ORDINANCE NO. 95-4

AN ORDINANCE AMENDING AND MODIFYING A FRANCHISE GRANTED TO CONCH TOUR TRAINS, INC., A FLORIDA CORPORATION, AND AMENDING AND MODIFYING ORDINANCE NOS. 737,69-16, 69-41, 71-48, 71-49, 74-9, 75-10, 76-33, 78-41, 80-3, **83-37** AND RESOLUTION NOS. 82-12, 83-50, COMMISSION SERIES OF THE CITY OF KEY WEST, FLORIDA, PROVIDING APPROVAL FOR TRANSFER OF THE FRANCHISE TO CONCH TOUR TRAINS, INC., PROVIDING A LICENSE TO OPERATE CITY-WIDE SIGHTSEEING SHUTTLE OPERATION; PROVIDING THAT ORDINANCE DOES NOT PROHIBIT CITY FROM OPERATING A SHUTTLE SERVICE; PROVIDING FOR CITY'S INSPECTION OF VEHICLES; PROVIDING FOR CITY'S INSPECTION OF SIGHTSEEING SHUTTLE SERVICE; REQUIRING COMPLIANCE WITH ALL TRAFFIC LAWS, ORDINANCES AND REGULATIONS; LIMITING ASSIGNMENT OF LICENSE EXCEPT WITH CONSENT OF CITY COMMISSION; **PROVIDING AN INCREASE OF** PUBLIC LIABILITY INSURANCE REQUIREMENTS **AND ADDING WORKERS' COMPENSATION INSURANCE;** PROVIDING **INCREASE** FOR CONSIDERATION TO CITY FOR GRANT; PROVIDING AN EXCEPTION TO ORDINANCE NO. 36-84 FOR ISSUANCE OF PERMITS AND OCCUPATIONAL LICENSES; PROVIDING FOR OPERATION OF SHUTTLE SERVICE WITHOUT EXCLUDING OPERATION OF CITY SHUTTLE OR PRIVATE TAXI SERVICE; EXCLUDING SIMILAR NEW OPERATIONS WITHIN 1000 FEET OF BOUNDARY OF EXISTING OPERATIONS AND PROVIDING FOR A DEPOT IN CRUISE SHIP AREAS, **AND THE KEY WEST BIGHT** AND EXCLUDING OTHER OPERATIONS FROM CITY PROPERTY WITHOUT PROHIBITING DESIGNATION OF DEPOT AREAS FOR TAXICABS OR CITY TRANSPORTATION; PROVIDING RIGHT AND LICENSE TO USE ALL STREETS, AVENUES, SIDEWALKS AND OTHER PUBLIC HIGHWAYS FOR A PERIOD OF 20 YEARS WITH AN OPTION TO RENEW; PROVIDING FOR NOTIFICATION TO CITY OF FARE INCREASES AND REPEALING PREVIOUS FARE PROVISIONS; PROVIDING NOTICE OF ACCEPTANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES OF SAID CITY IN CONFLICT WITH PROVISIONS OF THIS ORDINANCE; PROVIDING A SAVING CLAUSE; PROVIDING WHEN ORDINANCE GOES INTO EFFECT.

WHEREAS, WOMETCO Enterprises, Inc., a Corporation has sold and is desirous of transferring any rights, titles, interest, and authority granted to it under Ordinance Nos. 737, 69-16, 69-41, 71-48, 71-49, 74-9, 75-10, 76-33, 78-41, 80-3, and Resolutions Nos. 82-12 and 83-50 of Commission Series of the City of Key West, Florida to Conch Tour Train, Inc., a Florida Corporation, now, therefore,

WHEREAS, Conch Tour Train, Inc., desires to extend and modify its rights granted by Ordinance 83-37.

