

**CONTRACT BETWEEN OWNER AND CONTRACTOR
TO PROVIDE CONVENTION AND VISITORS BUREAU SERVICES
TO THE CITY AND BOROUGH OF SITKA, ALASKA**

City and Borough of Sitka (“Owner” or “CBS”) desires the GREATER SITKA CHAMBER OF COMMERCE, INC., (“Contractor”) to Provide Convention and Visitors Bureau Services. This Contract to Provide Convention and Visitors Bureau Services (together with all exhibits and attachments hereto to and all amendments and modification to such contract or exhibits, collectively the “Contract”) to the City and Borough of Sitka is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Contract. This Contract describes Sitka Convention and Visitors Bureau duties and obligations, which include effective marketing and promotion of Sitka’s visitor attractions and tourism related services. The primary goal is to increase the level of visitor traffic to enhance the economy and maintain tourism related businesses in Sitka.

This Contract also consists of the following which are incorporated into and made a part of the Contract.

- Statement of Interest
- Exhibit A - Scope of Services (2 pages)
- Exhibit B - Compensation and Payment (1 page)

SECTION 1. DEFINITIONS

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

- A. “Owner” shall mean the CITY AND BOROUGH OF SITKA, Alaska.
- B. “Contractor” shall mean the GREATER SITKA CHAMBER OF COMMERCE, INC., an Alaska non-profit corporation, and any **partner, associate**, or any other person acting for and/or in behalf of the GREATER SITKA CHAMBER OF COMMERCE, INC.
- C. “Owner’s authorized representative” shall mean the person set forth in Section 20 (B)(2) of this Contract.
- D. “Days” shall mean calendar days.

SECTION 2. CONTRACT TIME

- A. This Contract becomes effective when signed and dated by both Parties.
- B. Contractor shall commence performance of the work identified in Section 4 immediately following receipt of the Notice to Proceed.

- C. Except as expressly allowed under this Contract, Owner need not grant Contractor any extension in the time provided to complete the work under this Contract. If Contractor's progress falls behind the project schedule, Contractor shall commit additional resources to the prosecution of the work, or take such other additional steps as are reasonably necessary to assure the completion of the work on schedule, all at no additional cost to Owner.

SECTION 3. CONTRACTOR QUALIFICATIONS

- A. The Contractor expressly represents and warrants it is now and shall continue to be at all times during the performance of this Contract, the holder of all required or necessary professional, business or other licenses or permits and is qualified and capable of performing all of the work covered or called for by this Contract and is presently ready, able and willing to undertake and perform all of such work and services, and to supply all necessary materials and equipment at the times, and in a professional and workmanlike manner and pursuant to the terms, conditions and provisions, and for the compensation and payments as herein provided.
- B. All actions taken by Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. Contractor shall timely pay all federal, state and local sales, excise or other taxes or assessments incurred by the Contractor.

SECTION 4. SCOPE OF SERVICE

- A. The services to be performed by Contractor shall include all services required to complete the tasks set forth and described on Exhibit A, and shall be in accordance with all applicable statutes, Sitka General Code provisions, ordinances, rules, and regulations.
- B. The Statement of Interest provided by the Contractor, and incorporated into this Contract, shall be treated as a broad general intent of Contractor as to how the Scope of Services under this Contract shall be performed, and, Contractor shall not be held to strict performance of elements of the Statement of Interest which are not specifically contained within Exhibit A. Both parties mutually agree, however, that a gross deviation by the Contractor from the intent set forth in the Statement of Interest, especially in regards to governance and management accountability, shall potentially form a reason for Termination for Cause as outlined in Section 6.

SECTION 5. CONTRACT TIME PERIOD

- A. The term of this Contract shall commence on **January 1, 2019** and end at the end of the business day **December 31, 2021**.

If the Contractor complies with all terms and conditions of this Contract at all times until December 31, 2021, Owner shall have the right (hereafter "Renewal Option") to renew this contract for the period Jan. 1, 2022 to December 31, 2022; and if Contractor complies

with all the terms and conditions of the Contract at all times thereafter, Contractor and Owner may agree to a Renewal Option for subsequent one-year periods up to 5 one-year periods subject to Owner's approval for each new Renewal Option. In order to exercise these Renewal Options, Owner shall give Contractor written notice on or before August 1, 2021, or on or before August 1st of any subsequent year, of its intent to renew this Contract whereupon Contractor will have 10 days to accept or reject Renewal Option. If the Owner fails to exercise a Renewal Option, this Contract shall terminate on December 31st of that year.

SECTION 6. TERMINATION

This Contract may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Owner or Contractor, provided that Owner or Contractor notifies the other of its intent to terminate under this paragraph at least 6 months prior to the effective date of the termination.
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Contract; provided, however, that as a condition of the exercise of its right of termination under this subsection the terminating Party shall notify the other Party of its intent to terminate this Contract and state with reasonable specificity the grounds, and the defaulting Party shall have failed, within 60 days of receiving the notice, to cure the default.
- D. Termination pursuant to this section shall not affect the Parties' continuing obligations under this Contract.

