

**OPERATING AGREEMENT  
BETWEEN  
CITY AND BOROUGH OF SITKA  
AND  
XXXX**

**FOR MARINE VESSEL HAUL OUT AND SHIPYARD OPERATIONS**

The City and Borough of Sitka (“Owner”) desires the firm XXXX (“Contractor”) to Provide Marine Vessel Haul Out and Shipyard Operations. This Operating Agreement (“Agreement”) is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Agreement.

This Agreement also consists of:

- Exhibit A – Scope of Services/Facilities – 3 pages, dated \_\_\_\_\_
- Exhibit B – Fee Schedule for Shipyard Services, dated \_\_\_\_\_ (XX pages)
- Exhibit C – MOU between the State of Alaska and City and Borough of Sitka Management Plan for Sawmill Cove Industrial Park

**SECTION 1. DEFINITIONS**

For the purpose of this Agreement, the terms used in this Agreement shall have the following meaning:

- A. “Owner” shall mean the CITY AND BOROUGH OF SITKA, Alaska.
- B. “Contractor” shall mean XXXX, a Partner, Associate, or any other person acting for and/or on behalf of the firm XXXX.
- C. “Owner’s authorized representative” shall mean the person set forth in Section 12 of this Agreement.
- D. “Days” shall mean calendar days.

**SECTION 2. TERM AND DURATION**

This Agreement begins **Month \_\_\_\_\_, 2025** and ends June 30, 2030. It will be automatically extended for up to five (5) one-year renewal terms provided Contractor’s performance is deemed acceptable and the terms of this Agreement are found to remain in the public interest following completion of an Annual Review by Owner. This Agreement may be extended beyond June 30, 2035 by the mutual written agreement of Owner and Contractor.

**SECTION 3. FACILITIES**

The Owner will make available to the Contractor certain equipment and adjacent property at the Gary Paxton Industrial Park (GPIP), as depicted in **Exhibit A** to the Agreement (“Facilities”).

*Operating Agreement between the City and Borough of Sitka and XXXX  
For Marine Vessel Haul Out and Shipyard Operations.*

The Owner shall have the right to make additions, alterations, or improvements to the Facilities which do not impede Contractor's access to or use of the Facilities, except as required to perform necessary repairs to the Facilities.

#### **SECTION 4. SCOPE OF SERVICES**

The Contractor agrees to perform Shipyard Services at and using the Facilities as set out in the attached **Exhibit A** in a prompt, efficient, prudent, and economical manner including the provision of all clerical personnel, laborers, and supervision necessary to perform such Shipyard Services. The Contractor shall exercise independent judgment in performing its obligations and responsibilities under this Agreement in compliance with all OSHA regulations.

- A. Exclusive and Non-Exclusive Rights
  - 1. Contractor shall have exclusive rights to use of the 150-ton Marine Travel Lift ("Travel Lift") twenty-four (24) hours per day, seven (7) days per week and up to **square feet** of Contractor storage.
  - 2. Contractor shall have non-exclusive rights to use of all other Shipyard Facilities. Such use shall be coordinated with Owner. Contractor shall not unreasonably hinder use of other Facilities by persons permitted by Owner to use other Facilities under the Owner's "Open Shipyard" policy.
  - 3. Contractor shall have non-exclusive rights to use Owner's real property at the Shipyard within the boundaries shown in **Exhibit A**. Contractor shall not unreasonably hinder use of Owner's real property at the Shipyard by persons permitted by Owner to enter and occupy Owner's real property at the Shipyard under Owner's "Open Shipyard" policy. Contractor shall allow and coordinate other use of the Shipyard by vessel owners to maximize use of the Shipyard for its intended purpose.
- B. Services by Other Persons at Shipyard. A person other than Contractor may provide services at the Shipyard to vessel owners that do not require use of the Travel Lift. Contractor shall coordinate use of the Shipyard by others.
  - 1. Shipyard Services. Shipyard Services means lifting, launching, blocking, washing, lay days, hang time, and other services provided to Shipyard customers at rates set by Owner performed by Contractor at the Shipyard. Services provided by Contractor for ship repair or any business activity currently conducted by Contractor that is invoiced directly to the customer at rates set by Contractor are not Shipyard Services. Provision of utilities is a Shipyard Service. Provision of dry dockage space and on-site storage are Shipyard Services.

