

TOUR OPERATOR LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2009, by and between **GLYNN COUNTY, GEORGIA**, a political subdivision of the State of Georgia (hereinafter referred to as the "County"), and **MARSHLAND COMMUNICATIONS, INC., D/B/A ST. SIMONS TROLLEY** (hereinafter referred to as "Licensee").

WITNESSETH:

WHEREAS, the County is in possession of a certain right-of-way on St. Simons Island known as the Village Pier parking area which lies immediately west of and adjacent to the Old Casino and Neptune Park; and

WHEREAS, the Glynn County Board of Commissioners has the sole jurisdiction to manage the Village Pier parking area; and

WHEREAS, the County is desirous of making tours of St. Simons Island available to visitors to the St. Simons Island Village; and

WHEREAS, Licensee desires to conduct tours originating in the Village area via trolley, tram, carriage, or some other motorized or non-motorized conveyance; and

WHEREAS, County desires to have a third party conduct and provide tours for the use and benefit of visitors; and

WHEREAS, County is desirous of providing one parking space in the Village Pier parking area for tour operators to park, load, and unload passengers in order to conduct tours; and

WHEREAS, Licensee is desirous of utilizing one space in the Village Pier parking area in order to park, load, and unload passengers in order to conduct tours.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, it is hereby agreed by and between County and Licensee as follows:

1. PREMISES. County shall grant Licensee a non-exclusive, revocable license to use one (1) designated parking space, depicted on Exhibit "A" attached hereto, during the time period designated in Paragraph 5(b)(vi) in the Village Pier parking area near the Casino and Neptune Park in the operation of a tour business.
2. TERM. This license shall be for a period of one (1) year beginning _____, _____ and ending on _____, _____, unless otherwise terminated as provided for in this agreement.
3. OPTION TO RENEW. Licensee shall have the option to renew this license for

one (1) additional year. This option may be exercised by Licensee only by a written document stating the intent to exercise this option, delivered to County not more than six (6) months and not less than thirty (30) days before the end of the initial term of this agreement. Said renewal or extension shall be upon the same covenants, provisions, terms, conditions, and stipulations as herein set forth.

4. License Fee. Licensee shall pay to County a license fee in the amount of one thousand five hundred and 00/100 dollars (\$1,500) each year for an exclusive license to park, load, and unload passengers in the operation of its tour business in one (1) designated parking space in the Village Pier parking area. The license fee shall be paid to County beginning on the first day of this agreement and then each year on the anniversary date of this agreement.
5. CONDITIONS. The following conditions shall apply to Licensee's use of the premises:
 - (a) **Improvements.** Licensee shall not make any improvements, erections, additions or alterations on the premises. No fixtures or other property already on the premises may be removed without consent of County. The placing, posting, or affixing of any signs or other advertising to any property owned by County is prohibited. However, County will provide one sign in close proximity to the premises which will inform the public concerning the tours that originate from the area. The contents of the sign will be determined by County and shall not advertise for any specific tour business. Licensee will be provided a brochure box on the sign into which it may place advertising materials relating to its tour business.
 - (b) **Use of Premises.**
 - (i) Licensee is granted a non-exclusive, revocable license to use a County designated parking space for operation of its tour business. Only Licensee and Licensee's employees shall be allowed to utilize the parking space pursuant to this license. Use of the premises by parties other than Licensee or its employees is ground for termination of this license pursuant to Section 6 of this agreement. No other product or service may be sold or provided.
 - (ii) Only one (1) of Licensee's vehicles may be allowed on the premises at any one time for the purpose of carrying out the terms of this agreement. All vehicles used in the parking space must be less than twenty-one (21) feet in total length, including any trailer or other attachment. Licensee shall use the premises only for the parking of its vehicle and loading and unloading of passengers.
 - (iii) With the exception of a sound or public address system installed

on Licensee's vehicle for the purpose of communicating with its passengers during the tour and while on board the vehicle, Licensee is prohibited from using a radio, tape player, public address or speaker system, playing music, or otherwise making any noise which tends to annoy the general public, including the operation of a generator or other power producing device that creates either noise or smoke.

- (iv) County shall designate and choose the location of the parking space as it deems fit. Licensee shall have no recourse or cause of action should it be necessary for County to close or change the location of any or all designated parking spaces.
- (v) Licensee shall be responsible for performing those activities necessary in carrying out the activities authorized hereunder, including, but not limited to setting its own schedule, registering participants, and collecting fees. County shall not be obligated to undertake or perform any additional duties or responsibilities as a result of the license granted hereunder. County shall not, as a result of this agreement, be obligated to perform any action or activity not ordinarily and customarily performed in its operation of County right-of-way.
- (vi) Licensee shall only be allowed to use the premises between 10:30 a.m and 11:00 a.m. each day. All tours should be conducted in such a way that no loading or unloading of passengers occurs on the premises before or after that time. However, Licensee may use the premises outside of the times listed in this paragraph to **unload** passengers after the completion of a tour provided that Licensee does not do so during a time slot awarded to another tour operator. Licensee may only use the premises outside of the times assigned to it for the purpose of unloading passengers; Licensee shall not load new passengers. If Licensee uses the premises outside the times assigned to it, Licensee shall remain on the premises only as long as necessary to unload passengers, but in no event longer than fifteen (15) minutes. County shall not provide or allow any overnight parking facilities for any tour business.
- (vii) Licensee shall operate its tour business at its sole cost and expense. County shall not furnish or provide access to utilities for operation of Licensee's business. County shall not incur any charges, fees, or exactions for security of Licensee's business, nor for any local, state, or federal fees or taxes resulting from Licensee's operation of its business or use of the premises. County shall not be responsible for damage or theft to any of Licensee's property.