SECTION 7. DUTIES UPON TERMINATION

- A. If either Owner or Contractor terminates this Contract for convenience, either shall pay the other, the reasonable value of all expenses incurred and services rendered prior to actual termination date. Payment under this section shall never exceed the total compensation possible under Section 10. All finished and unfinished reports and materials prepared by Contractor shall become the property of Owner.
- B. If this Contract is terminated for cause, Owner shall pay Contractor reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Owner because of Contractor's failure to perform its contractual obligations. Any finished or unfinished documents or materials shall become the property of Owner at its option. Under no circumstances shall payment under this section exceed the percentage value of work completed as defined by Exhibit Band under Section 9. Under no circumstances shall payment under this section exceed the total compensation possible under Section 9.

- C. If Contractor has received payments prior to termination in excess of the amount to which it is entitled under Subsection A or B of this section, Contractor shall remit such excess to Owner within 60 days after receipt of notice to that effect.
- D. Contractor shall not be entitled to compensation under this section until Contractor has delivered to Owner all documents, records, work products, materials, and equipment owned by City and Borough of Sitka, related to this Contract and requested by Owner.
- E. If Contractor's services are terminated, for whatever reason, Contractor may not claim any compensation under this Contract other than allowed under this section.
- F. The Owner need not recognize any claim by Contractor for reimbursable expenses or costs incurred after the 60 day notice of termination period under section 7C.

SECTION 8. INDEMNIFICATION

- A. Each Party (the "Indemnitor Party") shall indemnify, defend, save, and hold the other Party (the "Indemnatee Party") harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of the Indemnitor Party occurring during the course of or as a result of the Indemnitor Party's performance pursuant to this Contract.
- B. The Indemnitor Party shall is required to indemnify, defend, save, and hold the Indemnatee Party harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising in wrongful or negligent acts, errors or omissions solely of the Indemnatee Party occurring during the course of or as a result of the performance of this Contract.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both Parties, Contractor shall indemnify, defend, save and hold Owner harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from Contractor's wrongful or negligent acts occurring during the course of or as a result of Contractor's performance pursuant to this Contract.

SECTION 9. PAYMENT

- A. For Contractor's Contract Services and Expenses, as described in Section 4 of this Contract, compensation will be paid as set forth and described on Exhibit B, subject to Contractor's satisfactory performance, unless mutually agreed upon by both Parties prior to commencing additional work.
- B. Each year, the Assembly of the City and Borough of Sitka will have a worksession with the Contractor. During this worksession the contractor will include the marketing plan, budget, visitor statistics and plans for the future.
- C. Either party to this contract may request that the compensation to Contractor be

renegotiated. Any renegotiated contract amount must be approved by the Assembly of the City and Borough of Sitka. If a request for renegotiation is not initiated by either party, the existing contract compensation amount and payment schedule shall remain in place.

- D. Contractor shall submit invoice(s) to Owner's authorized representative, as set forth and described on Exhibit B.
- E. Owner shall make payment on invoices as set forth and described on Exhibit B with approval by Owner's authorized representative.
- F. Contractor shall be entitled to no compensation under this Contract beyond the amount of Owner's express obligation under subsection A above.
- G. The amount to be paid for additional services, at the option of Owner, shall be negotiated by the Parties prior to the execution of amendments to this Contract for this work.

SECTION 10. AUDIT: ACCESS TO RECORDS

- A. Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Contract. The Owner's authorized representatives shall have the right to examine such records and accounting procedures and practices.
- B. The Owner's authorized representative shall have the right to examine all books, records, documents and other data of Contractor related to the pricing and performance of the Contract, and any change or modification for the purpose of evaluating the accuracy, completeness, and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations, and projections used.
- C. The materials described in this section shall be made available at the business office of Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of 3 years from the date of final payment under this Contract and for such longer period, if any, as may be required by applicable statute or other provisions of this Contract.
- D. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Contract shall be made available to Owner by Contractor until such claims or litigation have been concluded.

SECTION 11. INDEPENDENT CONTRACTOR

- A. The parties hereto expressly agree that the Contractor shall be and is an independent contractor and is not an employee or agent of the Owner and is, therefore, entitled to no insurance coverage, whether worker's compensation or otherwise and no other benefits accorded to Owner's employees. No withholding, FICA or other taxes (whether income,

sales or otherwise) or other amounts will be withheld from the payments due to the Contractor, it being understood that the Contractor is solely responsible therefore, provided Owner shall be entitled to withhold such retainage or other amounts from any progress or other payments as have been provided for elsewhere in this Contract.

- B. Contractor shall perform its obligations under this Contract as an independent Contractor of Owner. Owner may administer the Contract and monitor Contractor's compliance with its obligations. Owner shall not supervise or direct Contractor as provided in this section.
- C. The parties hereto agree that the Contractor is not and shall not be construed to be a partner, joint venture, employee or agent of the Owner, and shall not and is not authorized to enter into or make any contracts, agreements to into any understanding with any other person, corporation, partnership, joint venture or other entity, in the name of or for the benefit of the Owner.

