

ORDINANCE NO. 4462

ORDINANCE GRANTING A FRANCHISE TO OPERATE A LOW SPEED VEHICLE SHUTTLE SERVICE WITHIN THE CITY OF ASHEVILLE

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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, the City of Asheville has the authority pursuant to G.S. 160A-76 to grant franchises; and

WHEREAS, Land of Sky Shuttle, proposes to operate a low speed vehicle shuttle service on the streets of the City; 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, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Land of Sky Shuttle is hereby granted a franchise to operate a low speed vehicle shuttle service on the streets of the City of Asheville subject to the following terms and conditions:

1. Route: The low speed vehicle shuttle service is allowed to operate in the downtown Central Business District (CBD) along state-maintained and city-maintained streets where the posted speed limit is 35 mph or less. The operation of the low speed vehicle shuttle service shall be designed so as to minimize traffic impacts upon the general circulation of vehicular and pedestrian traffic of the City. The low speed vehicle shuttle service shall not load or unload passengers directly from Patton Avenue, College Street, Broadway or Biltmore Avenue unless there is an open parking space or a loading/unloading zone into which the low speed vehicle can safely enter in order to prevent blocking the flow of traffic.
2. Stops and Parking: The low speed vehicle shuttle service stops may not exceed three minutes on any public right-of-way, except as necessary to embark and disembark passengers, or with the written permission of the City Traffic Engineer. Loading zones may be used for stops of this limited duration. All service stops shall be made in a way to minimize any possible disruption to the flow of vehicular traffic. It is anticipated that the low speed vehicle shuttle service will secure parking mainly in private lots when longer stops (i.e. waiting for passengers while they are in restaurants) are required.
3. Operating times/frequency: The low speed vehicle shuttle service will operate between the hours of 9:00 am to 3:00 am Monday through Friday and between the hours of 7:00 am and 3:00 am on Saturday and Sunday. The City reserves the right to change these hours at its sole discretion, provided that Land of Sky Shuttle is given a 30-day notice of such change. The low speed vehicle shuttle service is prohibited from operating in any City approved festival or event area where the roadways are blocked except with written permission from the event organizer.

4. Terms of Franchise/Renewal: The term of this Franchise shall be indefinite, subject to the Revocation/Termination provisions of Paragraph 10 of this Ordinance.

5. Insurance: Land of Sky Shuttle 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 with limits of not less than \$1,000,000 per occurrence, and \$1,000,000 annual aggregate. The coverage shall be written on an occurrence basis. At all times during the term of this Franchise, Land of Sky Shuttle shall maintain statutory Workers' Compensation insurance in accordance with the laws of North Carolina. Land of Sky Shuttle shall also maintain Employers' Liability insurance with limits of not less than \$500,000 per accident and \$100,000 each employee for injury by disease. In the event of bodily injury or property damage loss caused by Land of Sky Shuttle negligent acts or omissions in connection with Land of Sky Shuttle services or operations associated with this Agreement, Land of Sky Shuttle Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. Land of Sky Shuttle shall submit copies of all said policies and a certificate of insurance naming the City as an additional insured for the approval of the City's Risk Manager. Approval from the City's Risk Manager shall be obtained prior to beginning any operation in the City of Asheville.

Land of Sky Shuttle shall submit copies of said insurance policy and a certificate of insurance for approval to the City's Transportation Director prior to starting operations in the City of Asheville.

6. Indemnity: By commencing operation under this Franchise, Land of Sky Shuttle agrees to indemnify and hold harmless the City against any liability for personal injury, property damage or other damage or injury arising from or in connection with any of its 's operations, including operation of the low speed vehicle shuttle service under this Franchise, and its insurance policy shall name the City as an additional insured to this effect.

7. Low Speed Vehicle Equipment/Condition of Vehicle: The low speed vehicle is defined by General Statute 20-4.01(27)h as a four-wheeled electric vehicle whose top speed is greater than 20 mph but less than 25 mph. The low speed vehicle will be licensed and plated by the NC Department of Transportation (Division of Motor Vehicles). Safety features of the vehicle are expected to include headlamps, tail lamps, stop lamps, turn signals, a Type AS-1 or AS-5 glazing windshield with wiper, reflex bumpers, parking brake, rearview mirrors, a horn, and seatbelts. Land of Sky Shuttle is responsible for ensuring that all low speed vehicle equipment is maintained in a safe and operable condition in accordance with applicable laws. The City reserves the right to have the vehicle inspected by the City's taxi inspector, appointed pursuant to city Code Sec. 18-9, and to restrict operation of any vehicles that fail inspection.