- (viii) County reserves the right to utilize the premises at those times it deems necessary, including but not limited to, in order to respond to an emergency situation and to perform maintenance on the premises or the surrounding area. County will make reasonable efforts to notify Licensee in advance before it utilizes the premises when possible, however, nothing in this agreement shall obligate County to provide advance notice of its utilization of the premises nor shall it negate County's authority to use the premises at any time it deems necessary without prior notice. Licensee shall not be allowed to use the premises at any time on July 4th; County will utilize the premises on that date.
 - (ix) The premises shall not be used for any illegal purpose, or in violation of any valid regulation of any governmental body, deed restriction, nor in any manner to vitiate the insurance or increase the rate of insurance on the premises. Licensee shall not permit any nuisance on or in the premises. Licensee shall not obstruct any right-of-way or sidewalk at any time during its use of the premises. Licensee shall not use the premises or allow or permit same to be used in any way or for any purpose that County, in its sole discretion, deems to be hazardous.
 - (x) Licensee accepts the premises in its condition as of the date hereof and affirms that it is suited for the uses specified herein.
 - (xi) Licensee shall, throughout the initial term of this agreement and all renewals thereof, at its expense, maintain the premises in good order and repair. Licensee agrees to return premises to County in as good a condition and repair as when first received by Licensee excepting normal wear and tear only. Licensee shall pay County on demand or cause to be repaired any damages to the premises or to any other part of any building or land caused by the negligence or willful act of misuse or abuse by Licensee or any of its agents, employees, contractors, invitees, or guests.
- (c) **Litter.**
- (i) Licensee shall be responsible for any litter which it generates as result of conducting its business on the premises. Licensee shall not use the premises or any public trash receptacle to dispose of any grease, oil, or similar substance which may cause harm to the environment.
 - (ii) Licensee shall cleanup any animal waste resulting from Licensee's

operations authorized hereunder. Such waste shall be deposited in a location suitable to County.

- (d) **Insurance.** Licensee, at its expense, shall at all times during the term of this agreement or any renewal thereof maintain in full force and effect comprehensive public liability insurance for any occurrence resulting in property damage, bodily or personal injury or death and consequential damages arising therefrom, with limits in amounts no less than the minimum amount required by Chapter 9 of Title 40 of the Official Code of Georgia, a/k/a the Motor Vehicle Responsibility Act. This insurance shall be in standard form generally in use in Georgia with insurance companies authorized to do business in Georgia, which are satisfactory to County.

Licensee shall provide County a Certificate(s) of Insurance for such liability insurance policy(ies) which lists County as an additional named insured on the liability insurance policy. The certificate must state that such coverage may not be canceled without thirty (30) days' written notice to County. Licensee shall not operate the premises without a valid, current insurance policy(ies) as described herein, which is approved by County.

- (e) **Compliance with Laws and Regulations.** Licensee's operations shall comply with all rules, regulations and ordinances governing the use of the premises and Licensee's operation as they exist and as they may be amended from time to time. If Licensee utilizes motor vehicles for its tours, Licensee shall be a bus carrier licensed by the Georgia Public Service Commission. Licensee shall not on the grounds either of race, color, sex, age or natural origin, discriminate or permit discrimination against any persons or group of persons in any manner prohibited by any statute or regulation of the State of Georgia and/or the United States of America. Licensee shall make the premises available on a fair, equal and non-discriminatory basis to the general public.
- (f) **Complaints.** Licensee shall respond to all complaints received and take appropriate corrective action where reasonably necessary. Licensee shall keep a complaint log listing all complaints together with a description of the complaint, when received and what action was taken as a result thereof (if any) and why that action was taken or why no action was taken. The complaint log shall also list any identifying information about the complainant which is known including name, address and phone number. The complaint log shall be available for inspection by County during normal business hours.
- (g) **Assignment.** Licensee may not assign this License without written permission from County, which will not be unreasonably withheld.

