

POSSIBLE MOTION

I MOVE TO approve terminating the contract for professional consulting services with Akros, Inc. by mutual agreement.

A K R O S

July 21, 2010

James E. Dinley
Municipal Administrator
City and Borough of Sitka
100 Lincoln Street
Sitka, AL 99835

Dear Mr. Dinley

In August of 2009 the City and Borough of Sitka and Akros, Inc. entered into a contract for professional consulting services. The contract was for compensation to Akros, Inc. on a time and expense basis to a maximum amount of \$24,300. Akros, Inc. billed the City in January of 2010 in the amount of \$13,360 for time and expenses incurred through December 31, 2009. This invoice was paid in January of 2010.

Subsequent to that billing, Akros, Inc. incurred approximately eighteen hours of additional time for tasks related to analysis of the community survey results, report format and graphics planning and initial revisions to the HP plan preliminary draft; which would be payable pursuant to the terms of the contract. However, since early February of this year there has been no meaningful interaction with Sitka Historic Preservation Commission. Months have passed with no direction from Sitka or how to proceed with the project. There appears to be significant communication difficulties between us and it is clear that the parties have differing understandings of the scope and methods to be utilized in the project and the nature of the consulting services.

Given the long hiatus in communication and the history of the relationship, I believe that the appropriate action at this time is to simply agree to mutually cancel the contract under section 6(A). I will waive any claim for additional compensation which would be due and owed under the contract and Sitka will look for no further work from Akros, Inc.

If I do not hear from you by August 5 2010, I will assume that mutual termination is acceptable.

Sincerely,

Deborah Edge Abele

**AGREEMENT TO PROVIDE
PROFESSIONAL SERVICES TO
THE CITY AND BOROUGH OF SITKA**

The **City and Borough of Sitka** (“**CBS**”) and **Matthew Turner, d.b.a Concept of Degrees** (“**Contractor**”) individually referred to as “Party” and collectively referred to as “Parties,” enter into this “Agreement To Provide Professional Services To The City and Borough Of Sitka” (“Agreement”) regarding providing professional services for public meeting facilitation for the Sitka Tourism Collaboration of the City and Borough of Sitka. The terms, conditions, and consideration regarding this Agreement are set out below.

This Agreement consists of:

- Part I consisting of 24 sections of provisions:
- Appendix A Sitka Tourism Collaboration Meeting Facilitator Scope of Services
- Appendix B Sitka Tourism Collaboration Meeting Facilitator Contractor Fee Schedule

PART I

SECTION 1. DEFINITIONS

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

- A. The term “CBS” shall mean “City and Borough of Sitka”.
- B. The term “Contractor” shall mean “Matthew Turner, d.b.a. Concept of Degrees”.
- C. “CBS” Authorized Representative shall be the person listed in Section 21(B)(2) of this Agreement.
- D. “Days” shall mean calendar days.

SECTION 2. AGREEMENT TIME PERIOD

- A. This Agreement becomes effective when signed and dated by both Parties, and covers the time period when professional services were provided by Contractor, which began on February 7, 2006.
- B. Contractor shall perform for and on behalf of CBS regarding the services set out in the Scope of Services (attached as Appendix A). Except as expressly allowed under this Agreement, CBS need not grant the Contractor any extension in the time provided to complete the work under this Agreement. If the Contractor progress falls behind the project schedule, the Contractor shall commit additional resources to complete the work, or take such other additional steps as are reasonably necessary to assure the completion of the work at no additional cost to CBS.

SECTION 3. RESPONSIBILITY OF THE CONTRACTOR

At all times during the Contractor's performance under this Agreement, the 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 services to be performed by the Contractor shall include all services required to complete the tasks set forth in Appendix A, and shall be in accordance with all applicable statutes, ordinances, rules and regulations.

SECTION 5. OWNERSHIP OF DOCUMENTS

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

SECTION 6. TERMINATION

This Agreement may be terminated:

- A. By mutual consent of the Parties;
- B. For the convenience of CBS, provided that CBS notifies the Contractor of its intent to terminate under this paragraph in writing at least 10 days prior to the effective date of the termination; or
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Agreement; 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 Agreement in writing, state with reasonable specificity the grounds, and allow the defaulting Party to cure the default within thirty (30) days of receiving the notice.
- D. Termination pursuant to this Section shall not affect the Parties continuing obligations under this Agreement.