#### **SECTION 5. PERFORMANCE/ANNUAL REVIEW**

Contractor agrees to perform the work on a non-exclusive basis, when requested, as

described in Exhibit A. On or before **August 1** of each year during the initial or extended term of this Agreement, Owners shall provide Contractor a written statement of whether Contractor's performance during the previous calendar year has been acceptable and whether the terms of this Agreement have been found by Owner to remain in the public interest. If the Owner deems Contractor's performance not acceptable or that the terms of this Agreement do not remain in the public interest, Owner and Contractor shall negotiate in good faith for an amendment to the Agreement effective on the anniversary date of the initial term.

## **SECTION 6. CONTRACTOR COMPENSATION**

The Owner agrees Contractor may retain all payments made to Contractor for Shipyard Services and other services provided by Contractor to Shipyard users subject to Owner's Compensation required by Section 8 of this Agreement. Contractor is responsible for billing and collection of charges from vessel owners for Shipyard Services.

## **SECTION 7. RATES**

Rates Contractor must invoice for use of Facilities and Shipyard Services are identified in the attached **Exhibit B** and may be changed only upon approval of the Assembly of the City and Borough of Sitka. The Contractor shall be bound by any future modification or amendments to rates made by the Assembly. Rates for other services provided by Contractor to vessel owners may be set by Contractor. All such sums shall be charged against the vessel or cargo and shall be collected by the Contractor, and a portion thereof remitted by the Contractor to the Owner as required by this Agreement.

## **SECTION 8. OWNER COMPENSATION**

On or before the first day of each month during the initial or any extended term hereof, Contractor shall pay Owner \$\_\_\_\_\_. In addition to this fixed monthly payment commencing **Month 1, 2025** on or before the thirtieth day of each month during the initial or extended term, Contractor shall pay Owner a sum equal **XXXX percent (X%)** of the gross receipts of Contractor from all Shipyard Services received during the previous calendar month, including all utility expenses. Owner will invoice the Contractor monthly for all utility expenses. Such remittances shall be accompanied by appropriate itemized documentation.

## **SECTION 9. OWNER RESPONSIBILITIES**

- A. Owner shall provide all parts, materials, and consumables necessary for the maintenance and operation of the Facilities. Owner will designate an employee knowledgeable in the maintenance routine of the Shipyard to help transition service documentation and schedules for the Facilities.
2. If any replacement equipment is necessary due to excessive maintenance costs or major repairs, Contractor and Owner will come to an agreement in writing regarding either the acquisition of new equipment or the use of Contractor equipment.

- 3.
4. Owner will reimburse Contractor for all major repair work that falls outside general maintenance subject to prior approval in writing of the Municipal Administrator and Contractor on the scope and cost of the major repair work. For purposes of this Agreement, "major repair work" is repairs whose estimated costs exceed ten thousand dollars (\$10,000.00).
- B. Owner will make available all utility connections, however, Contractor shall be responsible for all Shipyard utilities. This includes all water, sewer, electricity, and fuel necessary for the operation and maintenance of the Facilities.
- C. Owner shall be responsible for Shipyard property grading and major snow removal.
- D. Owner will complete a Phase I environmental assessment within sixty (60) days of commencement of this Agreement.
5. Owner shall be responsible for preparing all annual environmental reports on the Shipyard wastewater system and submitting the reports to the State of Alaska Department of Environmental Conservation.
- E. Owner shall be responsible for the 150-ton Marine Travel Lift Certification.

#### **SECTION 10. RELATIONSHIP OF PARTIES**

Contractor shall perform its obligations under this Agreement as an independent Contractor of Owner. Owner may administer the Agreement and monitor Contractor's compliance with its obligations. Owner shall not supervise or direct Contractor other than as provided in this section.

#### **SECTION 11. ASSIGNMENTS**

Unless otherwise allowed by this Agreement or in writing by Owner, any assignment by Contractor of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by Contractor to assign any part of its interest or delegate duties under this Agreement shall give Owner the right immediately to terminate this Agreement without any liability for work performed.

The Owner reserves the right to approve all subcontractor contracts.

#### **SECTION 12. DESIGNATION OF REPRESENTATIVE**

The Parties agree that, for the purposes of this Agreement, the Owner shall be represented by and may act on through the Municipal Administrator or such other person as he/she may designate in writing.

