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## MEMORANDUM

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**To:** Mayor Westover and Members of the Assembly  
Jim Dinley, Municipal Administrator

**From:** Michael Harmon, P.E. Public Works Director

**Reviewed:** Jay Sweeney, Finance Director  
Tammy O'Neil Contract Coordinator

**Date:** February 22, 2012

**Subject:** **Transit Services RFP for Marine Passenger Fee Fund  
Old Sitka Dock to Centennial Hall or O'Connell Bridge parking area**

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**Background:**

Halibut Point Marine (HPM) constructed a deepwater dock (Old Sitka Dock) at their marine haul out facility on Halibut Point Road. HPM submitted a proposal to CBS to consider using a portion of the Commercial Passenger Excise Tax (CPET) funds to support transportation of cruise passengers between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area. On November 29, 2011 the Sitka Assembly approved the "Old Sitka Dock Improved Passenger Access Project" proposal with amendments. To date, HPM has not been able to secure a commitment from cruise line(s) to dock at their facility; however they continue to pursue such an agreement.

Public Works has incorporated direction provided by the Assembly on January 24, 2012 into a RFP to obtain a transit service provider to transport cruise ship passengers from the Old Sitka Dock to Centennial Hall or O'Connell Bridge parking area.

**Recommendation:**

Approve the Request for Proposals for Transit Services between Old Sitka Dock & Centennial Hall or O'Connell Bridge parking area and authorize the Administrator to advertise the Request for Proposals.

REQUEST FOR PROPOSALS (RFP)  
by  
THE CITY AND BOROUGH OF SITKA, ALASKA  
for  
TRANSIT SERVICES BETWEEN OLD SITKA DOCK & CENTENNIAL HALL  
OR O'CONNELL BRIDGE PARKING AREA

The City and Borough of Sitka (CBS) wishes to hire a licensed passenger transportation company to provide Free cruise passenger and crew member transit services between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area for the 2012 cruise ship season. The passenger transportation company will be reimbursed a maximum of \$3.00 round trip per revenue cruise passenger based on the certified letter from each ship detailing the number of revenue passengers. Due to the uncertainty of Cruise Ships using the Old Sitka Dock and availability of funds all bids for this service may be rejected by the CBS. After opening the bids the CBS has 45 days to make a decision on whether to award the contract to the lowest responsible and responsive bidder. If the CBS decides not to award the contract all bids and bonds will be returned to the respective bidders. If the CBS decides to award the contract the contract will be awarded to the qualified Contractor which charges the lowest fee for this service. If no ships dock at the Old Sitka Dock no payments will be made.

REQUEST FOR PROPOSALS (RFP)  
by  
THE CITY AND BOROUGH OF SITKA, ALASKA  
for  
TRANSIT SERVICES BETWEEN OLD SITKA DOCK & CENTENNIAL HALL  
OR O'CONNELL BRIDGE PARKING AREA

**A. Overview**

The City and Borough of Sitka (CBS) wishes to hire a licensed passenger transportation company (Contractor) to provide free cruise passenger and crew member transit services between Old Sitka Dock to Centennial Hall or O'Connell Bridge parking area for the 2012 cruise ship season. Due to the uncertainty of Cruise Ships using the Old Sitka Dock and availability of funds all bids for this service may be rejected by the CBS. After opening the bids the CBS has 45 days to make a decision on whether to award the contract to the lowest responsible and responsive bidder. If the CBS decides not to award the contract all bids and bonds will be returned to the respective bidders. If the CBS decides to award the contract the contract will be awarded to the qualified Contractor which charges the lowest fee for this service. If no cruise ships dock at Old Sitka Dock no payments will be made. Background information and specific contract requirements follow.

