of which is attached hereto as Exhibit A, and

Whereas, Section 9 of the Winter Service Agreement allows CMI to assign its rights and obligations to the Mackinac Island Transportation Authority (MITA) only to facilitate winter service, through the services of MIFC, under the terms of the Winter Service Agreement and subject to certain terms and conditions.

WITNESSETH, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is acknowledged by both parties, CMI hereby assigns to MITA CMI's interests and obligations under the Winter Service Agreement. This Assignment is made subject to the following terms and conditions:

- A. All matters of enforcement of and authority under the Winter Service Agreement shall remain with the CMI.
- B. MITA shall not compete with the business of MIFC during the term of the Agreement.
- C. MITA, and its successors, shall be bound by all terms of the Winter Service Agreement and this Assignment.
- D. Any and all obligations relating to the Winter Service Agreement from and after this date shall be assumed and complied with by MITA.
- E. CMI shall have the right to unilaterally withdraw and/or revoke this Assignment, and to reinstate all its rights, and obligations under the Winter Service Agreement. Such revocation shall be in the sole discretion of the City Council. Notice of such revocation shall be sent to MITA by first class US mail, and will be effective 7 days after such notice is postmarked.
- F. MITA shall have no power to bind the CMI in any contract amendments or new contracts.
- G. Grantee MITA may not enter into any additional contract regarding passenger service to/from the City of Mackinac Island, general ferry service, or winter service, without approval of the City Council of the CMI during the Winter Service Agreement or beyond the date the Winter Service Agreement expires.

**CITY OF MACKINAC ISLAND, By:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
MARGARET DOUD, its Mayor

ACCEPTANCE

Mackinac Island Transportation Authority accepts the Assignment in accordance with its terms.

**MACKINAC ISLAND TRANSPORTATION  
AUTHORITY, By:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
ANDREW McGREEVY, its Chairperson

## AGREEMENT FOR WINTER FERRY SERVICE

AGREEMENT made this 18<sup>th</sup> day of October, 2023, by and between the City of Mackinac Island, hereafter CMI, and Mackinac Island Ferry Company, hereafter MIFC.

WHEREAS, CMI has issued two identical non-exclusive franchises to operate public ferry boat services to and from the City of Mackinac Island, the two franchisees being Shepler's Mackinac Island Ferry and MIFC Mackinac Island Ferry, and

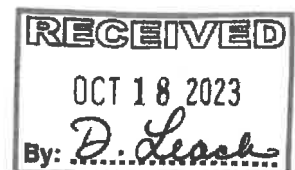
WHEREAS, the franchises granted provide, at Section 5, that every five years CMI would seek proposals from all franchisees for providing winter ferry service for a five (5) year time period, being between November 1<sup>st</sup>, 2013 and April 20<sup>th</sup>, 2018; November 1<sup>st</sup>, 2018 and April 20<sup>th</sup>, 2023; and November 1<sup>st</sup>, 2023 and April 20<sup>th</sup>, 2028, respectively.

WHEREAS, CMI requested proposals for winter service from both franchisees, and received such proposals from Shepler's Mackinac Island Ferry and from MIFC, and

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

WHEREAS, the Mackinac Island Transportation Authority ("MITA") was created in 2019 by the CMI to provide funding and resources to insure the safe and reliable winter service transportation of passengers and goods to and from Mackinac Island;

WHEREAS, PA 51 of 1951 ("Act 51") created the Michigan Transportation Fund ("MTF") which directs MTF revenue to state transportation funds and to local units of government including the CMI and the MITA;



WHEREAS, although not required by the Michigan Department of Transportation (“MDOT”) nor the MTF, the CMI has requested MIFC voluntarily agree to allow funding flow through the MITA under the terms and conditions of this Agreement;

WHEREAS, the parties intend that this agreement memorialize their respective understanding and agreement relating to winter ferry service to and from Mackinac Island for the time period between November 1<sup>st</sup>, 2023 and April 20<sup>th</sup>, 2028.

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

IT IS AGREED as follows:

1. Grant of Franchise for Winter Service. CMI hereby accepts MIFC’s proposal, attached as Exhibit A hereto, and grants to MIFC the exclusive right and obligation, and exclusive contract to operate and provide winter service to and from Mackinac Island during the five-year time period between November 1<sup>st</sup>, 2023 and April 20<sup>th</sup>, 2028, and MIFC hereby accepts the same, subject to the terms and conditions of this agreement. MIFC’s exclusive right and exclusive contract shall not exclude the option for the City to contract with the Mackinac Island Transportation Authority (MITA) to provide winter service through an assignment of this Agreement. Notwithstanding any assignment to MITA, there shall be no changes to this Agreement, including that all matters of enforcement and authority will remain with the CMI, without the consent of CMI and MIFC.

2. Standards of Performance.

A. Vessels and Equipment. MIFC hereby agrees to provide and maintain all of the steel-hulled vessels, docks, parking and other facilities referenced in Exhibit A during the term of this agreement. Any change that would reduce or eliminate any of the steel-hulled vessels, docks,



parking and other facilities identified in Exhibit A must be approved by CMI, said approval to not be unreasonably withheld.

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

C. Rates. The following schedule of rates shall be maintained during the term of this contract subject only to changes representing cost increases incurred by MIFC that exceed the parties' reasonable expectation and result from conditions beyond MIFC's control. No such increases shall be put in effect without approval of CMI, with said approval not being withheld unreasonably. The parties agree to assume the duty to deal fairly and in good faith on issues involving future rate increases.