### **SECTION 13. DEFAULT AND TERMINATION**

The Owner may declare a default hereunder and terminate this Contract, in addition to exercising any other available remedy, upon the occurrence of any of the following:

- A. The failure of the Contractor to pay any sum of money due under this Agreement within ten (10) days after the due date.
- B. The failure of the Contractor to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money, which is not cured within thirty (30) days after notice thereof from the Owner to the Contractor, unless the default is of a kind that may be cured, but not within such thirty (30)-day period, in which case no default shall be declared so long as the Contractor shall commence the curing of the default within such thirty (30)-day period and thereafter shall diligently and continuously prosecute the curing of same.
- C. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against the Contractor, or the filing of a voluntary or involuntary petition proposing the adjudication of the Contractor as bankrupt or insolvent, or the reorganization of the Contractor, or arrangement by the Contractor with its creditors, unless the petition is filed or case commenced by a party other than the Contractor and is withdrawn or dismissed within ninety (90) days after the date of its filing.
- D. The admission in writing by the Contractor of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of the Contractor, unless such appointment shall be vacated within ten (10) days after its entry; the Contractor making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of the Contractor.

### **SECTION 14. INSURANCE**

- A. Contractor shall at all times during the term of this Agreement, maintain in good standing the insurance described in Subsection B. Before rendering any services under this Agreement, Contractor shall furnish Owner with proof of insurance in accordance with Subsection B in a form acceptable to the Risk Manager for Owner; such proof of insurance shall be incorporated into this Agreement.
- B. Type of coverage (may include umbrella):
  - 1. Minimum Scope of Insurance
    - a. Commercial Marine Liability
    - b. Commercial Automobile Liability Insurance
    - c. Pollution Insurance
  - 2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- a. Commercial Marine Liability: \$1,000,000 combined limit per occurrence for bodily injury and property damage claims. The general aggregate limit shall be \$2,000,000.
- b. Commercial Auto Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c. Pollution insurance: \$5,000,000 combined single limit per loss applicable to bodily injury, property damage, cleanup costs and defense. Coverage shall apply to sudden and non-sudden pollution conditions.
- d. Umbrella Liability Insurance: The Contractor shall procure and maintain during the life of this Agreement umbrella liability insurance, not less than \$5,000,000 combined single limit per occurrence and aggregate for bodily injury and property damage claims arising from all operations related to this Agreement.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

a. Commercial Marine Liability and Automobile Liability and Pollution.

(1) The City and Borough of Sitka, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City and Borough of Sitka, its officers, officials, employees and volunteers.

(2) The Contractor's insurance coverage shall be primary insurance as respects the City and Borough of Sitka and its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City and Borough of Sitka, its administrators, officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

(3) The Contractor's insurer shall agree to waive all rights of subrogation against the City and Borough of Sitka, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the City and Borough of Sitka.

b. Employer's Liability. The Contractor's insurer shall agree to waive all rights of subrogation against the City and Borough of Sitka, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the City and Borough of Sitka.

c. All Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by

either party, reduced in coverage or in limits except after thirty (30) days prior written notice for nonpayment of premium or fraud on the part of the Contractor or sixty (60) days prior written notice for any other reason by certified mail, return receipt requested, has been given to the City and Borough of Sitka. Such notice shall be mailed by the Contractor's insurer(s) to the attention of the Municipal Administrator for the City and Borough of Sitka.

4. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A-: VII
5. Verification of Coverage. Contractor shall furnish the City and Borough of Sitka with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and Borough of Sitka, or which meet industry standard (ACORD form). The City and Borough of Sitka reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### **SECTION 15. IDEMNITY**

Contractor agrees to indemnify, defend, and hold the City and Borough of Sitka and its administrators, officers, agents, employees, volunteers and servants harmless from and against any and all claims, demands, actions, losses, expenses, and liabilities for, or related to, loss of or damage to property or injury to or death of any person relating to or arising or resulting in any way from the performance by the Contractor or any of its subcontractors under the Agreement, or the work or services provided or the condition or use thereof, regardless of any negligence of the City and Borough of Sitka or their respective agents or employees, excepting only such loss, damage, injury or death which results solely from the negligence or willful misconduct of the City and Borough of Sitka.

#### **SECTION 16. COPYRIGHTS AND RIGHTS IN DATA**

All documents produced under this Agreement are the property of Owner, including notes, drawings, reports and other technical information referred to as work products, except items which have pre-existing copyrights. Payments to Contractor for services include full compensation for all work products produced by Contractor and its subcontractors.