**B. Background**

Halibut Point Marine (HPM) constructed a deepwater dock (Old Sitka Dock) at their marine haul out facility on Halibut Point Road. HPM submitted a proposal to CBS to consider using a portion of the Commercial Passenger Excise Tax (CPET) funds to support transportation of cruise passengers between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area. On November 29, 2011 the Sitka Assembly approved the "Old Sitka Dock Improved Passenger Access Project" proposal with amendments. To date, HPM has not been able to secure a commitment from cruise line(s) to dock at their facility; however they continue to pursue such an agreement.

**C. General Contract Requirements**

The goal of CBS and HPM is to provide safe and efficient free transit services for cruise passengers and crew members between Old Sitka Dock to Centennial Hall or O'Connell Bridge parking area. The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock. Designated pickup/drop off areas will be identified by CBS and HPM at their respective properties. The Downtown drop-off location (Centennial Hall or O'Connell Bridge parking area) will be determined by the Harbormaster in consultation with the vessel agent. Typically the location will be the location not used by a lightering cruise ship. Contractor's shuttles must not block traffic to drop off or pick up passengers at non-approved locations. Contractor shall be required to keep an accurate count of both revenue passengers and crew members for each shuttle trip. Minimum level of service shall be as follows:

- The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock.
- Maximum cruise passenger and crew member waiting time shall not exceed 15 minutes at either location.

- The contractor shall provide ADA accessible shuttles and provide assistance to ADA passengers as needed to help load and unload the ADA passengers.
- The final shuttle departing from Centennial Hall or O'Connell Bridge parking area at the end of the day must arrive at Old Sitka Dock prior to the cutoff time specified by the ship. That time must be identified and posted in the front of each shuttle in plain sight at the start of each day.
- Contractor shall provide a customer support liaison at both the Old Sitka Dock and the Centennial Hall or O'Connell Bridge parking area to coordinate loading and unloading. The customer support liaison shall provide onshore support to organize the vehicle cuing and coordinate the passenger loading and unloading.
- While traveling to and from the Old Sitka Dock advertisement for third party tours and other third party activities are not allowed on the shuttle vehicles.
- The selected transportation company has 30 days to obtain State of Alaska and USDOT licenses required to operate an interstate passenger transport company. In the event of failure to obtain the required licenses within the 30 day time limit the City and Borough of Sitka (CBS) may declare the selected transportation company in breach of the agreement effected by the acceptance of the bid. The bid guarantee will be forfeit and the CBS may award the contract to the next lowest responsible bidder.
- Contractor shall provide a report of the number of passengers and crew transported each trip. The information shall be submitted to the Public Works Department no later than the 10<sup>th</sup> of the month for the previous month.

Penalties may be assessed for the Contractor's failure to meet the level of service requirements.

- \$50 per passenger that exceeds the maximum 15-minute waiting time.
- \$100 per passenger or crew member delayed by the Contractor from arriving at Old Sitka Dock by the cutoff time specified by the ship.
- \$1000 per passenger or crew member delayed by the contractor from arriving at the Old Sitka Dock prior to the ship sailing for any reason whatsoever. In addition to the \$1000 penalty the contractor is responsible for but not limited to all costs of lodging, cab fares, shuttle service, meals, and incidentals including a change of clothing and scheduled airline transportation of the passenger to the next port of call for the cruise ship.

If this is not possible due to airline schedule or Sitka was the last port of call of the cruise ship the passenger will be returned to the cruise ships final destination no later than the scheduled arrival by the cruise ship. If the arrival is delayed such that the passenger's connections are missed the contractor will pay for any additional costs associated with rescheduling the passenger to their final destination including but not limited to lodging, cab fares, shuttle service, meals and incidentals. The contractor is also responsible for collecting the passenger's luggage from the cruise ship and delivering it to the passenger prior to departure from the final cruise ship destination.