BE IT ENACTED by the City Commission of the City of Key West, Florida:

Section 1. The City approves and hereby gives its consent to the transfer of all of the right, title, and interest, and authority **extending and modifying the original rights granted to Conch Tour Train, Inc.,** originally granted to the Conch Tour Trains, Inc., and later transferred to WOMETCO Enterprises, Inc., by virtue of Ordinance Nos. 737, 69-16, 69-41, 71-48, 71-49, 74-9, 75-10, 76-33, 78-41, 80-1, and Resolution Nos. 82-12 and 83-50 of Commission Series, **retransferred to Conch Tour Train, Inc. by Ordinance No. 83-37** of the City of Key West, Florida to Conch Tour Trains, Inc., a Florida corporation. Said ordinances and resolutions shall remain in full force and effect as previously **passed and as** repealed, modified or amended except as modified and amended herein.

Section 2. GRANT. For the purpose of providing a citywide sightseeing shuttle service, there is hereby granted to Conch Tour Trains, Inc., a Florida corporation, a franchise treated herein as a license and hereinafter referred to as a license to operate a citywide sightseeing shuttle service which license shall include the right, privilege, and franchise to use all streets, avenues,

sidewalks, public easements and other public highways, within the corporate limits of the City of Key West insofar as said operation does not unreasonably interfere with public transportation or block traffic, and in so doing to employ and exercise the right hereby granted, subject at all times to the provisions, terms and conditions of this Ordinance.

Section 3. TERRITORY TO BE SERVED. The rights granted hereby shall be exercisable in and applicable to all sections of the City within the present or future corporate limits thereof.

Section 4. CITY INSPECTION OF TOUR TRAINS. All sightseeing shuttle motor vehicles hereunder shall be maintained in good repair so that they will be suitable and safe at all times for operation in public service. The Grantee shall permit the City to make such inspections of such motor vehicles as the City shall deem necessary in the public interests, and shall comply in every respect with the provisions of all Ordinances relating to the inspection of motor vehicles by the City.

Section 5. INSPECTION OF SIGHTSEEING SHUTTLE SERVICE. The City shall have the right to designate from time to time a municipal department, or one or more duly authorized representatives of the City, to exercise appropriate control, supervision, inspection and regulation by the City of the sightseeing shuttle service provided for herein.

Section 6. OBSERVANCE OF TRAFFIC RULES AND REGULATIONS. The Grantee shall observe, obey and comply fully with all present and future traffic laws and ordinances affecting the operation of motor vehicles, and shall also observe and carry into effect any rules, orders or regulations which may be promulgated by the City for the purpose of safeguarding public health, comfort, safety or property.

Section 7. LIMITATION ON ASSIGNMENT OF FRANCHISE. This license shall not be leased, assigned or otherwise alienated except with the consent of the City Commission as expressed by Ordinance, which consent shall not be unreasonable withheld.

Section 8. PUBLIC LIABILITY. The Grantee shall keep in full force and effect at all times during the effective period hereof, a liability insurance policy or policies, the terms and conditions whereof shall be such as to provide protection for the City and for all persons suffering injury, loss or damage to persons or to property by reason of the operation of any tour train or other motor vehicle employed as part of the sightseeing shuttle system provided herein. Such insurance policy or policies shall be executed by a company authorized to do business in the State of Florida and acceptable to the City. The City hereby expressly assumes no responsibility for injury or damage done or caused to persons or property by reason of the operation of said sightseeing shuttle system. The minimum limits of such policy or policies shall be one million dollars ($1,000,000.00) combined limit arising

out of one accident. Property damage shall be covered by minimum limit of $50,000.00. The limits of liability shall be subject to review at any time by the City to the end that an increase in the limits would accurately and fairly reflect an increase in potential liability due to inflation.

Section 8. PUBLIC LIABILITY INSURANCE. The grantee shall keep in full force and effect at all times during the effective period of this ordinance, liability insurance to provide liability insurance for the City and for all persons suffering injury, loss or damage to their persons or to property by reason of the negligent operation of each sightseeing shuttle vehicle operating by authority of this ordinance. Such insurance shall comply with the laws and regulations of the State of Florida. All insurance policies insuring said sightseeing shuttle vehicles shall be issued by an insurance company registered to do business in the State of Florida, subject to the laws and regulations of the State of Florida.