SECTION 7. DUTIES UPON TERMINATION

- A. If CBS terminates this Agreement for convenience, CBS shall pay the 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. CBS may terminate the work upon ten (10) days written notice to Contractor. Within ten (10) days after the Agreement

terminates, Contractor shall deliver to CBS all finished and unfinished notes, reports, drawings and materials prepared by the Contractor which shall become the property of CBS.

- B. If this Agreement is terminated for cause, CBS shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by CBS because of the Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials shall become the property of CBS at its option. Under no circumstances shall payment under this Section exceed the total compensation possible under Section 9.
- C. If the Contractor has received payments prior to termination in excess of the amount to which he is entitled under Subsection A or B of this Section, the excess amount shall be remitted to CBS within 30 days after receipt of CBS's notice to that effect.
- D. The Contractor shall not be entitled to compensation under this Section until the Contractor has delivered to CBS all documents, records, work products, materials and equipment owned by CBS, related to this Agreement and/or requested by CBS, as provided in Subsection A and B of this Section.
- E. CBS need not recognize any claim by the Contractor for reimbursable expenses or costs incurred after the time which the Contractor receives notice of termination under this Section.

SECTION 8. INDEMNIFICATION

- A. The Contractor shall indemnify, defend, save, and hold CBS 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 Contractor occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.
- B. The Contractor shall not indemnify, defend, save, and hold CBS harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising from wrongful or negligent acts, errors or omissions solely by the City and Borough of Sitka occurring during the course of or as a result of the performance of this Agreement.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both CBS and the Contractor, the Contractor shall indemnify, defend, save and hold CBS harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from the Contractor's wrongful or negligent acts occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.

SECTION 9. PAYMENT

- A. For the Contractor's services, as described in Section 4 of this Agreement, compensation will be paid on a time and expense basis, subject to Contractor's satisfactory performance, in a total

amount not to exceed the sum of \$12,000.00, unless otherwise mutually agreed upon by both Parties prior to commencing additional work.

- B. The Contractor shall present invoice(s) to the CBS's Authorized Representative. Such invoice(s) shall describe the work for which payment is sought and shall document expenses and fees to the satisfaction of the CBS's Authorized Representative. Invoices shall not be submitted more frequently than once every 30 days.
- C. CBS shall make payment on invoice(s) within 30 days of receipt of the invoice(s) and approval by CBS's Authorized Representative.
- D. The Contractor shall be entitled to no compensation under this Agreement beyond the amount of the CBS's express obligation under Subsection A above.

SECTION 10. AUDIT: ACCESS TO RECORDS

- A. The Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Agreement. CBS's Authorized Representatives shall have the right to examine such records and accounting procedures and practices.
- B. CBS's Authorized Representative shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing and performance Agreement, 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 the Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of three (3) years from the date of final payment under this Agreement and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.
- D. If this Agreement is completely or partially terminated, records relating to the services terminated shall be made available to CBS by the Contractor for a minimum of three (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 Agreement shall be made available to CBS by the Contractor until such claims or litigation have been concluded.

SECTION 11. RELATIONSHIP OF PARTIES

The Contractor shall perform the obligations in this Agreement as an independent Contractor of CBS. CBS may administer the Agreement and monitor the Contractor's compliance with its

obligations. CBS shall not supervise or direct the Contractor other than as provided in this Section.

SECTION 12. ASSIGNMENTS

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

CBS reserves the right to approve all sub-consultant agreements.

SECTION 13. NONDISCRIMINATION

- A. The Contractor shall 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. The Contractor shall 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. The Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.
- B. The Contractor shall state in all solicitations or advertisements for employees to work on jobs relating to this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, or marital status or mental or physical handicap.
- C. The Contractor shall include the provisions of Subsection A of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Contractor under this Agreement.
- D. The Contractor shall comply with all applicable Federal, State and Municipal laws concerning the prohibition of discrimination.

