

## AGREEMENT FOR SERVICES

This Agreement For Services (this “Agreement”) is entered into the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between the City of South Bend, acting by and through its Board of Parks Commissioners (the “City”), and Diamond Tours, Inc., a Florida corporation with its address at 13100 Westlinks Terrace, Suite 1, Fort Myers, Florida 33913 (the “Provider”) (each a “Party” and collectively the “Parties”).

### RECITALS

WHEREAS, the City intends to continue, through its Venues Parks and Arts Department (“VPA”), to promote programs for its citizens; and

WHEREAS, the City is in need of professional services for coordinating group trips it offers to its citizens; and

WHEREAS, the Provider herein wishes to fulfill the needs of the City by providing services for coordinating the City’s group trips; and

WHEREAS, the City has determined that due to Provider’s experience and expertise, it is the best interest of the City to retain the services of Provider and to do so pursuant to the terms hereof.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and Provider hereby agree as follows:

1. Services. The Provider will provide to the City the professional services (the “Services”) set forth in the Provider’s proposal attached hereto as Exhibit A (the “Scope of Work”). In the event of any conflict between the terms of this Agreement and the terms of the Scope of Work, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

2. Compensation. In exchange for the Provider’s satisfactory performance of the Services, and subject to the terms and conditions of this Agreement, the City will pay the Provider as set forth in Exhibit A. The total consideration under this Agreement for the (Trip Location), (Date of Trip), shall not exceed \_\_\_\_\_ single rate, \_\_\_\_\_ double rate and \_\_\_\_\_ triple rate for rooms with \_\_\_ minimum and \_\_\_ maximum participants. Total amount to be determined at time of invoice with number of participants. The City will pay the Contract Amount upon invoicing by the Provider as described in the Scope of Work. The City will not be required to pay any invoice if any material default or breach of this Agreement by the Provider exists, that is not remedied by Provider, within 24 hours, upon receipt of written notice from the City.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider’s satisfaction of all its obligations hereunder and the City’s final payment therefor. Notwithstanding the foregoing,

effective immediately upon delivery of a written termination notice to the Provider, a minimum of 30 days prior to the departure date, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to appropriation by the City. If the City makes a written determination at least 30 days prior to the departure date, that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider's performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. Failure to complete the Services in accordance with this Agreement will be considered a material breach. In the event of such breach, the City may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity. The Provider shall repay to the City any portion of the Contract Amount expended for matters not within the scope of the Services.

5. Point of Contact. The Contract Administrator identified in Section 10 below will serve as the City's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third-party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither Party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

7. Indemnification. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the City, its officials, directors, employees, and agents. The City hereby agrees to defend, indemnify, and hold harmless the Provider, its directors, employees and agents from any and all claims of any nature which arise from the performance of the City under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the Provider, its directors, employees and agents. The obligations of the Parties under this Section shall survive the termination of this Agreement.

8. Work Product; Ownership. The Provider will submit its work product to the City in accordance with the terms of the Scope of Work. Any and all work product submitted by the Provider to the City as part of the Provider's performance of the Services will become the exclusive

property of the City, and the City will have the right to use and reproduce copies of the Provider's work product as the City determines in its sole discretion without compensation to the Provider except the compensation expressly provided for in this Agreement.

9. Limitation of Liability. Notwithstanding anything to the contrary and the fullest extent permitted by law, the City agrees that the total liability of the Provider in connection with this Agreement, whether in contract, tort, negligence, breach or otherwise, shall not exceed the Contract Amount.

10. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

<u>Provider:</u>	<u>City:</u>
Diamond Tours, Inc.	Howard Park Recreation Center
13100 Westlinks Terrace	City of South Bend
Suite 1	321 E. Walter Street
Fort Myers, FL 33913	South Bend, IN 46614
Attn: Jeffery Ferraro	Rose Kaufman, Contract Administrator

11. Equal Opportunity. The Provider shall comply with federal, state, and local law in its hiring and employment practices and policies for any activity covered by this Agreement.

12. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana.

13. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.

14. Non-Collusion. The undersigned attests, subject to the penalties of perjury, that he is the Provider and that he has not entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

15. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

16. E-Verify. The Provider hereby certifies that it does not and will not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Provider subsequently learns is an unauthorized alien. The Provider agrees that he/she/it shall enroll in and verify the work eligibility status of all of the Provider's newly hired employees through the E-Verify program as defined by Ind. Code 22-5-1.7-3.

17. Contractor's Affidavit. The Provider agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute and submit to the City and any other appropriate bodies an affidavit in the form attached hereto as Exhibit B.

18. Counterparts. This Agreement may be executed in counterparts which when taken together shall constitute one fully executed original.

**IN WITNESS WHEREOF**, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

[Signatures on following page]

**DIAMOND TOURS, INC.**

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARKS COMMISSIONERS**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Mark Neal, President

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
Consuela Hopkins, Vice President

\_\_\_\_\_  
Aimee Buccellato, Member

\_\_\_\_\_  
Dan Farrell, Member

ATTEST: \_\_\_\_\_  
Eva Ennis, Clerk

**EXHIBIT A**

**Scope of Work**

[See attached.]

**EXHIBIT B**

**Non-Collusion, Non-Debarment Affidavit Non- Iran Form 2016**

[See attached.]