

## USE AGREEMENT

THIS USE AGREEMENT (the "Agreement") is made this **17th day of MARCH, 2004**, between **THE NAPLES CONCERT BAND**, a Florida non-profit organization, and **THE CITY OF NAPLES**, a Florida municipal corporation (the "City").

**WHEREAS**, for over 30 years the Naples Concert Band has provided and continues to provide free concerts in Cambier Park for the cultural enrichment of greater Naples, Collier County residents and visitors; and

**WHEREAS**, the Naples Concert Band has made a considerable contribution in the planning of and raising over one-half the funds for the construction of the original band shell in Cambier Park in 1987; and

**WHEREAS**, the Naples Concert Band additionally was instrumental in the design and construction of the renovated Cambier Park Band Shell in 2001, having raised over \$400,000 for the project; and

**WHEREAS**, the City has agreed to grant the Naples Concert Band a license to use space in the Cambier Band Shell for a five (5) year period on the terms and conditions contained herein.

**NOW, THEREFORE**, based upon the mutual covenants and premises provided herein, and other valuable consideration, the parties hereby agree as follows:

1. Recitals Incorporated: The above recitals are true, correct and incorporated herein.
2. Premises: For purposes of this Agreement, the term "Premises" shall mean the Cambier Park Bandshell, which is located at 755 8<sup>th</sup> Ave. South, Naples, Florida 34102.
3. Term: The term of this Agreement shall be for Five (5) years (the "Term"). The Term shall commence on MARCH 17, 2004 and shall expire on MARCH 16, 2009 (the "Termination Date"). At the end of the Term or if terminated prior to Termination Date by either party, this Agreement shall absolutely end. The Agreement will be jointly reviewed by the City and the Naples Concert Band during the third year of this Agreement and future recommendations of terms and conditions will be recommended by October 1, 2007.
4. License Fee: There shall be no license fees due under this Agreement.
5. Use: The Naples Concert Band will be entitled to free use of the band shell and be given first rights of refusal regarding concert dates during each October through April concert season, with dates to be chosen by The Naples Concert Band by December 31<sup>st</sup> of the previous season.
6. Sponsorship: The Naples Concert Band will be allowed to provide sole sponsorship for its corporate sponsors each concert.
7. Fees and Charges: The City of Naples will continue to provide \$500 annually to the Naples Concert Band for reimbursement of music purchases.
8. Provisions: The Naples Concert Band will be provided keys to the Band Shell, storage rooms, and rest rooms and will be provided a storage room for the exclusive use by The Naples Concert Band for equipment. Naples Concert Band will be responsible for all assigned keys.

9. Equipment Usage: The Naples Concert Band will be allowed continued usage of property owned by the City of Naples, including, musician's chairs, music stands and related property stored in the band shell. Said equipment will continue to be maintained and replaced as needed by the City upon notification by the band of deficiencies.
10. Banners/Displays: The City Of Naples will allow no display of flags, banners, etc. on behalf of any organization or business at any of the Naples Concert Band's scheduled concerts with the exception of The Naples Concert Band Banner and the City of Naples Community Services Department Banner.
11. Responsibility of the Naples Concert Band: Provide set-up and teardown of risers, chairs, etc., for each concert. Provide programs to the audience at each concert. Provide sound system and sound technician for each concert. Regularly apprise the City of deficiencies in the facility being provided such as damages to and losses of risers, stands, chairs, lighting, etc., with the expectation of correction. Conduct its own fundraising. Locate business sponsors for each concert. Notify City of Naples Special Events Committee annually of concert dates and expected attendance. Consider requests for City and/or County governments or other organized groups for special performances subject to the Band's Board of Directors. Provide, publicize and guarantee alternate indoor concert site for every concert date.
12. Alterations and Improvements: The Naples Concert Band shall not alter, improve or change the Premises, including existing signage, without the written consent of the City.
13. Termination: At any time during the initial or any extended term of this AGREEMENT, either party may terminate this AGREEMENT by delivering one (1) month's written notice of the same to the other party without liability to the other. If the City terminates this AGREEMENT without cause, the Naples Concert Band will be able to honor its scheduled performance commitments for up to one (1) year.
14. Assignment: The Naples Concert Band shall not assign, sublet, or permit the Premises to be used by others.
15. Indemnification: The Naples Concert Band shall indemnify, defend, save, and hold harmless the City, the City's officers, agents and/or employees from and against any and all losses, penalties, damages, professional fees, including reasonable attorney's fees and all costs of litigation and judgments, arising out of any willful misconduct or negligent act, error, or omission of the Naples Concert Band arising out of or incidental to the Naples Concert Band use of the Premises, or the failure of the Naples Concert Band to perform any duties under this Agreement.
16. Notices and Address Record: All notices required or made pursuant to this Agreement to be given by the Naples Concert Band to the City shall be in writing and shall be delivered by hand or by United States Postal Services Department, first class mail services, postage prepaid, return receipt requested, addressed to the following:

City of Naples Community Services Department  
280 Riverside Circle  
Naples, Florida 34102

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Use Agreement on the day first written above.

**NAPLES CONCERT BAND:**  
A Florida non-profit organization

By: \_\_\_\_\_

ATTEST:

**CITY OF NAPLES, FLORIDA**

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

By: \_\_\_\_\_  
Bill Barnett, Mayor

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney