



**MEMORANDUM**

**TO:** Beverly R. Cameron, City Manager  
**FROM:** Karen Hedelt, Director of Economic Development and Tourism  
**DATE:** April 28, 2016  
**SUBJECT:** Approving a Franchise for FLY Fitness to Provide Tour Services in the City

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**ISSUE**

Shall the City approve a Franchise FLY Fitness to operate bicycling and running tours in the City?

**RECOMMENDATION**

The City Council should approve and authorize the City Manager to execute a one-year franchise agreement with FLY Fitness, an existing city business that plans to originate guided bicycling and running tours from its current location at 501 William Street.

**BACKGROUND**

FLY Fitness owner Catesby Payne successfully offers various exercise and fitness classes in her studio in downtown Fredericksburg. A native of the Fredericksburg area, she is also passionate about our region's history and proposes to blend fitness with narrated bicycling and running historic tours of the city.

Ms. Payne's proposal has been reviewed and vetted by other city staff, including representatives of the Police, Public Works and Parks, Recreation and Public Facilities staffs. She is taking precautions for the safety of the tour participants by limiting the tour group size and requiring all participants to use traffic safety vests. She now has several potential guides undergoing the city's education, testing and licensing process.

Initially Ms. Payne requested use of city trails as part of her tour route. However, with high usage of the trails from the general public and special events, she has decided to first get her tour service underway. She plans to alter the tour route regularly to keep the tours "fresh" and invite previous participants back for new information. She requests the ability to request use of the trails in the future a regular route revisions she anticipates to keep her torus new and interesting. Possible use of trails would be proposed in consultation with city staff and approved by the City Manager. Provision is made for this possibility in the tour franchise.

As the city strives to enhance its outdoor recreation offerings, bicycling and running tours will add a new element to the city's touring choices.

**FISCAL IMPACT**

There is a direct and indirect positive fiscal impact from permitting the bicycling and running tour operation in the city from business taxes and the commission fees received.

Attachments: Resolution  
Bicycling Tour Franchise Agreement



May 10, 2016  
Regular Meeting  
Resolution No. 16-\_\_

**MOTION:**

**SECOND:**

**RE: GRANTING THE NON-EXCLUSIVE FRANCHISE TO CATESBY PAYNE, D/B/A FLY FITNESS INSPIRATION STUDIO, LLC, TO PROVIDE GUIDED BICYCLING AND RUNNING TOUR SERVICES IN THE CITY**

**ACTION: APPROVED; Ayes: 0; Nays: 0**

**WHEREAS,** Catesby Payne has established an exercise and fitness business in the City of Fredericksburg; and

**WHEREAS,** outdoor recreation is a growing focus for tourism marketing; and

**WHEREAS,** cycling and running tours would provide a new means to present the city's heritage; and

**WHEREAS,** the City and FLY Fitness Inspiration Studio wish to establish a franchise agreement for guided bicycling and running tours, valid for one-year;

**NOW, THEREFORE, BE IT RESOLVED** that the non-exclusive franchise for tour services within the city is established for a one-year term. The City Manager is hereby directed to execute the attached franchise agreement, subject to the review and approval by the City Attorney.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

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***Clerk's Certificate***

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 16-\_\_ duly adopted at a meeting of the City Council meeting held Date, 2016 at which a quorum was present and voted.*

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***Tonya B. Lacey, CMC  
Clerk of Council***



## **BICYCLE AND RUNNING TOURS FRANCHISE AGREEMENT**

This agreement, dated \_\_\_\_\_ 2016, is between the **City of Fredericksburg, Virginia**, a municipal corporation, and **FLY Fitness Inspiration Studio, LLC** (“Franchisee”).

### **Recitals**

The Virginia General Assembly has granted the City the power to award franchises for the commercial use of its streets and other public property.

The City seeks to encourage and promote tourism within the city while maintaining the aesthetic charm and quality of life for residents of the City.

Ms. Payne of Franchisee has experience and expertise in group fitness instruction, including a freestyle cycling certification. She is also a native of Fredericksburg with knowledge of the City’s history.

The City intends to award a franchise to Franchisee, as described in this agreement.

### **Agreement**

#### **I.** **DEFINITIONS**

- 1.0 For purposes of this Franchise:
- .1 Franchisee: FLY Fitness Inspiration Studio, LLC, its employees and agents.
  - .2 Tour Guide: any person who acts or offers to act as a guide for customers of the Tour Service.
  - .3 Public Stand: any City-owned or controlled property alongside the curb of a street or in a parking area, which the City has designated by street marking and has reserved exclusively for the use of Franchisee or other tour service operators.
  - .4 Private Stand: any privately-owned or operated property which the owner has granted Franchisee permission to use under this franchise.
  - .5 Tour Service: leading a guided bicycle or running tour over a designated route.

#### **II.**

#### **GRANT OF NON-EXCLUSIVE FRANCHISE: FRANCHISE FEE**

- 2.1 The City hereby grants Franchisee a non-exclusive franchise to operate a Tour Service over and upon the public streets, alleys, trails, bridges, and other public property within the city limits. This franchise does not authorize Franchisee to use privately-owned streets, roads, or alleys, or allow Franchisee access to City-owned property not normally open to the public.
- 2.2 The Franchisee shall pay the City one dollar for the full term of the Franchise.
- 2.3 Nothing in this Franchise waives any requirement of the City Code or any City regulation regarding other permits, fees, taxes, or restrictions on the operation of tour services, unless specifically provided in this agreement.

- 2.4 By its execution of this franchise, Franchisee accepts the legal right of the City to issue this franchise and to impose the requirements set forth by the franchise agreement.

### **III. TERM**

- 3.1 This franchise begins on May 1, 2016 and expires on May 1, 2017.
- 3.2 The Franchisee shall notify the City at least 60 days before the expiration of the franchise as to whether it wishes to renew the franchise for another term.
- 3.3 Upon the expiration or termination of the franchise, Franchisee shall remove, at its own expense, all of its equipment and other property from City property, and restore any public property that Franchisee has altered them or caused to be altered to its former condition. If Franchisee fails to remove its property or restore altered public property within 30 days of a written request by the City, the City may perform the work at the Franchisee's expense.

### **IV. TOUR GUIDES**

- 4.1 Anyone seeking to be a Tour Guide must apply for and receive a license from the City Manager before acting as a Tour Guide.
- 4.2 Applicants for a Tour Guide license must provide to the City Manager:
- a) state-issued identification;
  - b) a recent photograph of the applicant;
  - c) if the City Manager requires that the applicant visit any tourist attractions, a certification, signed by the applicant, that he has done so;
  - d) an application fee of \$25; and
  - e) any other information required by the City Manager.
- 4.3 The City Manager will design and administer a test of local history and specific historic attractions in the Fredericksburg area. No person may act as a Tour Guide before taking this test and demonstrating, to the City Manager's satisfaction, a minimum level of expertise in these subjects.
- 4.4 When the City Manager approves an application, he will issue the applicant a Tour Guide license, which will include a photo ID. This ID must be visible at all times when the Tour Guide is conducting tours for the Franchisee. The ID is the property of the City and must be returned to the City Manager upon expiration, revocation, or suspension of the license.
- 4.5 A Tour Guide license expires five years after the date on which it was issued, or upon the expiration or termination of this Franchise, whichever comes first. Renewal applicants must meet the same requirements as first-time applicants.
- 4.6 The City Manager may impose reasonable continuing education requirements on Tour Guides.
- 4.7 The City Manager may suspend or revoke a Tour Guide's license for failure to comply with any provision of this franchise or any law, ordinance, or regulation affecting or regulating the activities of the Tour Service while the licensee is acting as a Tour Guide. The City Manager will provide written notice to the licensee of the potential suspension or revocation and inform the licensee of his right to an administrative hearing before the City Manager. The City Manager's decision is final.

**V.**  
**RATES, FEES, SCHEDULES, ROUTES**

- 5.1 The City may offer promotional information about Franchisee's services. The Franchisee shall keep the City Manager informed of all circumstances (e.g. cancellation of tours) that might result in the City offering incorrect information on Franchisee's rates, fees, schedules, or routes. The Franchisee shall regularly supply the City Manager with copies of all Tour Service promotional materials offered or distributed by the Franchisee. The Franchisee's services must not cost more than the amount advertised in the promotional materials supplied to the City Manager; this does not apply to any customized or specialized tour rate which has been separately negotiated and is not a regularly scheduled tour.
- 5.2 For the first 90 days of the franchise, rates will be \$25 per person per tour, and tours will run Monday-Friday 8:30am-12:30pm and 4pm-6:30pm with weekends potentially added after the first 30 days. After that 90-day period, the Franchisee may establish its own rates, fees, schedules, and routes, subject to the review and approval of the City Manager as set forth in §§ 5.3 and 5.4. Information regarding rates, fees, schedules, and routes must be publicly available at all times, along with a City Manager-issued certificate showing the name, address, and business phone number of the Franchisee.
- 5.3 The Franchisee must submit all proposed rates, fees, schedules, and routes to the City Manager at least ten days before their effective date. The City has no authority to regulate Franchisee's regular rates or fees unless they violate the terms of this franchise. The City Manager may disapprove schedules or routes if, in his opinion, they would disrupt traffic, City government operations, or the operations of City tourist attractions. Temporary promotional rate reductions are not considered rate changes for purposes of Article V.
- 5.4 The City may adjust schedules and tour routes due to special projects and festivals in the City.

**VI.**  
**OPERATION OF TOUR SERVICE**

- 6.1 The Franchisee shall maintain a business office within the city for the operation of the Tour Service at all times during the term of this franchise. The office must maintain a mailing address within the city and a phone number capable of receiving reservations, customer inquiries, and complaints during normal business hours, seven days a week.
- 6.2 The City Manager may impose reasonable conditions and regulations on the Tour Service, such as a maximum number of bicycles/runners per tour group, required number of guides per tour group, hours of operation, and regulations to ensure the flow of traffic is not impeded. For the first 90 days of the franchise, tour groups will be no larger than the guides plus 5 customers. Group size after the that 90-day period is subject to approval of the City Manager.
- 6.3 The Franchisee shall maintain all bicycles used by Tour Guides and all bicycles offered as rentals in safe mechanical condition, with all safety equipment intact and operative, at all times. Franchisee shall maintain all safety gear such as helmets used by Tour Guides and offered to customers in a proper, safe, and sanitary condition.
- 6.4 Franchisee shall require all Tour Guides and bicycle tour customers to wear bicycle helmets and safety vests during the riding portions of the Tour Service.

- 6.5 If Franchisee finds personal property left by a Tour Service customer, it shall deliver the property to the City of Fredericksburg Visitor Center within four hours. The Visitor Center shall retain the property on behalf of the owner for at least 60 days.
- 6.7 The City shall designate at least one Public Stand for Franchisee's exclusive use for beginning and ending tours. The Franchisee shall only load and unload passengers at Public Stands designated by the City and Private Stands approved of in advance by the City Manager. The City may move Public Stands and regulate their use by Franchisee. The City shall mark the location of Public Stands with signs or street markings.
- 6.8 The Franchisee may place, from one hour before Tour Service begins for the day until Tour Service ends for the day, one temporary, two-sided portable sign in the vicinity of each Stand. Franchisee shall ensure that these signs comply with all applicable City ordinances regulating temporary portable signs.

## **VII.** **SOLICITATION**

- 7.1 The Franchisee will not take any action which creates the impression that the Tour Service is owned by or affiliated with the City.
- 7.2 The Franchisee will not solicit verbally or by gesture, directly or indirectly, on public property, or within or in front of any historic attraction open to the public, except as specifically permitted by this franchise. The only location from which Franchisee may solicit is the immediate vicinity of Public and Private Stands permitted under Section VI. The Franchisee's solicitation will not distract or interfere with vehicle or pedestrian traffic, and will not be audible more than 30 feet from a Stand.
- 7.3 The Franchisee may not harass or interfere with the operations or solicitations of any other tour service franchisee, nor may it harass or interfere with any person's peaceful enjoyment of City tourist attractions.