SECTION 14. COPYRIGHTS AND RIGHTS IN DATA

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

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

SECTION 15. NOTICES

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

CITY AND BOROUGH OF SITKA:

Attn: John Stein
City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835

CONTRACTOR:

Concept of Degrees
Attn: Matthew Turner
P.O. Box 110806
Juneau, Alaska 99811-0806

SECTION 16. CLAIMS AND DISPUTES

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

SECTION 17. SUCCESSORS AND ASSIGNS

CBS and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement.

SECTION 18. INSURANCE

A. The Contractor shall at all times during the term of this Agreement, maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Agreement, the Contractor shall furnish the CBS with proof of insurance in accordance with Subsection B of this Section in a form acceptable to the CBS; such proof of insurance shall be incorporated as Appendix C of this Agreement.

B. Type of coverage:

- | | | |
|----|---|---|
| 1. | <u>General Liability</u> | Waived |
| 2. | <u>Workman's Compensation</u> | Statutory, if Contractor has any employee |
| 3. | <u>Comprehensive Automotive Liability</u> | Waived – Contractor does not have an automobile |
| 4. | <u>Professional Errors and Omissions</u> | N/A |

C. Insurance Notes

1. CBS shall be named as an additional named insured on the required general liability. CBS 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. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to CBS by certified mail.

SECTION 19. PERMITS, LAWS AND TAXES

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

SECTION 20. NON-WAIVER

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

SECTION 21. AMENDMENT

- A. This Agreement shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Agreement as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Agreement, the only authorized representatives of the Parties are:
 - 1. Matthew Turner, d.b.a Concept of Degrees – For Contractor
 - 2. City Administrator John Stein - For CBS
- C. Any attempt to amend, modify or change this Agreement by either an unauthorized representative or unauthorized means, shall be void.

SECTION 22. SEVERABILITY

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

SECTION 23. JURISDICTION - CHOICE OF LAW

Any civil action arising from this Agreement shall be brought in the Alaska Superior Court First Judicial District at Sitka. The law of the State of Alaska shall govern the rights and obligations of the Parties under this Agreement.

SECTION 24. INTEGRATION

This Agreement and all appendices and amendments embody the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement.

This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the Parties.

IN WITNESS, the Parties execute this Agreement in duplicate on the date shown below, and by their signatures, confirm they are authorized to sign this Agreement.

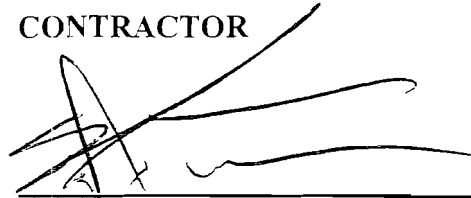
CITY AND BOROUGH OF SITKA



John C. Stein, City Administrator

Date: 4/6/2006

CONTRACTOR



Matthew Turner, d.b.a Concept of Degrees

Date: April 10, 2006

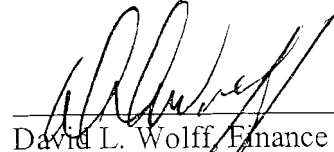
IRS TAX I.D. NO. 160 64 1791

ATTEST:



Colleen Pellett, MMC
Municipal Clerk

Date: 4/7/06



David L. Wolff, Finance Director

Date: 4-5-06

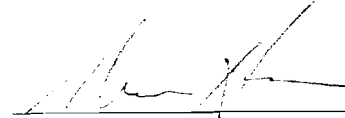
CERTIFIED FUNDS AVAILABLE:

Fund Number: 100

Account Number: 100-500-001-5212.000

Amount of Contract: **\$12,000.00**

APPROVAL OF CONTRACT FORM



Theresa Hillhouse
Municipal Attorney

Date: 4/5/06

Sitka Tourism Collaboration
Meeting Facilitator

Appendix A
Scope of Services

Meeting Facilitation

Provide meeting leadership services for Sitka Tourism Planning groups including convening groups, stakeholder groups and the Steering Committee.

Seek guidance from other consultants provided by Sitka to achieve the highest quality tourism planning collaboration possible.