This contract will be awarded to the Contractor charging the lowest fee for this service. The Contractor's Bid Proposal Rate must not exceed \$3.00 per revenue generating passenger. The number of revenue generating passengers on each ship is reported in a certified letter upon sailing. The CPET funds are allocated to each community based on the number of revenue

generating passengers. Currently, HPM estimates that 90% of passengers will disembark each vessel berthed at Old Sitka Dock. For the purposes of this contract, the debarkation rate shall be defined as 90% of the certified revenue generating passenger count. The following formula shall be used as the basis of payment to the Contractor:

$$\begin{array}{ccccccc}
 \text{Debarkation} & & & & & & \\
 \text{Rate} & & & & & & \\
 \text{(90\%)} & & & & & & \\
 & \times & & \times & & = & \\
 & & \text{Number of} & & \text{Contractor's} & & \text{Payment} \\
 & & \text{Revenue} & & \text{Bid Price} & & \text{to} \\
 & & \text{Generating} & & \text{(\$3.00 MAX)} & & \text{Contractor} \\
 & & \text{Passengers} & & & & 
 \end{array}$$

The Contractor will be paid on a monthly basis based on the number of revenue generating passengers arriving at Old Sitka Dock during the previous month. It will be the Contractor's responsibility to collect and provide CBS with the certified letter from each ship detailing the number of revenue passengers and provide the required passenger and crew member counts with each request for payment. If no cruise vessels berth at Old Sitka Dock, no payment will be made to the Contractor.

If multiple low bids are submitted, the contract will be awarded to the Contractor best qualified to provide the service based on the scoring criteria identified in Section D of this RFP. The contract will be for one (1) year or cruise ship season. With mutual agreement, two (2) additional one-year extensions may be awarded for the 2013 and 2014 cruise ship seasons respectively. The debarkation rate used in the payment formula may be adjusted in each additional year based on the actual rate documented by prior seasons.

The Contractor is required to maintain insurance for the life of the contract. The limits of liability for the insurance required shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Worker's Compensation – Minimum Limits:  
Employer's Liability and Worker's Compensation – Statutory as required by Alaska Worker's Compensation Statutes.  
U.S. Longshoremen & Harbor Workers' (USL&H) if required
2. Comprehensive General Liability – Minimum Limits:  
Single Limit \$5,000,000  
Aggregate \$10,000,000
3. Comprehensive Automobile Liability – Minimum Limits:  
Bodily Injury and Property Damage, including all owned, hired and non-owned vehicles - \$5,000,000

**D. Requirements for Proposal**

Contractors submitting proposals must include the following information:

1. A letter of interest signed by an authorized representative of the Contractor.
2. A narrative describing the Contractor's experience with operating and maintaining a passenger transportation company.
3. Completed Bid Form (see attached) indicating Contractor's bid price not to exceed \$3.00 per revenue generating passenger.

4. A copy of current Alaska Business License.
5. Spreadsheet detailing transit vehicle fleet to include make, model, year, mileage, passenger capacity, and ADA capabilities of each vehicle. Table should include all available transit vehicles including subcontractors (if applicable).
6. Operational plan and proposed daily schedule. For the purposes of this proposal, the plan shall assume typical port call duration from 7AM to 5PM. The plan shall identify rotational and operational schedules for pickup and drop-off, emergency backup plans in the event of equipment breakdown, and Customer Care Policy (CCP). The CCP shall cover what information will be presented and displayed to the passengers that may impact their experience in Sitka. The CCP shall address how passengers will be taken care of if they miss their ship, have an emergency or medical need, smoking policy, etc.

In the event of two low bidders, responses to this RFP will be evaluated and ranked based on the following criteria (100 points total):

1. Contractor's overall qualifications and experience (20 points)
2. Vehicle fleet (20 points)
3. Operational Plan (60 points)
  - a. Operations, emergency plan, etc. (20 points)
  - b. Schedules (20 points)
  - c. Customer Care Policy (20 points)

#### **E. Submissions and Inquiries**

Sitka encourages disadvantaged, minority, and women-owned Contractors to respond.