SECTION 12. CONTRACTOR RESPONSIBLE FOR PERSONNEL

The Contractor has or will secure, all personnel required to perform this Contract in a timely and proper manner. The parties hereto agree and understand that such personnel shall in no event be deemed to be and are not employees, agents, or representatives of the Owner, and the Owner shall have no responsibility or liability whatsoever to any of said persons or for the acts or omissions of any such persons.

SECTION 13. ASSIGNMENTS

Unless otherwise allowed by this Contract or in writing by Owner, any assignment by Contractor of its interest in any part of this Contract shall be void.

SECTION 14. CONFLICT OF INTEREST

The Contractor covenants, warrants and represents that the Contractor has no interest and shall not acquire any interest, direct or indirect which would conflict in any manner with the subject matter or the performance of this Contract. The Contractor further covenants, warrants and represents that in the performance of this Contract, no person having any such interest shall be employed.

SECTION 15. 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 Contract, 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 Contract, so as to be binding upon every such subcontractor or vendor of Contractor under this Contract.
- D. Contractor shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

SECTION 16. COPYRIGHTS AND RIGHTS IN DATA

- A. All documents produced under this Contract 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.
- B. All such subject data furnished by Contractor pursuant to this Contract 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. NOTICES

- A. Regular Communications. For communications between the Parties on personnel issues or on matters of a confidential nature the Parties' respective points of contact shall exclusively be the Municipal Administrator of CBS and the President of Contractor, or their respective designees. For all other regular or routine communications with respect to this Contract the Parties designate the following persons as their respective primary points of contact:

OWNER Point of Contact:

Name: Community Affairs Director

Telephone: 1.907.747.1824

Email: maegan.bosak@cityofsitka.org

CONTRACTOR Point of Contact:

Name: Executive Director

Telephone: 1.907.747.8604

Email: director@sitkachamber.com

- B. Formal Notices. Any notice required under this Contract 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
Attn: Community Affairs Director
100 Lincoln Street
Sitka, AK 99835

CONTRACTOR:

Greater Sitka Chamber of Commerce Inc.
Attn: Board President
104 Lake Street
Sitka, AK 99835

SECTION 18. 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 outside of this contract by a third party or outside entity, 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. 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 Contract under which the Claim is made.

SECTION 19. SUCCESSORS AND ASSIGN

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

SECTION 20. AMENDMENT

- A. This Contract 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 Contract as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Contract, the only authorized representatives of the Parties are:
 - 1. President of the Board - For Contractor
 - 2. Municipal Administrator - For Owner
- C. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means, shall be void.

SECTION 21. INSURANCE

A. Contractor shall at all times during the term of this Contract, maintain in good standing the insurance described in Subsection B. Before rendering any services under this Contract, 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 Contract.

B. Type of coverage:

1. Comprehensive General Liability

Occurrence Limit	\$1,000,000
Products and Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000

2. Workman's Compensation
Employers Liability Alaska Statutory

3. Comprehensive Automobile Liability \$1,000,000
Including all owned, hired and non-owned vehicles

C. Insurance Notes

1. Owner shall be named as an additional named insured on the required general liability and automobile insurance policies. The Owner shall also be granted a full waiver of any rights of subrogation by endorsement under all required policies with the exception of Professional Errors and Omissions. These requirements extend to all subcontractors.
2. Contractor is required to notify Owner if any policy is to be canceled, materially changed, or renewed, at least thirty days prior, by written notice sent by certified mail.

SECTION 22. CHANGES OR MODIFICATIONS

Any change in any regulations or requirements applicable to the work called for herein, made, caused or imposed by, or as a result of the action of any state, federal or other governmental agency that has or will provide all or any portion of any funds for payment for the work or project which is the subject of this agreement, shall automatically become a part of, and amendment to this agreement and the Contractor shall comply there with.

SECTION 23. NON-WAIVER

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

SECTION 24. SEVERABILITY

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

SECTION 25. JURISDICTION - CHOICE OF LAW

Any civil action rising from this Contract 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 Contract.

SECTION 26. INTEGRATION

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

IN WITNESS, the parties execute this agreement through their duly authorized representatives, and represent that their duly authorized representatives are authorized to sign this agreement between Owner and Contractor to provide Convention and Visitor Bureau Services to the City and Borough of Sitka, on behalf of the party they represent.

CITY AND BOROUGH OF SITKA

**GREATER SITKA CHAMBER OF COMMERCE.
INC.**

Municipal Administrator

President of the Board

Date: _____

Date: _____

IRS TAX I.D. NO. _____

ATTEST:

LEGAL REVIEW:

Municipal Clerk

Municipal Attorney

Date: _____

Date: _____

ACKNOWLEDGMENTS

STATE OF ALASKA)
)ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____
20____ by _____, **Municipal Administrator** of the City and
Borough of Sitka, an Alaska municipal corporation, for the corporation on behalf of the
corporation.

WITNESS my hand and official seal the day and year in this certificate above written.

(SEAL)

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF ALASKA)
)ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____
20____ by _____, the (title of office) _____ of
(name of organization) _____ for and on behalf
of the organization.

WITNESS my hand and official seal the day and year in this certificate above written.

(SEAL)

Notary Public for State of Alaska
My Commission Expires: _____