

MEMORANDUM OF AGREEMENT

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HORSE-DRAWN CARRIAGE OPERATION**

WHEREAS, the City of Asheville (herein "City") has the authority pursuant to G.S. 160A-296 to control the use of streets and sidewalks within the city; and

WHEREAS, COMPANY NAME, a North Carolina Limited Liability Company (herein ""), proposes to operate a horse-drawn carriage service on the streets of the City pursuant to Article IV, Sec. 18-91 to 18-120 of the Asheville Code of Ordinances; and

WHEREAS, the City has determined that it is in the public interest to permit the operation of said service on the City's streets, subject to certain terms and conditions;

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING TERMS:

1. Route: A horse-drawn Carriage shall be allowed on city streets along only those routes as approved, in advance of their use, by the City. In addition, all streets designated as a US or State street must have NC DOT approval to be included in the route. The operation of the horse-drawn carriage shall be designed so as to minimize traffic impacts upon the general circulation of vehicular and pedestrian traffic of the City. The horse-drawn carriage shall not load or unload passengers in any area other than the carriage stand. The approved route is attached hereto at **Exhibit A**.
2. Stops: Horse-drawn Carriage stops may not exceed three minutes on any public right-of-way, except as necessary for emergencies or with the written permission of the City Traffic Engineer. All service stops shall be made in a way to minimize any possible disruption to the flow of vehicular traffic. The City has designated a Carriage Stand, where the horse and carriage may stand while not in service, as shown on the above referenced route map.
3. Operating times/frequency: For all operations, the hours of operation shall be limited to between 9:00 a.m. to 11:30 a.m. and between 1:30 p.m. and 4:45 p.m., Monday thru Friday, and between 9:00 a.m. and midnight Saturday, Sunday, and legal holidays. City reserves the right to change these hours an any approved hours at its sole discretion, provided that horse-drawn carriage applicant is given a 30 day notice of such change. Horse-drawn carriages are prohibited from operating in any City

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approved festival or special event area where the roadways are blocked including, but not limited to, the Bele Chere festival except with written permission from the event organizer. The initial agreed upon hours of operation are Thursdays and Fridays 6:00 PM-Midnight; Saturdays 3:00 PM-Midnight; and Sundays Noon-7 PM. These hours may be reduced without notification to the City or may be otherwise changed with notification to and approval by the City.

4. Term: The term of this Agreement shall be for one year from the date of issue on the permit and ending on the last calendar day prior to the date of issue plus one year. Applicant may apply for renewal of the Agreement.
  
5. Insurance: The horse-drawn carriage company shall maintain Commercial General Liability insurance, including coverage for contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability. Minimal limits of not less than \$1,000,000 for bodily injury to any one person, \$300,000 for injury to more than one person in the same accident, and \$25,000 for property damage resulting from one accident. Such policy may be in the form of a separate policy for each carriage or in the form of a fleet policy covering all carriages operated by the same company. Such policy or policies shall include an endorsement to the effect that the same cannot be altered, modified or cancelled for any cause without notice thereof being served upon the carriage inspector at least 30 days prior to the date of such alteration, modification or cancellation. A certificate of insurance certifying the above coverage shall be filed in the office of the carriage inspector. If at any time during the life of any permit issued the company allows said insurance policy to lapse or to become ineffective, or if any insurer thereof becomes unable financially to respond to the obligation thereof, or such policy is allowed to terminate in whole or in part, then at the same time the permit of such company to operate such carriage shall ipso facto become null and void.
  
6. Indemnity: By commencing operation under this Agreement, the horse-drawn carriage company agrees to indemnify and hold harmless the City, its officers and employees, against any and all liability, loss, damages or expenses including personal injury, property damage, or other damage arising from or in connection with any of the company's operations, including

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operation of the horse-drawn carriage service under this Agreement, and its insurance policy shall name the City as an additional insured to this effect.

7. Number of Carriages: It is agreed that COMPANY may operate one (1) horse-drawn carriage. Additional carriages may be permitted with express approval by the City.
  