Submit four (4) copies of your Proposal to:

City and Borough of Sitka, Municipal Clerk  
100 Lincoln Street,  
Sitka, Alaska 99835

Proposals will be received until **Friday March 30, 2012 2:00 p.m. local time.**

Any questions regarding this project should be directed to Stephen Weatherman, P.E., Municipal Engineer, at [stephen@cityofsitka.com](mailto:stephen@cityofsitka.com), (907) 747-4042.

Dates of Publication:

Sitka Daily Sentinel:	3/19, 3/21, 3/23 & 3/26
Juneau Empire:	3/21 & 3/26

## INSTRUCTIONS TO BIDDERS

### TRANSIT SERVICES BETWEEN OLD SITKA DOCK TO CENTENNIAL HALL OR O'CONNELL BRIDGE PARKING AREA SITKA, ALASKA

1. Bidders shall submit their bid on the Bid Proposal Form included in these specifications. All spaces must be filled in. Each bid **must** be submitted in a sealed envelope, addressed to the Municipal Clerk, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835.

**The envelope shall be clearly marked with the following information on the outside:**

- Name and address of the Bidder
  - Bid for: Transit Services Between Old Sitka Dock & Centennial Hall or O'Connell Bridge parking Area
  - Due Date: \_\_\_\_\_, 2011
2. Bidders must satisfy themselves of the conditions as stipulated in the Agreement. After the bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the Agreement.
  3. Due to the uncertainty of Cruise Ships using the Old Sitka Dock and available funding all bids for this service may be rejected by the CBS. After opening the bids the CBS has 45 days to make a decision on whether to award the contract to the lowest responsible and responsive bidder. If the CBS decides not to award the contract all bids and bonds will be returned to the respective bidders.
  4. Due to the uncertainty of awarding the contract and the actual cost of the contract a \$1,000.00 Bid Bond is required. As soon as bid prices have been compared, the Owner will return the bonds of all except the three lowest bidders. When the Agreement is executed, the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful Bidder shall be retained until the payment bond and/or performance bonds have been executed and approved, after which it will be returned. A certified check may be used in lieu of a bid bond. Attorneys-in-fact who sign bid bonds must file with each bond a certified copy of their power of attorney.
  5. The Owner may waive any informalities or minor defects or reject any or all bids. Any bid may be withdrawn prior to the scheduled time for the opening of the bids. Any bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid within 60 days after the actual date of opening thereof. Should there be reason why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder.
  6. The Contract Documents contain the provisions required for this Contract. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risk or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.

INSTRUCTIONS TO BIDDERS

Transit Services between Old Sitka Dock to Centennial Hall or O'Connell Bridge Parking Area

Page 2 of 3

7. The party to whom the Contract is awarded will be required to execute the Agreement within ten (10) days from the date when Notice of Award is delivered to the Bidder. Notice of Award shall be accompanied by the necessary agreement. In case of the failure of the Bidder to execute the Agreement, the Owner may at his option consider the Bidder in default, in which case the bid bond accompanying the proposal shall become the property of the Owner.

The Owner within ten (10) days of receipt of the Agreement signed by the party to whom the Contract is awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement.

8. The Notice to Proceed shall be issued within ten (10) days of the execution of the Agreement by the Owner. Should there be reason why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the Owner and the Contractor. If the Notice to Proceed has not been issued within the ten (10) day period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party. Such Notice of Withdrawal shall be effective upon receipt of the Notice by the Owner.
9. The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated herein.
10. A conditional or qualified bid will not be accepted.
11. Award will be made to the lowest responsive and responsible Bidder.
12. All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over this Agreement shall apply to the Contract throughout.
13. Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve and Bidder from any obligation in respect to his bid.
14. A Bidder **not** listed on the **official City and Borough of Sitka plan holders list** shall be deemed **non-responsive**.
15. The Bidder must acknowledge receipt of all Addenda on the form and in the spaces provided in these documents. **It is the responsibility of the bidder to regularly check the website for addendum to the project for which they are bidding.**
16. A contract award will be made on the basis of a total basic bid. Award will be subject to the availability of funds, which is deemed solely by the Owner.