## **VIII.** **CONSUMER PROTECTION**

- 8.1 The City Manager may allow Franchisee's customers to file written comments at the City Visitor Center. If he does, Franchisee's website must display a notice indicating that comment forms are available from Tour Guides, and that the forms can be filed at the Visitor Center.
- 8.2 The Franchisee shall make reasonable and timely efforts to respond to any customer complaints.
- 8.3 If the City Manager feels that a pattern of customer complaints has cast doubt on the reliability or quality of Franchisee's services, he may require Franchisee to appear at an administrative hearing to report on its performance. The Franchisee shall cooperate fully with the City in providing information for the hearing, and provide all requested reports within ten days following the hearing.

## **IX.** **INSPECTIONS, REPORTS**

- 9.1 The City Manager may inspect any records, documents, vessels, equipment, and other property of Franchisee during regular business hours. This specifically includes tax records and returns. The City may not disclose any information specifically identified by Franchisee as proprietary and confidential, unless the information is offered as evidence by the City in an enforcement or legal proceeding brought under the terms of this franchise.

- 9.2 Franchisee shall send the City Manager, upon request, a written report containing:
- (i) A summary of the previous year's activities, including services begun or discontinued, average number of customers per month, and total number of miles traveled per month;
  - (ii) An audited financial statement, including a statement of income, a balance sheet, and a statement of sources and applications of funds, specifying all significant accounting policies and practices upon which it is based;
  - (iii) A statement of projected costs for maintenance and expansion planned during the next year;
  - (iv) If Franchisee is a corporation, a list of officers and members of its board and the boards of any parent corporations, and a copy of its most recent financial statement; and
  - (v) A copy of Franchisee's rules and regulations applicable to customers of the Tour Service.

**X.**  
**INDEMNIFICATION AND INSURANCE**

- 10.1 To the maximum extent allowed by law, the Franchisee shall, at its sole cost and expense, release, indemnify, and hold harmless the City, its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for injuries or damages arising out of its operations under this Franchise. Indemnified expenses include all out-of-pocket expenses, such as costs and attorney's fees, and the reasonable value of any services rendered by the City Attorney or his designee or any other employees of the City in connection with claims, suits, etc.
- 10.2 The Franchisee shall maintain, throughout the term of this Franchise:
- A. General liability insurance for owned, non-owned, and rented vehicles, with coverage for comprehensive form, premises-operation, explosion and collapse hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury, with minimum coverages of:  
  
\$1,000,000 for property damage, per occurrence;  
\$1,000,000 for personal bodily injury to any one person; and  
\$1,000,000 for bodily injury aggregate per single accident or occurrence.
  - B. Workers' compensation and employer's liability coverage, valid in Virginia, with the minimum coverages of the statutory limit for workers' compensation and \$100,000 for employer's liability.
- 10.3 The Franchisee shall provide the City with insurance certificates verifying these coverages within thirty days after the beginning date of this franchise and annually thereafter. All policies must name the City as an additional name insured. All certificates must indicate that policies may not be terminated or modified without thirty days prior written notice by the insurer to the City.

**XII.**  
**DEFAULT; REMEDIES**

- 11.1 The Franchisee is in default of this Franchise if it:
- (i) fails to comply with any law, ordinance, rule, or regulation governing any part of the operations of the Tour Service; or
  - (ii) fails to comply with any provision of this Franchise.
- 11.2 If any provision of the Franchise is found by any court to be invalid, the City Manager has the sole discretion to either sever the provision from the Franchise or to terminate the Franchise upon reasonable notice to the Franchisee.

