

## **SIGHTSEEING BUS STOP AND BUS ROUTE FRANCHISE AGREEMENT**

THIS AGREEMENT, made and entered into this 3rd day of November, 2010, by and between the CITY OF NAPLES, NAPLES, FLORIDA, hereinafter referred to as "City" or "Grantor"; and the DOLPHIN TRANSPORTATION SPECIALISTS, INC., hereinafter referred to as "Grantee";

NOW, THEREFORE, WITNESSETH: That for and in consideration of the benefits to be derived by the City of Naples and its inhabitants from the operation of a private passenger sightseeing bus route along certain streets within the City limits of Naples and of the mutual covenants herein contained, the parties hereto agree as follows:

1. The City hereby grants to the Grantee the non-exclusive right and privilege to operate up to two (2) scheduled passenger tour busses, not to exceed thirty-eight feet (38') in overall length, over, across and along designated streets and avenues of the City and into and from suburban communities and territories adjacent to the City, for the purpose of conveying passengers for hire. special charters shall be in addition to scheduled operations. Sightseeing services to be provided by the Grantee are outlined in the attached 'Operation Plan' which provides routes, stops, schedules, vehicle listing, seasonal operating information and additional operational information. This agreement recognizes the right of the Grantee to provide special charters/destination-to-destination services within the City of Naples subject to either the destinations being private property or the destinations being subject of administrative approval.
2. By virtue of this agreement, Grantee is required to operate said vehicles in a safe and efficient manner conducive to the utmost protection of the public at all times, to obtain all required permits and licenses and to observe all traffic regulations and city, county, state and deferral laws applicable to the operation thereof and to follow the attached 'Operation Plan'.
3. Grantee acknowledges that nothing contained in this agreement waives any defenses the City may have for any liability pursuant to actions of the Grantee. Further, the City does not waive any defenses it may have. Nothing herein is intended to alter any immunity in tort or otherwise impose liability on the City. Nevertheless, Grantee shall save the city harmless from any and all losses, claims for personal injury or death of any person, suits and actions at law of every kind and description arising or resulting from the operation of said vehicle. For this purpose Grantee shall provide for public liability and property damage insurance to be carried in the minimum amount of five million dollars (\$5,000,000) and five hundred thousand dollars (\$500,000) respectively, covering the use of said vehicles and providing protection against any and all claims for personal injury or death of any person and property damage which may arise out of or in connection with, the operation of said vehicles. The City of Naples shall be named as additionally insured on the insurance policy and certificate of insurance. Grantee shall furnish a copy of the certificate of insurance reflecting said coverage to the City Manager prior to the adoption of this agreement and annually thereafter.

4. Each trolley/bus stop in the public right-of-way shall be subject of generic signing per the Manual on Uniform Traffic Control Devices (MUTCD) and such signing shall be installed by contractors under supervision of the City or by City personnel. Signing at the stops may be supplemented by route/destination/scheduling materials provided by the Grantee and approved by the Grantor. Grantee shall not be permitted to install or move trolley/bus stop signs on any City right-of-way without approval of the Grantor.
5. Grantee shall not assign any rights or obligations under this Agreement without the prior approval of the City Manager.
6. During the approved operating hours and consistent with approval of the 'Operation Plan' and use of the public right-of-way, Grantee agrees that said vehicles will stop in the public right-of-way only for traffic signals and traffic controls and only at locations where signs are posted designating trolley stops/bus stops/loading zones. Approved trolley stop/bus stop/loading zone locations are as follows:
  - 1) Chamber of Commerce @ Diana Avenue
  - 2) Edgewater Beach Hotel on Gulf Shore Boulevard
  - 3) Naples Beach Hotel on Gulf Shore Boulevard
  - 4) East side of 3<sup>rd</sup> Street South at 12<sup>th</sup> Avenues South
  - 5) 5<sup>th</sup> Avenue South Alley and 8<sup>th</sup> Street South
  - 6) Naples City Dock @ the east end of 12<sup>th</sup> Avenue South
  - 7) Dockside Boardwalk on 11<sup>th</sup> Street South
  - 8) Tin City Shops via 12<sup>th</sup> Street South

Grantee further agrees to operate said vehicles only over such routes as are approved as part of the 'Operation Plan' and modifications of such plans as may be approved by the City Manager. Such routes may be revised from time to time by the City Manager who is authorized to consent to such changes so long as the routes do not make frequent or undue use of residential side streets within the City nor tend to overcrowd commercial locations and traffic areas. The City reserves the right to modify the proposed routes, trolley/bus stops in the public right-of-way, and/or schedules to address traffic concerns or otherwise to be in the best interest of the public. Deviation from approved routes or schedules may result in suspension or termination of this Agreement.