The City hereby expressly assumes no responsibility for injury or damage done or caused to persons or property by reason of the operation of said sightseeing shuttle operation. The minimum limits of such insurance policy or policies shall be as follows:

General Liability:	$ 1,000,000.00 per occurrence
Automobile Liability:	$ 1,000,000.00 per occurrence
Auto Physical Damage Liability:	$ 50,000.00 per occurrence
Statutory Workers' Compensation Insurance:	
Excess Liability or Umbrella Policy	$10,000,000.00 per occurrence

The City of Key West shall be named as an additional insured on the general liability policy. Certificates of insurance shall be filed and maintained with the City Clerk evidencing the minimum limits of insurance cited above.

Insurers issuing the above-referenced policies must maintain an A.M. Best rating of no less than B+ and be of a financial size category of V or higher. Retention for General Liability and Automobile Liability over $10,000.00 per occurrence shall require review and approval by the City of Key West. The limits of liability shall be subject to review at any time by the City to the end that an increase in the limits would accurately and fairly reflect an increase in potential liability due to inflation.

Section 9. CONSIDERATION FOR GRANT. During the period of time in which the Grantee is operating under this ordinance, the Grantee shall pay to the City 5% of the gross receipts it realizes from the operation of this sightseeing shuttle service or during the first three (3) years of the enactment of this ordinance $105,000.00 **the sum of $210,000.00** per year, whichever is greater. Provided that **Since** the Grantee **and Buggy Bus, Inc., d/b/a Old Town Trolley are both owned by Historic Tours of America, Inc., the Grantee** herein may apply, as credit toward this obligation, any amounts paid to the City by Buggy Bus Inc., or its successors, assignees, etc., during the same one-year period, under the terms of a similar ordinance **companion license enacted on even date herewith.** Said 5% of the gross receipts shall be paid at the end of each calendar month with a 15-day grace period. The yearly guaranteed payment of $105,000.00 **$210,000.00** minus credit as aforesaid shall be payable at the end of each 12-month period with a 30-day grace period.

The City realizes that the receipts from this operation depend almost entirely on tourist trade, therefore the Grantee shall be

excused from paying to the City a reasonable pro-rata portion of the said $105,000.00 **$210,000.00** in the event the tourist trade to the City is substantially interrupted by certain phenomena beyond the Grantee's control causing a loss of trade including but not limited to acts of God, serious recessions, etc. It is agreed that a 20% reduction in tourist trade over a one-year period as compared to an average of the previous three years as evidenced by the revenue produced by Ordinance No. 9-1981, known as the Tourist Development Tax Ordinance, or such number of years that the Tourist Development Tax is in effect, would be considered a substantial reduction of tourist trade; therefore, a reasonable pro-rata reduction of said guaranteed yearly payment shall be allotted. It is further agreed by the City to reduce the said $105,000.00 **$210,000.00** payment in a reasonable proportion to a loss of trade to the Grantee occasioned by allowing similar operations to any other future sightseeing or shuttle operations including the City, its agencies or authorities, other than Buggy Bus, Inc. d/b/a Old Twon Trolley. Furthermore, the City shall not make a grant to a similar private sightseeing shuttle operation whose terms and obligations are more favorable than those granted to the Grantee herein **and Buggy Bus, Inc.**

Section 10. PERMITS. As a special exception to City Ordinance No. 36-84 the appropriate officers of the City are authorized and directed to issue written permits and occupational licenses as the Grantee may need and apply for in the operation of

its sightseeing shuttle service. Said occupational licenses and permits shall be a vested property right in the Grantee so long as the Grantee pays the occupational license fee when due, existing separate and independent from this Ordinance. In all other respects Ordinance No. 36-84 remains in full force and effect.

Section 11. SHUTTLE SERVICE. It is the intention of the City to allow the Grantee to operate a shuttle service in addition to the traditional sightseeing operation. The Grantee may shuttle groups or individuals from place to place within the city corporation limits subject at all times to this Ordinance and provided that any receipts realized from said operation are subject to and included in Section 9, Consideration for Grant. This section shall not be construed to either prohibit nor allow private taxicabs or the City, its agencies or authorities from operating a shuttle service. Whether or not taxicabs or the City, its agencies or authorities, may enter into a shuttle service operation in competition with the Grantee shall be determined by applicable City, State and Federal law.