All such subject data furnished by Contractor pursuant to this Agreement are instruments of its services in respect to this particular project. It is understood that Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If Owner reuses the subject data without Contractor's specific written verification of adaption, such reuse will be at the risk of Owner, without liability to Contractor. Any such verification of adaption requested in writing by Owner at Owner's sole option will entitle Contractor to further compensation at rates

agreed upon by the Parties.

#### **SECTION 17. RESPONSIBILITY OF CONTRACTOR**

At all times during Contractor's performance of services under this Agreement, Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

#### **SECTION 18. COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall, in the performance of the Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance hereunder.

#### **SECTION 19. NONDISCRIMINATION**

- A. Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.
- B. Contractor shall state, in all solicitations or advertisements for employees to work on jobs relating to this Agreement, that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood.
- C. Contractor shall include the provisions of Subsection A in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of Contractor under this Agreement.
- D. Contractor shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

#### **SECTION 20. RECORDS AND AUDIT**

The Owner, in cooperation with the Contractor, agrees to maintain sufficient and accurate records and books of hauls and launches, including detailed hauling profiles of each vessel, complete date and time records, showing all direct labor hours expended and all costs incurred and the same shall be provided in a timely fashion to the Owner for its record keeping. Contractor shall maintain such records for a period at least equal to the period established by the City and Borough of Sitka records retention schedule or any subsequent amendment thereto following expiration or termination of this agreement.

#### **SECTION 21. NOTICES**



Any notice required pertaining to the subject matter of this Agreement shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

**OWNER:**

City and Borough of Sitka  
Municipal Administrator  
100 Lincoln Street  
Sitka, AK 99835

**CONTRACTOR:**

XXXX  
XXXXX  
ADDRESS  
City, ST XXXXX

**SECTION 22. CLAIMS AND DISPUTES**

If Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, Contractor shall immediately notify in writing Owner's authorized representative. If the matter cannot be resolved within seven (7) days, Contractor shall, within the next fourteen (14) days, submit a written notice of the claim to Owner. Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Agreement under which the claim is made. This procedure covers all claims by Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Agreement. Contractor agrees that unless these written notices are provided, Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

**SECTION 23. SUCCESSORS AND ASSIGNS**

The Parties bind themselves, partners, successors, assigns and legal representatives to the other Party to this Agreement and to partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement.

**SECTION 24. PERMITS, LAWS AND TAXES**

Contractor shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Agreement. All actions taken by Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. Contractor shall pay all taxes pertaining to its performance under this Agreement.

**SECTION 25. ATTORNEY'S FEES**

In the event either party institutes any suit or action to enforce its right hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs in such suit or action and on any appeal therefrom.

## **SECTION 26. NON-WAIVER**

The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part, or the right of such Party to enforce each and every provision.

## **SECTION 27. AMENDMENT**

- A. This Agreement shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Agreement as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Agreement, the only authorized representatives of the Parties are:
  - 1. \_\_\_\_\_ - For Contractor
  - 2. John Leach, Municipal Administrator - For Owner
- C. Any attempt to amend, modify or change this Agreement by either an unauthorized representative or unauthorized means, shall be void.

## **SECTION 28. SEVERABILITY**

Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Agreement.

## **SECTION 29. JURISDICTION - CHOICE OF LAW**

Any civil action rising from this Agreement shall be brought in the Alaska Superior Court at Sitka. The laws of the State of Alaska shall govern the rights and obligations of the Parties under this Agreement.

## **SECTION 30. INTEGRATION**

This instrument and all exhibits, appendices and amendments embody the entire Agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement shall supersede all previous communications, representations, or Agreements, either oral or written, between the Parties.

## **SECTION 31. FORCE MAJEURE**

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.

- B. As used in this Agreement, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Agreement, including without limitation:
1. Any interruption, suspension or interference resulting solely from the act of Sitka or neglect of Sitka not otherwise governed by the terms of this Agreement.
  2. Strikes or work stoppages.
  3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, pandemics, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  4. Order, action, or failure to act, by a court, administrative agencies or governmental officers other than Sitka.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement, on the date and at the place shown below.

**CITY AND BOROUGH OF SITKA, ALASKA**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: John Leach  
Its: Municipal Administrator

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: \_\_\_\_\_

**CONTRACTORS NAME**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: XXXX  
Its: President

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by XXXXX, President for the CONTRACTORS NAME, an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: \_\_\_\_\_