The parties agree that the following procedure shall be used to determine penalties against Grantee under this section:

In the event that Grantor receives a confirmed complaint (as hereinafter defined), Grantor shall provide Grantee with written notice of said confirmed complaint. If Grantor receives three confirmed complaints against Grantee in any six month time period, Grantor's notice to Grantee of the third confirmed complaint shall state the same and Grantee's franchise shall be suspended for two (2) days. If Grantor receives four confirmed complaints against Grantee in any six month time period, Grantor's notice to Grantee of the fourth confirmed complaint shall state the same and City

Council shall hold a public hearing to consider the revocation of this franchise which revocation may be in the sole and exclusive discretion of City Council.

All notices required by this section shall be in writing and either hand delivered, delivered by overnight courier or facsimile transmission, or mailed through the United States Postal Service by certified or registered mail, return receipt requested. Any notice shall be deemed to be given upon actual receipt in the case of hand delivery, facsimile, or delivery by overnight courier, or four (4) business days after depositing the same in a letter box or by other means placed within the possession of the United States Postal Service, properly addressed in accordance with the foregoing and with the proper amount of postage affixed thereto. In the event of any notice via facsimile transmission, a hard copy shall be sent via regular mail on the day of such transmission.

For the purposes of this Agreement, a “confirmed complaint” shall mean either (i) a complaint received and validated by Grantor that Grantee has violated a provision of this section or (ii) a warning or citation issued by a local law enforcement agency which represents a violation of this section. A log of complaints with respect to Grantee shall be maintained by the City Manager, which log shall include action taken by Grantor. The City reserves the right to incorporate ‘comment’ forms and/or ‘complaint’ forms at the various trolley stops/bus stops to obtain operating and service information.

7. Trolleys/buses shall not be permitted to stop at any designated location for more than three (3) minutes unless the stop is a designated loading zone in which case the time shall be no more than five (5) minutes unless a longer time is allowed as part of an approved operations plan.
8. Trolley/bus color schemes shall be submitted to and approved by the City Manager’s Office. Advertisements on trolleys shall be limited to exterior signs identifying the firm’s name and local phone numbers clearly visible to the public.
9. Grantee shall make an initial five hundred dollar (\$500) annual payment to the City of Naples to cover administrative costs associated with this Agreement. The first payment shall be made upon execution of this Agreement and subsequent payments shall be made on each anniversary date thereafter. The Grantor reserves the right to annually increase the annual payment subject to administrative cost and related impacts to City operations.
10. The City Manager’s Office reserves the right to request copies of letters from private property owners within the City of Naples which grant permission to stop on their property to load and/or off-load passengers.
11. Grantee agrees to adopt and maintain a drug free workplace policy during the term of this Agreement. Grantee further agrees to implement and monitor driver background and driver evaluations consistent with the attached ‘Operation Plan’. the City’s Driver Evaluation Policy for all trolley operators employed by Grantee, attached hereto as Exhibit “A” and made a part hereof.

12. No alcoholic beverages may be sold or consumed, and no live music shall be performed on scheduled trolleys/buses within the City limits. In addition, loud speakers or amplifiers shall be kept at a minimum noise level so as not to disturb the general public and not to exceed decibel levels set forth in the Naples Code of Ordinances.
13. Grantee shall arrange for and insure that said vehicles are properly maintained, repaired and equipped and shall make said vehicles available at reasonable times for inspection by representatives of the City to determine that such repair and maintenance have been performed.
14. The City reserves the right to terminate and cancel this Agreement and all right and privileges of the Grantee hereunder in the event that Grantee violates any provision of this franchise or any determination of City Council made pursuant thereto, or in the event that City Council determines that it is in the best interests of the City to do so. Should the City determine to exercise its right to terminate this franchise, it shall so notify Grantee in writing sixty (60) days prior to termination unless such termination involves safety and public welfare issues in which case notification may be made in writing ten (10) days prior to such termination.
15. This Agreement shall be effective for a period of five (5) years from the date of approval and shall be subject to an annual review and approval of the Operation Plan by the City Manager prior to annual renewal.

IN WITNESS WHEREOF the parties hereto have executed this instrument the day and year above written:

\_\_\_\_\_  
 F Papps, President  
 Dolphin Transportation Specialists, Inc.

\_\_\_\_\_  
 A. William Moss, Naples City Manager  
 City of Naples

ATTEST:

Tara Norman, City Clerk

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

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

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