8. Standards for Drivers/Conductors: Land of Sky Shuttle shall certify in writing to the City that each driver has a valid North Carolina driver's license, is medically fit to operate the low speed vehicle and has submitted a complete criminal background check. Land of Sky Shuttle shall keep these records on file and will supply this information to the City upon request. Drivers with convictions for crimes of moral

turpitude, driving while impaired, controlled substance offenses and sex offenders are prohibited from operating the low speed vehicle within the City limits.

9. Non-transferability/Amendment: This Franchise shall constitute a certificate of public convenience and necessity for the operation of the low speed vehicle shuttle service. This Franchise is not transferable, except to another entity owned by Land of Sky Shuttle with written agreement from the City, and may not be amended except as provided in G.S. 160A-76 and G.S. 160A-304(b). This Franchise is not exclusive.

10. Revocation/Termination: The City may revoke this Franchise at any time for failure by Land of Sky Shuttle to comply with any of the provisions hereof; provided, that Land of Sky Shuttle shall receive 10 day's notice of said revocation during which time this franchise may only be suspended.

The City may revoke this Franchise for any reason upon 30 days notice to Land of Sky Shuttle. Land of Sky Shuttle shall be entitled to no compensation or payment as a result of the revocation of this franchise for any reason.

Land of Sky Shuttle may cease operations under this Franchise upon 30 days notice to the City.

11. 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 Land of Sky Shuttle:

Dale Degraffenreid  
2 Clearbrook Road  
Asheville, NC 28805

If to City:

City Attorney  
70 Court Plaza  
Asheville, NC 28802

Compliance with the formalities of this section may be waived.

Land of Sky Shuttle 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. Land of Sky Shuttle 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.

12. Franchise Fee: The fee for the operation of this Franchise shall be \$1.00 per day for each day of the term of the Franchise, payable in a lump sum on or before the date of operation of service.

13. Temporary Suspension/Modification: This Franchise 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 Land of Sky Shuttle. The City will endeavor to provide advance notice of such action, but shall not be bound to do so. Suspension or modification expected to be of more than 30 days duration will require amendment to this Ordinance.

14. Compliance with Laws: Land of Sky Shuttle shall comply with all applicable federal, state, and local laws in the operation of its business including, but not limited to, the City of Asheville open container ordinance, and the State of North Carolina Alcoholic Beverage Control (ABC) laws (i.e. NCGS 18B-401; NCGS 20-4.01 (27); NCGS 20-138.7; NCGS 138.2C). It has been determined that because the low speed vehicle will be licensed as a slow-moving vehicle, it does not, per se, conflict with the City's open container ordinance (Section 11-11). However, requirements of this ordinance must still be observed (i.e. passengers cannot leave the vehicle with an open container). Land of Sky Shuttle shall also be responsible for obtaining all necessary licenses and permits including, but not limited to, ABC permits and licenses or permits from the NC Department of Transportation. Land of Sky Shuttle will not allow alcoholic beverages on the low speed vehicles.

Section 2. All ordinances and clauses of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 3. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance, The City Council hereby declared that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4. That this ordinance shall be in full force and effect on the date of adoption.

Read, approved and adopted the 17th day of November, 2015, on first reading and on the second and final reading the 8th day of December, 2015.

Nikka A °Auk 1<sup>7-?</sup>)ukaAtt,

City Clet

Mayor

Appred as to <sup>form</sup>  
5-Z-1  
City Attorney 

## **COMPREHENSIVE PARKING STUDY**

### **Timeline**

- Release RFP — January 12, 2016
- Receive proposals — February 12, 2016
- Review proposals and select consultant — mid-March 2016
- Time to complete work — 90 to 120 days (finalized when consultant is selected and contract finalized)
- Anticipated completion date — July 2016

### **Scope of Work**

- Background section (laws and ordinances)
- Benchmarking section (50 cities)
- Parking strategies section
- Downtown shuttle service (2 phases)
- Funding strategies section (10-year financial model)