8. Horse-drawn Carriage Equipment/Condition of Vehicles: The horse-drawn carriage company may determine whatever carriage model(s) it sees fit to use, provided that all carriages shall include operable turn signals, operable lights or lanterns and reflectors when used during the hours of darkness. The turn signals, lights, and reflectors shall be mounted so that they are visible from any direction for a distance of at least 1,000 feet. Each carriage shall have on board at all times a fire extinguisher and a first aid kit. Each carriage shall be kept painted and in a clean and sanitary condition, free of litter and debris and at all times suitable for public transportation of passengers. Each carriage must be inspected for compliance of safety and overall appearance and shall pass the carriage inspectors inspection before being used to carry passengers. The carriage must be re-inspected once every six-months. When the carriage is involved in an accident, the horse-drawn carriage business owner shall file a report of the accident with the carriage inspector. The carriage inspector shall inspect each carriage before it is returned to service. This inspection shall include:
  - Body condition
  - Reflectors;
  - Grab handles;
  - Traces;
  - Harness;
  - Seats;
  - Wheels;
  - Top (if applicable);
  - Shafts;
  - Steps;
  - Brakes;
  - Lights or lanterns, on any vehicle to be operated at night;
  - Turn signals.
  
9. Standards for Drivers: The horse-drawn carriage company shall certify in writing to the City that each driver has a valid North Carolina driver's license, is medically fit to operate the carriage and has submitted a complete criminal background check. The city shall keep these records on file and will supply this

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information to the company upon request. Drivers with convictions for crimes of moral turpitude, driving while impaired, controlled substance offenses and sex offenders are prohibited from operating a horse-drawn carriage within the City limits.

10. Health and Safety of the Animals: The Owner/Operator shall present to the Carriage Inspector **every four (4 months)** beginning with the date of this Agreement, **a certificate by a Veterinarian licensed in the State of North Carolina, for each horse or other beast of burden owned by such Operator for its horse-drawn business, certifying that each horse or other animal has been examined and that the same is in good health and able to draw the horse-drawn carriage(s) to which it is assigned without endangering the health of such horse or other animal.** In the event of failure to present a certificate for each such horse, the Owner/Operator shall not be able to use in the horse-drawn carriage business any horse for which a certificate is not presented.

The Carriage Inspector or his or her designee, may from time-to-time inspect the animals in order to determine compliance with the following:

1. No single animal shall pull a carriage holding more than six adults, including the driver.
2. Unless written approval is given by a licensed veterinarian, no animal having open sores or wounds or any disease or ailment shall be permitted to be in service on the streets of the City.
3. Each animal shall have all hooves properly trimmed and shod for street surfaces, with the horse shoes to be a type of poly-urethane shoes designed to keep the animal from slipping on the pavement; provided, however, the Carriage Inspector may determine that another horse shoe proposed by the permit holder is adequate to keep the animal from slipping on the pavement.
4. Each animal shall be groomed daily and shall not have fungus, dandruff, or a dirty coat.
5. Harnesses shall be properly fitted, maintained and oiled so that no irritating material will come in direct contact with the animal.
6. No driver may use more than a light touch of the whip upon any animal, and no driver or

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- other person may forcefully strike an animal, or make movements or noise intended to frighten or harm an animal.
7. No driver shall permit an animal to pull a carriage at a speed faster than a slow trot, except in emergency situations.
  8. Each animal shall be provided with adequate food, water and rest to pull the horse-drawn carriage to which it is assigned.
  9. No animal shall become overheated in a manner which endangers its health and safety. The temperature of each animal pulling a horse-drawn carriage shall be taken immediately prior to being used to pull horse-drawn carriages that day and shall be taken no less often than once each two hours during the time period it is used to pull horse-drawn carriages for that day. **A log of these times and temperatures shall be maintained by the permit holder and shall be provided to the carriage inspector on a monthly basis.**
  10. No animal shall pull horse-drawn carriages in temperatures below 25 degrees Fahrenheit under calm conditions or its equivalent when adding in a wind chill factor, or when the apparent temperature, combining the air temperature with the relative humidity, is above 90 degrees Fahrenheit.
  11. Animals used to pull horse-drawn carriages shall be given a ten-minute rest period at the end of two consecutive labor hours and potable water shall be made available during the rest period. Labor hours are defined as hours the animal is in harness for the horse-drawn carriage business. No animal shall be kept in harness for the horse-drawn carriage business for periods in excess of eight successive labor hours without a minimum of three successive hours out of harness. No animal shall be in harness for the horse-drawn carriage business for more than six days in a seven-day period.
  12. No animal shall be subject to any condition or treatment, whether in service or out of service, which will impair the good health and physical condition of that animal.