INSTRUCTIONS TO BIDDERS

**Transit Services between Old Sitka Dock to Centennial Hall or O'Connell Bridge Parking Area**

Page 3 of 3

17. Bids may be modified by Fax. The City and Borough of Sitka Fax number is (907) 747-4004. The Fax must be signed by the person who signed the original bid and may be received up to the time of the bid opening fixed in the invitation to bid. **DO NOT** reveal the actual bid amount in the Fax.

**BID FORM**

In submitting this bid, the bidder certifies that they have examined the RFP documents. If awarded a contract under this bid, the bidder agrees to the terms set forth in the bid Contract documents and all addenda identified on this bid.

<b>CONTRACTOR'S BID PRICE PER REVENUE GENERATING PASSENGER*</b>
\$ _____

**\*Not to exceed \$3.00/ revenue generating passenger**

Firm Name: \_\_\_\_\_ Representative: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

By signing below the Bidder verifies that he/she is an authorized representative of the above firm and that all information presented is accurate. Furthermore the bidder agrees to abide by all terms set forth in this RFP document.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I hereby acknowledge receipt of the following Addenda:

Addendum No. \_\_\_\_\_ Initials \_\_\_\_\_

Addendum No. \_\_\_\_\_ Initials \_\_\_\_\_

**CONTRACT TO PROVIDE TO CITY AND BOROUGH OF SITKA TRANSIT  
SERVICES BETWEEN OLD SITKA DOCK TO CENTENNIAL Hall or O'CONNELL  
BRIDGE PARKING AREA**

The City and Borough of Sitka (CBS) desires to hire Halibut Point Marine Services a licensed passenger transportation company (Contractor) to provide free cruise passenger and crew member transit services between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area for the 2012 cruise ship season. This Contract to provide transportation services for the City and Borough of Sitka between the Old Sitka Dock and Centennial Hall or O'Connell Bridge Parking Area ("Contract") is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Contract.

This Contract also consists of: Appendix A which includes the contractor submitted information to include:

1. Bid Form
2. A narrative describing the Contractor's experience with operating and maintaining a passenger transportation company.
3. Spreadsheet detailing transit vehicle fleet to include make, model, year, mileage, passenger capacity, and ADA capabilities of each vehicle. Table should include all available transit vehicles including subcontractors (if applicable).
4. Operational plan and proposed daily schedule.

**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 Halibut Point Marine Services a Partner, Associate, or any other person acting for and/or in behalf of the firm .
- C. "Owner's authorized representative" shall mean the person set forth in Section 21 (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. The contract time begins when signed and ends 30 days after the last cruise ship of the 2012 cruise ship season departs Sitka.
- C. The contract may be extended for two (2) additional one year extensions for 2013 and 2014 respectively upon Assembly approval.
- D. 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. RESPONSIBILITY OF CONTRACTOR**

At all times during Contractor's performance of maintenance services under this Contract, 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 4. SCOPE OF SERVICE**

The goal of CBS and Halibut Point Marine Services (HPM) is to provide safe and efficient transit services for cruise passengers and crew members between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area. The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock. Designated pickup/drop off areas will be identified by CBS and HPM at their respective properties. The Downtown drop-off location (Centennial Hall or O'Connell Bridge parking area) will be determined by the Harbormaster in consultation with the vessel agent. Typically the location will be the location not used by a lightering cruise ship. Contractor's shuttles must not block traffic to drop off or pick up passengers at non-approved locations. Contractor shall be required to keep an accurate count of both revenue passengers and crew members for each shuttle trip. Minimum level of service shall be as follows:

- The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock.
- Maximum cruise passenger and crew member waiting time shall not exceed 15 minutes at either location.