- (h) **Advertising.** No advertising shall be permitted on the premises except that which is authorized in writing by County.
 - (i) **Sound.** No device producing sound which is audible off the premises shall be permitted except with the consent of County, which consent may be withdrawn at any time.
 - (j) **Inspection.** Licensee, on an annual basis and at its own expense, shall prepare financial statements including income and expense statements and balance sheets in accordance with generally accepted accounting principals and furnish a copy of the same to County.
 - (k) **Administrative Review.** This Agreement may be reviewed annually or at any time by County to ensure compliance with the terms herein.
 - (l) **Interest.** This License does not constitute an interest in land.
6. TERMINATION WITHOUT CAUSE. County may revoke the license granted herein and terminate this agreement for any reason at any time upon notice to Licensee. Notice shall be deemed given on the date sent, if sent certified mail to the address for notice shown herein. County may forthwith re-enter the premises covered by this agreement and take possession thereof, and remove all persons and property therefrom, using such force as may be necessary. Should County revoke the license and terminate this agreement pursuant to this paragraph, Licensee shall not be entitled to any compensation or reimbursement for any losses to Licensee that may occur therefrom. Provided, however, County shall return one twelfth (1/12) of the license fee paid that year for each full month left in the current year. Licensee shall remain liable for all of its obligations under this License.
7. TERMINATION WITH CAUSE. The license granted herein allows only the Licensee or its employees the use of the premises. County may revoke the license and terminate this agreement if Licensee allows any party other than its employees to use the premises. Further, County may revoke the license granted herein and terminate this agreement if Licensee ceases the use of the premises. Licensee will be deemed to have ceased the use of the premises if the parking space is not used by Licensee for thirty (30) consecutive calendar days. In the event County revokes the license and terminates this agreement pursuant to this paragraph, Licensee shall not be entitled to any compensation or reimbursement for any losses to Licensee that may occur therefrom. In addition, Licensee will forfeit the license fee paid for that year.

In the event the premises, either prior to the commencement date of the term of this agreement or during the term hereof, shall be so damaged by storm, fire, lightning, earthquake or other casualties as to render them unusable for the

purpose(s) allowed under this agreement, then this agreement shall terminate as of the date of such destruction and payments due shall be accounted for as between County and Licensee as of that date.

8. NOTICES. All notices given pursuant to this agreement shall be sent to the following addresses:

As to County: Glynn County Administrator
701 "G" Street
1st Floor, Historic Courthouse
Brunswick, GA 31520

As to Licensee: Marshland Communications, Inc.
d/b/a St. Simons Trolley
649 Dellwood Avenue
St. Simons Island, GA 31522

It shall be the duty of each party hereto to notify the other in writing of any change of address for notices. Notices sent to the former address shall be valid if the notified party had failed to so notify of any change.

9. INDEMNITY. Licensee agrees to indemnify and hold harmless County, its officers, agents, and employees from and against all liability, loss, costs, damages, fees and expenses (including attorney's fees) for any suit, claims settlement, award, penalty, fine, defense or judgment because of loss or damage to any person, property or right arising out of or in consequence of this License and any of Licensee's operations authorized hereunder. This indemnity shall apply whether or not the loss or damage is caused or alleged to be caused in whole or in part by the joint or concurrent act or omission (whether negligent or otherwise) of Licensee or County or their agents, employees, invitees, permittees, or guests.

Licensee shall also require all individuals wishing to take a tour from Licensee to purchase a ticket, said ticket shall contain the waiver language contained in Exhibit "D"; releasing Glynn County its officers, agents, and employees from all liability prior to participating in the activities authorized hereunder. Such release shall not extend to acts caused by the lone, sole negligence or other act of any person or party claiming benefit of such provision.

10. WAIVER OR CHANGES. The failure of County to insist at any time upon the strict performance of any covenant or agreement herein, or to exercise any option, right, power or remedy contained in this agreement, shall not be construed as a waiver of or a relinquishment thereof for the future. No payment by Licensee or receipt by County of a lesser amount than the amount due or any adjustment of the amount to be paid by Licensee shall be deemed to be other than on account of the earliest such payment due hereunder, nor shall any endorsement or statement

on any check or any letter accompanying any check or payment for as payment due be deemed an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of such payment due or any other sum herein provided to be paid by Licensee, or pursue any other remedy provided for in this agreement.

11. ENTIRE AGREEMENT. This agreement consists of this Tour Operator License Agreement, all provisions of Bid Solicitation #00709, and Licensee's bid in response to Bid Solicitation # 00709. Bid Solicitation # 00709 and Licensee's response thereto are attached hereto as Exhibits "B" and "C" respectively and are incorporated by reference as if set out fully herein. This agreement contains the entire agreement of the parties and no representations, inducement or promises, oral or otherwise, between the parties not embodied herein shall be of any force and effect unless in writing and signed by both parties hereto. If any of the terms of this agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this authorization to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.
12. LAW: This agreement shall be interpreted and construed under the laws of the State of Georgia.
13. EXECUTION IN COUNTERPARTS: This agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

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GLYNN COUNTY:

By: _____, Chairman
Glynn County Board of Commissioners

ATTEST:

By: _____, Clerk
Glynn County Board of Commissioners

(SEAL)

LICENSEE:

By: _____

ATTEST:

By: _____

(SEAL)