Boat Line	Pass/Ticket Type	Price	Food & Ticket
MIFC	Adult Island Resident Pass	\$ 245.00	No
	Child Island Resident Pass	\$ 150.00	No
	Winter Commuter Book - 40 One ways	\$ 340.00	No
	Winter Commuter Book - 20 One ways	\$ 330.00	No
	Summer Commuter Book - 40 One ways	Same as previous winter season	No
	Summer Commuter Book - 20 One ways	Same as previous summer season	No
	Adult - Round trip ticket	Same as previous summer season	Yes
	Child - Round trip ticket	Same as previous summer season	Yes
<b>Shoppers</b>			
	Adult Island Resident Pass	NA	No
	Child Island Resident Pass	NA	No
	Adult Seasonal Commuter Pass	NA	Yes
	Winter Commuter Book - 40 One ways	NA	Yes
	Winter Commuter Book - 20 One ways	NA	Yes
	Summer Commuter Book - 40 One ways	NA	Yes
	Summer Commuter Book - 20 One ways	NA	Yes

D. Island Residents. The term "Island Resident as used in this Agreement means only those individuals that are residents of the City of Mackinac Island and who produce satisfactory documentary evidence of such residence by way of a driver's license, voter identification card, utility bill, or similar evidence. Alternatively, proof of residence can be established by production of documentary evidence verifying that the individual physically resides on Mackinac Island. The City agrees to support compliance with the "Island Residency" requirement and that the rates applicable to Island Residents and allow MIFC reasonable discretion in its enforcement.

3. Consideration. In consideration of providing winter service, MIFC will receive an annual payment of \$200,000.00. The payment shall be made on a pro-rata basis, payable thirty (30) days after each of the five (5) installment payments of the franchise fee are received by the City during the summer season following each winter season during which MIFC provides services pursuant to this contract. For each year of this contract starting in year two, the annual payment shall be adjusted each year by an

increase equal to any percentage increase in the cost of living for the preceding one year period as reflected in the consumer price index, All Urban Consumers (CPI – U) U.S. City Average published by the Bureau of Labor Statistics of the U.S. Department of Labor. If that consumer price index is subsequently discontinued, the city council may select comparable statistics on the cost of living as they are computed and published by the Federal Government. As of the date of this Agreement, MDOT, through the MTF under Act 51 is providing 50% (\$100,000) of the current consideration (\$200,000.00) being paid to MIFC under this Agreement, which is reimbursed to the City. If, in any year, the City or MITA does not receive the full 50% reimbursement of the then-current consideration, paid to the MIFC under this Agreement, from MDOT, through MTF funding, the difference of what is not received through that funding (up to 50% of the then-current consideration) will be made up by an increase to the Franchise Fee, paid by the Franchise holders equally, in an amount equal to the funding not reimbursed through MDOT and MTF funding. In the event MIFC would like to increase the services provided under this Agreement, the CMI and MIFC (and MITA, should it be involved at that time) may enter into good faith negotiations to determine if such an amendment and potential increase in consideration of the services is in the best interest of all parties.

4. Default. In the event MIFC defaults in any of the provisions of this agreement, CMI shall provide written notice to MIFC identifying the nature of the default and a time period of not more than three (3) days in which to cure said default. Provided however, if the default by MIFC involves a failure to provide or maintain the schedule of services set forth in Exhibit A, the time period to cure said default shall be not more than two (2) days. If the default is not cured within the stated time period, the City may terminate this Agreement.

Notwithstanding any other provision in this paragraph, CMI may terminate this Agreement if there are three or more incidents of default, that occur during a single winter season, that are

subsequently cured by MIFC after receiving written notice of default. Further, CMI may also terminate this Agreement if MIFC becomes the subject of a bankruptcy or receivership proceeding.

MIFC may terminate this Agreement if CMI (a) grants any other contract for winter services, directly or indirectly, and whether through a transportation authority or otherwise, (with the exception provided herein) or (b) ceases to retain jurisdiction over the ferry boat services. In addition, MIFC or the CMI may seek to specifically enforce the terms of this Agreement.

Upon termination of this Agreement, MIFC's annual payment will be pro-rated over the term of the annual service period (165 days) with said payment being limited to the number of days between November 1<sup>st</sup> of a winter service season and the date of default.

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

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

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

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

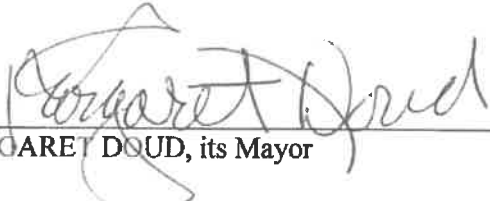
9. Assignment. The CMI may assign its rights and obligations to the MITA only to facilitate winter service, through the services of MIFC, under the terms of this Agreement. Any such assignment shall be subject to the following terms and conditions:

A. All matters of enforcement and authority shall remain with the CMI;


B. In no event shall the MITA compete with the business of MIFC during the term of this Agreement;

C. The MITA, and its successors, shall be bound by the terms of this Agreement.

**CITY OF MACKINAC ISLAND, By:**

  
\_\_\_\_\_  
MARGARET DOUD, its Mayor

**MACKINAC ISLAND FERRY COMPANY, By:**

  
\_\_\_\_\_  
JERRY FETTY, its CEO