

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

- Statement of Interest – reference Organizational Governance and Structure
- 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 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. Contractor shall commence performance of the work identified in Section 4 immediately following receipt of the Notice to Proceed.
- C. The first eighteen (18) months of this contract shall be deemed a service transition

period, in accordance with the Contractor's Statement of Interest. The Contractor's progress shall be determined in accordance with the schedule in the Statement of Interest document.

- 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. 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 the basis of a dispute, subject to the dispute resolution procedures outlined in Section 6 and, potentially, a reason for Termination for Cause as outlined in Section 7.

SECTION 5. TERM

- A. The term of this Contract shall commence on **October 1, 2015** and end at the end of the business day **June 30, 2018**.
- B. Contractor shall be afforded the period September 15, 2015 – September 30, 2015 as a mobilization period to prepare to execute services required by the Scope of Service, and, shall be required to begin executing such services on October 1, 2015.

SECTION 6. DISPUTE RESOLUTION AND MEDIATION

- A. **Informal Resolution**. Both Parties mutually agree to undertake a good faith effort to resolve disputes associated with the performance of both Parties under this contract through collaborative problem solving, beginning at the lowest levels of management and only escalating to higher levels, or to legal counsel, if satisfactory resolution can't be achieved.
- B. **Mediation**. Both parties agree to utilization of a third party mediator, if necessary or requested, as part of the informal resolution process, provided however, that any third party mediation process shall attempt to seek mutual voluntary resolution of dispute issues and recommendations of such a mediator shall not be binding upon any party. Such third party mediation must be formally scheduled to commence within fourteen days after a request by either Party for such mediation; this time period may be extended by the mutual agreement of both parties if necessary in order to engage a mediator. The selection of a mediator shall be by mutual agreement of both Parties.
- C. **Requirements**. Neither Party may initiate action to terminate this Contract for cause, or undertake formal litigation action concerning this Contract, without first attempting to resolve the underlying issues in accordance with Section 6(A) for a period of fourteen days. If either party requests informal, non-binding third party mediation, neither Party may initiate action to terminate this Contract for cause, or undertake formal litigation action concerning this Contract for a period of not less than fourteen days or seven days after the completion of informal, non-binding third party mediation, whichever is greater.

SECTION 7. TERMINATION

After the 18 month service transition period, 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 60 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 60 days of receiving the notice, to cure the default, or the Parties have failed to resolve the matter pursuant to the Dispute Resolution provisions under Section 6 of this Contract.
- D. Termination pursuant to this section shall not affect the Parties' continuing obligations under this Contract.

SECTION 8. DUTIES UPON TERMINATION

- A. If Owner terminates this Contract for convenience, Owner shall pay Contractor the reasonable value of all services 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 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 Contractor's Fee Proposal and under Section 10. Under no circumstances shall payment under this section exceed the total compensation possible under Section 10. The determination under this Section 8 of the reasonable value of the services for which Contractor shall be paid and /or of any damages suffered by Owner are subject to the Dispute Resolution procedures under Section 6 of this Contract.
- 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 9. INDEMNIFICATION

- A. Each Party (the “Indemnitor Party”) shall indemnify, defend, save, and hold the other Party (the “Indemnitee 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 Indemnitee 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 Indemnitee 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 10. 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. Either party to this contract may request that the compensation to Contractor be renegotiated. Such a request must be made in writing by March 31st of each year to be effective for the Owner’s next fiscal year (July 1 to June 30). 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.
- C. Contractor shall submit invoice(s) to Owner’s authorized representative, as set forth and described on Exhibit B. Invoices shall be as set forth and described on Exhibit B.
- D. Owner shall make payment on invoices as set forth and described on Exhibit B with approval by Owner’s authorized representative.

- E. Contractor shall be entitled to no compensation under this Contract beyond the amount of Owner's express obligation under subsection A above.
- F. 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 11. 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 12. 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 enter 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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: Don Kluting
Telephone: 1.907.747.3225
Email: don.kluting@cityofsitka.org

CONTRACTOR Point of Contact :

Name: Executive Director- The Greater Sitka Chamber of Commerce
Telephone: 1.907.747.8604
Email: eddirector@sitkachamber.org

- 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
Harrigan Centennial Hall
Attn: Don Kluting
100 Lincoln Street
Sitka, AK 99835

CONTRACTOR:

GREATER SITKA CHAMBER OF COMMERCE,
INC.
Attn: Board President
PO Box 638
Sitka, AK 99835

SECTION 19. 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. 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 20. SUCCESSORS AND ASSIGNS

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 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. President of the Board - For Contractor
 - 2. Mark Gorman, CBS 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. 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. <u>Comprehensive General Liability</u> | |
| Occurrence Limit | \$1,000,000 |
| Products and Completed Operations Aggregate | \$2,000,000 |
| General Aggregate | \$2,000,000 |
| 2. Workman's Compensation | Alaska Statutory |
| Employers Liability | |
| 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 23. 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 therewith.

SECTION 24. 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 25. SEVERABILITY

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

SECTION 26. JURISDICTION - CHOICE OF LAW

Any civil action arising 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 27. 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. _____