Section 12. PROHIBITION OF OTHER OPERATIONS WITHIN 1000 FEET. The City shall not issue any other occupational licenses, franchises, or pass any ordinance similar to this Ordinance, and does hereby prohibit sightseeing or shuttle services or any other similar type of operation, their representatives and agents from having offices, depots, load or unload passengers, sell tickets or

promote their business within 1,000 feet of the Grantee's existing depots, to wit: 303 Front Street, 501 Front Street, 3840 N. Roosevelt Boulevard, **and the newly granted depot at the Key West Bight. The location of the Bight Depot is subject to the approval of the Bight Board and the Community Redevelopment Agency.** Said 1,000 feet shall be measured from a point on the boundary of the subject property upon which each said depot is located to the closest point on the boundary of the property upon which any such sightseeing shuttle operation may be located, provided, however, that this provision shall not be construed as affecting any **legally** existing occupational licenses or franchises or renewals thereof, nor shall it be construed as affecting any occupational licenses or franchises for sightseeing tour services conducted by sea or by air.

The City shall designate a depot area immediately adjacent to the landing site of cruise ships or their tenders on City-owned property, street, sidewalk or easements **and The Key West Bight** to be used exclusively by the Grantee and/or Buggy Bus, Inc. The City shall not allow any other sightseeing or shuttle services to operate from or upon any City-owned or leased property other than Buggy Bus, Inc., an existing operation. This section shall not prohibit the City from designating depot areas for taxicabs or legal City transportation services. **This section does not prohibit taxicabs duly licensed under Section 92.00 Code of Ordinances from loading or unloading passengers at places otherwise permitted within 1,000 feet of said depots. Wherever the word "taxicab"**

appears in this Ordinance it means "Passenger Vehicle for Hire" as defined in section 92.01 of the Code of Ordinances.

Section 13. PERIOD OF GRANT. This license is hereby granted to Conch Tour Trains, Inc. a Florida corporation, and includes the right and license to use all streets, avenues, sidewalks and other public highways in the City for and during a period of twenty (20) years from and after the effective date hereof.

Section 14. REPEAL OF RATE PROVISIONS. The Grantee shall have the power to increase or decrease rates, fares and charges to users of its services provided, however, prior to increasing or decreasing rates, fares or charges, the Grantee shall notify the City and the City Commission may schedule a public hearing. All sections of previous ordinances and resolutions providing for fares and City approval thereof are hereby repealed.

Section 15. ACCEPTANCE. Within fifteen (15) days of the passage and adoption hereof, the Grantee shall file with the City Clerk written notice of its acceptance of all terms and conditions of this Ordinance, and both the City and Grantee shall thereafter be bound thereby.

Section 16. REPEALING SECTION. All ordinances or parts of ordinances of said City in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 17. SAVING PROVISION. If any section, part of section, paragraph, sentence or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered.

Section 18. WHEN ORDINANCE SHALL GO INTO EFFECT. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held on 18th January, 1995.

Read and passed on final reading at a regular meeting held on 7th February, 1995.

Authenticated by the presiding officer and Clerk of the Commission on February 8, 1995.

Filed with the Clerk February 9, 1995.

Dennis J. Wardlow, Mayor

ATTEST:

Josephine Parker, City Clerk

VFS.30417.03.2B

February 10, 1995

Josephine Parker, City Clerk
City of Key West Florida
City Hall
525 Angela St
Key West, Florida 33040

RE: Notice of Acceptance of Ordinance 95-4

Dear Ms Parker

In accordance with Section 15 of the above referenced Ordinance, please be advised that the Conch Train, Inc hereby accepts all the terms and conditions of said Ordinance.

If further action is required please advise.

Sincerely,

Edwin O. Swift III
President

I hereby acknowledge receipt of the above Notice of Acceptance

Josephine Parker
Date: February 10, 1995

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The Conch Tour Train
"Keeping Alive the Memories of Key West"
P.O. Box 1173, Key West, FL 33041 • (305) 294-5161
Member of National Tour Association, Inc., American Bus Association, Key West Attractions Association, and Florida Attractions Association