- 11.3 The City Manager shall send written notice of any known default to the Franchisee by certified mail and give the Franchisee a reasonable length of time (at least seven days) to cure the default.
- 11.4 If the default is not cured by this deadline, the City Manager shall send written notice by certified mail that this Franchise could be suspended or terminated. The notice will state the date of an administrative hearing to be held at least fourteen days after the date notice was sent. The notice will inform the Franchisee of its right to present evidence, call and cross-examine witnesses, and be represented by counsel at the hearing. Following the hearing, the City Manager may suspend or terminate this Franchise, or take other appropriate remedies to ensure compliance with its terms. The City Manager shall notify the Franchisee of his decision by certified mail.
- 11.5 The Franchisee may appeal the City Manager's decision to the City Council. The appeal must be filed in writing with the Clerk of the City Council within thirty days of the date of the City Manager's decision. Council may affirm, modify, or reverse the City Manager's decision.

## **XII.** **MISCELLANEOUS**

- 12.1 Any legal action brought to interpret or enforce any provision of this franchise is subject to the exclusive jurisdiction of the Circuit Court of the City of Fredericksburg, Virginia. This franchise is governed by and will be interpreted in accordance with Virginia law.
- 12.2 Force Majeure. Any act required to be done by either party may be excused or the time for performance extended due to any delay caused by an act of God, war, civil disturbance, fire, casualty or similar occurrence beyond the control of the non-performing party.
- 12.3 The failure of the City at any time to require performance by Franchisee of any provision of this franchise does not affect the right of the City to enforce that provision at a later time. The waiver of any breach by the City of any provision is not a waiver of any later breach of that provision nor a waiver of that provision itself.
- 12.4 The rights and remedies reserved to the City by this franchise are cumulative and are in addition to any other rights or remedies that the City may have.
- 12.5 This franchise does not create a joint venture or principal-agent relationship. Neither party is authorized to act toward third persons or the public in any manner that would indicate such a relationship with the other.
- 12.6 All notices from one party to the other must be send to:

City:	City Manager	Franchisee:
	City of Fredericksburg	
	P.O. Box 7447	
	Fredericksburg, VA 22404	

unless a party has notified the other party in writing of a change of address.

- 12.7 If the City decides to alter the any city street or make other public improvement that, in the City Manager's sole discretion, requires Franchisee to relocate, modify, or suspend its operations, the City Manager shall give at least 7 days' notice to Franchisee. The City Manager may require Franchisee to

remove its signs and other property to facilitate the project. The City is not liable for any losses, injuries, or damage suffered by Franchisee due to such a decision.

- 12.8 The Franchisee shall not deny service or access or otherwise discriminate against any person, including customers, on the basis of race, color, religion, national origin, age, or sex. The Franchisee shall comply at all times with applicable laws and regulations regarding equal employment opportunities.
- 12.9 This franchise may not, either in whole or in part, be sold, assigned, transferred, leased, or disposed of by merger, consolidation, or any other method. Neither legal nor equitable title, nor any right or interest in the franchise, may pass or vest in any person or entity, nor may the controlling interest in any corporation holding the franchise be changed without the prior written consent of the City Manager. This includes actual working (*de facto*) control by minor interest holders.
- 12.10 The provisions of this Franchise are to be liberally construed in order to effectuate its purposes, consistent with the public interest.
- 12.11 This Franchise, with any attachments, represents the entire understanding and agreement between the parties. It supersedes any prior oral negotiations or written instruments between the parties. It can only be amended by written agreement signed by both parties.
- 12.12 This franchise is executed by the City Manager by authority of Ordinance 16-\_\_\_, adopted by the City Council of the City of Fredericksburg, Virginia on \_\_\_\_\_, 2016.

**CITY OF FREDERICKSBURG, VIRGINIA**

By:

\_\_\_\_\_  
Beverly R. Cameron, City Manager

Attest: \_\_\_\_\_  
Deputy Clerk of Council

Approved as to form: \_\_\_\_\_  
Kathleen Dooley, City Attorney

**FLY Fitness Inspiration Studio, LLC**

By:

\_\_\_\_\_

Witness: \_\_\_\_\_