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13. The Carriage Inspector or his or her designee, shall conduct **inspections of the stables** where the horses are kept for the horse-drawn carriage business at least **once a year**, and at other times whenever complaints are filed in order to determine compliance with ordinance regulations. Additionally, **an annual inspection shall be conducted by a licensed veterinarian (D.M.V.)**, experienced in the care and treatment of horses for both the sanitary conditions of the stable facility and the health of the animals. The results of this inspection shall be submitted to the Carriage Inspector or City Animal Inspector, within 30 days of inspection.

11. Non-transferability/Amendment: This Agreement and the permits to operate horse-drawn carriages shall not be transferred without the consent of the carriage inspector; provided, however, that the holders of permits may make replacements and substitutions of such carriages if the total number of carriages does not exceed the total number provided for in the permit. In the event a horse-drawn carriage business is transferred, the new owner shall apply to the carriage inspector for the permits required. This Agreement is not exclusive.

Revocation/Termination: Failure to comply with the requirements of this Agreement and Secs. 18-91 to 18-102 of the Asheville City Code or with any of the laws, ordinances, and regulations of the city, or State or Federal law, can result in revocation of the permit of the driver, the company, or both.

12. Notice: Any notices required or permitted pursuant to this franchise shall be first class mail or personal delivery to the parties as follows:

If to the carriage company:

If to City:

Carriage Inspector  
Development Services  
P.O. Box 7148  
Asheville, NC 28802

Compliance with the formalities of this section may be waived.

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The carriage company shall at all times maintain an office or business location in the City of Asheville, and shall pay all City privilege license fees, and other taxes and fees associated with operation. The carriage company shall designate an individual to be its agent for service of process in accordance with North Carolina law, and shall keep the City advised of any changes in said agent or its address.

13. Permit Fee: The permit fee for the operation of this Agreement shall be found in the City of Asheville Fees and Charges Manual as approved by the City of Asheville City Council and is payable in a lump sum before the issuance of the permit.
14. Fares: The fees charged by horse-drawn carriage shall be prominently displayed on the outside of the carriage.
15. Temporary Suspension/Modification: This Agreement and any of the terms and conditions thereof, including those relating to route, stops, and scheduling are subject to temporary suspension or modification by the City as necessary for the City to exercise and maintain control over its streets and public ways. The reasons for such action may include (by way of example and not limitation), the following: (a) closing of streets for repairs; (b) closing of streets for parades and festivals; (c) change in direction of one way streets; (d) changes in parking configuration. Any such action shall be within the City's sole discretion without recourse by the carriage company. The City will endeavor to provide advance notice of such action, but shall not be bound to do so.
16. Compliance with Laws: The carriage company shall comply with all applicable federal, state, and local laws in the operation of its business.
17. Conflict of Laws: All ordinances and clauses of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.
18. Governing Laws: This Agreement is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
19. Severability: If any section, subsection, sentence, clause, or phrase of Sec. 18-102 of the Asheville City Code is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this agreement invalid.

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20. That this Agreement shall be in full force and effect on the signature date and issuance of the permit for operation.

NAME OF COMPANY

\_\_\_\_\_  
Signature of Company Agent

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is the \_\_\_\_\_ of COMPANY and acknowledged on behalf of COMPANY, the due execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Carriage Inspector

\_\_\_\_\_  
Date

Reference Permit Number: \_\_\_\_\_