- The contractor shall provide ADA accessible shuttles and provide assistance to ADA passengers as needed to help load and unload the ADA passengers.
- The final shuttle departing from Centennial Hall or O'Connell Bridge parking area at the end of the day must arrive at Old Sitka Dock prior to the cutoff time specified by the ship. That time must be identified and posted in the front of each shuttle in plain sight at the start of each day.
- Contractor shall provide a customer support liaison at both the Old Sitka Dock and the Centennial Hall or O'Connell Bridge parking area to coordinate loading and unloading. The customer support liaison shall provide onshore support to organize the vehicle cuing and coordinate the passenger loading and unloading.
- While traveling to and from the Old Sitka Dock advertisement for third party tours and other third party activities are not allowed on the shuttle vehicles.
- The selected transportation company has 30 days to obtain State of Alaska and USDOT licenses required to operate an interstate passenger transport company. In the event of failure to obtain the required licenses within the 30 day time limit the City and Borough of Sitka (CBS) may declare the selected transportation company in breach of the agreement effected by the acceptance of the bid. The bid guarantee will be forfeit and the CBS may award the contract to the next lowest responsible bidder.
- Contractor shall provide a report of the number of passengers and crew transported each trip. The information shall be submitted to the Public Works Department no later than the 10<sup>th</sup> of the month for the previous month.

Penalties may be assessed for the Contractor's failure to meet the level of service requirements.

- \$50 per passenger that exceeds the maximum 15-minute waiting time.
- \$100 per passenger or crew member delayed by the Contractor from arriving at Old Sitka Dock by the cutoff time specified by the ship.
- \$1000 per passenger or crew member delayed by the contractor from arriving at the Old Sitka Dock prior to the ship sailing for any reason whatsoever. In addition to the \$1000 penalty the contractor is responsible for but not limited to all costs of lodging, cab fares, shuttle service, meals, and incidentals including a change of clothing and scheduled airline transportation of the passenger to the next port of call for the cruise ship.

If this is not possible due to airline schedule or Sitka was the last port of call of the cruise ship the passenger will be returned to the cruise ships final destination no later than the scheduled arrival by the cruise ship. If the arrival is delayed such that the passenger's connections are missed the contractor will pay for any additional costs associated with rescheduling the passenger to their final destination including but not limited to lodging, cab fares, shuttle service, meals and incidentals. The contractor is also responsible for collecting the passenger's luggage from the cruise ship and delivering it to the passenger prior to departure from the final cruise ship destination.

The services to be performed by Contractor shall include all services required to complete the tasks set forth above and in Appendix A, and shall be in accordance with all applicable statutes, Sitka General Code provisions, ordinances, rules, and regulations.

## **SECTION 5. OWNERSHIP OF DOCUMENTS**

All plans, drawings, calculations, supporting data and specifications, originals and tracings, if created for this contract shall become the property of Owner. Such documents shall be transmitted to Owner prior to the time of final payment for the work under this Contract. Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

## **SECTION 6. TERMINATION**

This Contract may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Owner, provided that Owner notifies Contractor of its intent to terminate under this paragraph at least 10 days 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 30 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 Owner terminates this Contract for convenience, Owner shall pay Contractor the reasonable value of any services satisfactorily rendered prior to termination. Payment under this section shall never exceed the total compensation possible under Section 9. 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 satisfactorily. 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 Appendix A and 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 30 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 time which Contractor receives notice of termination under this section.

## **SECTION 8. INDEMNIFICATION**

- A. Contractor shall indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of Contractor occurring during the course of or as a result of Contractor's performance pursuant to this Contract.
- B. Contractor shall not indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising in wrongful or negligent acts, errors or omissions solely of Owner 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. The Contractor will be paid on a monthly basis based on the number of revenue generating passengers arriving at Old Sitka Dock during the previous month. It will be the Contractor's responsibility to collect and provide CBS with the certified letter from each ship detailing the number of revenue passengers and provide the required passenger and crew member counts with each request for payment. If no cruise vessels berth at Old Sitka Dock, no payment will be made to the Contractor.
- B. The payment for the first year of the contract shall be based on the following formula:  
  

$$\text{Debarkation Rate (90\%)} \times \text{Number of Revenue Generation Passengers} \times \text{Contractors Bid Price (\$3.00)} = \text{Payment to contractor.}$$
- C. If the contract is extended for the 2013 and 2014 the Debarkation Rate may be adjusted at the Assemblies discretion based on the previous year's actual debarkation rate.
- D. Contractor shall present an invoice(s) to Owner's authorized representative. Such invoice(s) shall enumerate the number of passengers for which it seeks payment. Invoices shall not be submitted more frequently than once every 30 days.
- E. Owner shall make payment on invoices within 30 days of the invoices' receipt and 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 at the hourly fees submitted in Appendix A, 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 negotiation, pricing and performance 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. If this Contract is completely or partially terminated, records relating to the services terminated shall be made available to Owner by Contractor for a minimum of 3 years from the date of any resulting final settlement.
- E. 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. RELATIONSHIP OF PARTIES**

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 other than as provided in this section.

#### **SECTION 12. 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 or any delegation of duties under this Contract shall be void, and any attempt by Contractor to assign any part of its interest or delegate duties under this Contract shall give Owner the right immediately to terminate this Contract without any liability for work performed.

The Owner reserves the right to approve all subcontractor contracts.

#### **SECTION 13. NONDISCRIMINATION**

- A. Contractor will not discriminate against any employee or applicant for employment because of race, color religion, national origin, ancestry, age, sex or marital status or mental or physical handicap. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical handicap. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.

- 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, color, religion, national origin, ancestry, age, or marital status or mental or physical handicap.
- 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 14. COPYRIGHTS AND RIGHTS IN DATA**

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.

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 15. NOTICES**

Any notice required pertaining to the subject matter of 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  
 Department of Public Works  
 Attn: Stephen Weatherman, P.E.  
 100 Lincoln Street  
 Sitka, AK 99835

**CONTRACTOR:**

Halibut Point Marine Services  
 Attn Chris McGraw  
 4513 Halibut Point Road  
 Sitka, AK 99835

## **SECTION 16. 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. 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. 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 Contract. 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 17. SUCCESSORS AND ASSIGNS**

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

## **SECTION 18. 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. Worker's Compensation – Minimum Limits:  
Employer's Liability and Worker's Compensation – Statutory as required by Alaska Worker's Compensation Statutes.  
U.S. Longshoremen & Harbor Workers' (USL&H) if required
2. Comprehensive General Liability – Minimum Limits:  
Single Limit \$5,000,000  
Aggregate \$10,000,000
3. Comprehensive Automobile Liability – Minimum Limits:  
Bodily Injury and Property Damage, including all owned, hired and non-owned vehicles - \$5,000,000

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 under all required policies including Workmen's Compensation policy. 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 19. PERMITS, LAWS AND TAXES**

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

#### **SECTION 20. 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 21. 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. Chris McGraw, Halibut Point Marine Services - For Contractor
  2. James Dinley, 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 22. SEVERABILITY**

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

**SECTION 23. 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 24. 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 WHEREOF**, the Parties have executed this Contract in duplicate on the date and at the place shown below.

**CITY AND BOROUGH OF SITKA**

**HALIBUT POINT MARINE SERVICES**

\_\_\_\_\_  
James Dinley, Municipal Administrator

\_\_\_\_\_  
Chris McGraw, Managing Member

Date: \_\_\_\_\_

Date: \_\_\_\_\_

IRS TAX I.D. NO. \_\_\_\_\_

ATTEST:

LEGAL REVIEW:

\_\_\_\_\_  
Colleen Ingman, Municipal Clerk

\_\_\_\_\_  
Theresa Hillhouse, Municipal Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_