Organize and promote public meetings, keep record of same and post meeting records on the Internet in a timely manner. Provide timely updates of meeting progress to the Long Range Planning Commission Tourism Steering Committee.

Design Sitka Tourism Planning Internet website to provide public access to Sitka tourism planning information.

Provide an Administrative Assistant and supervise his/her work.

Administrative Assistance

Contact and invite public meeting participants.

Arrange for meeting rooms.

Organize logistics for meetings such as refreshment services, visual aid devices, media coverage.

Provide written summary record of meeting events.

Provide written list of meeting attendees

Upload summary record of meetings and other data to Sitka Tourism Planning Internet website.

Coordinate local television recording of stakeholder meetings

Sitka Tourism Collaboration
Meeting Facilitator

Appendix B
Consultant Fee Schedule

Lead Meeting Facilitator (When facilitating live meetings)	\$50 per hour
Lead Meeting Facilitator (When meeting with Steering Committee or other consultants)	\$35 per hour
Administrative Assistant	\$20 per hour
Website design and maintenance (Payable at the rate of \$200 per month)	\$1,000 lump sum
Expenses billed at cost plus 10%	

Alaska Department of Commerce, Community, and Economic Development
P.O. Box 110806, Juneau, Alaska 99811-0806

ALASKA BUSINESS LICENSE

The licensee named below holds Alaska Business License Number 310241
covering the period of: March 22, 2005 through December 31, 2006
Line of Business: 61 Educational Services

CONCEPT OF DEGREES

863 BASIN ROAD, JUNEAU, AK 99801

Owner:
MATTHEW T. TURNER

747-3198

mturner@smallstones.net

This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State of Alaska or of the United States.

*Alaska Department of Commerce, Community, and Economic Development
Commissioner: Edgar Blatchford*

This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.

VI. REPORTS & CORRESPONDENCE

- a. **Chair:** Chair Pollnow reviewed communications the Commission received:
- Alaska Association for Historic Preservation Newsletter featured Sitka's award as one of this year's Dozen Distinctive Destinations; Grants are available for Alaska's ten most endangered sites (SJC listed in 2009).
 - BIA publications: one on Chignik Bay and one on Kake.
 - State Historic Preservation Office Newsletter lists 2010 Preservation Leadership Training. Chair Pollnow recommends this training be attended each year by a different Historic Preservation Commissioner.
 - National Alliance for Preservation Commissions sent a thank you for Sitka Historic Preservation Commission's completion of their survey.
- b. **Commissioners:**
1. Commissioner DeArmond reported Jennifer Klein notified him of the availability of funds to update a condition survey of Totem Square Pole and afterward return the pole to its current location. Ron Sheets, wood conservator, needs to find time in his schedule to come to Sitka.
 2. Commissioner Gorman acknowledged and thanked the Poulson's for saving Tillie Paul cottage, a former Sheldon Jackson College building.
- c. **Assembly Liaison:**
- Two public meetings will be held for a proposed "sea walk" in Crescent Harbor Park funded by Marine Passenger Funds. Commissioners and public are encouraged to attend. Chair Pollnow asked for a report at next month's meeting from any Commissioners who attend.
- d. **Agent** – all items appear further on the agenda.

VII. UNFINISHED BUSINESS

a. **Historic Preservation Plan: Abele/AKROS Decision**

Chair Pollnow framed the issue and summarized an offer from the Consultant. Commissioner Gorman affirmed a quarterly report was sent to SHPO. Municipal Attorney Hillhouse outlined options available to the Commission. Commissioner Gorman requested the consultant be referred to as a consultant to the City.

M-DeArmond/S-Gorman to recommend to the City to terminate the contract with AKROS at the point where it stands as of this date [4-7-2010].

Motion carried unanimously.

M-DeArmond/S-Gorman to recommend creation of a new agreement with Ms. AKROS to produce a first draft of the report. Motion carried.

Following receipt of the first draft, Commissioner Gorman recommended the next step is to determine what remains to complete the Historic Preservation Plan. A proper scope of work can then be drafted with assistance from SHPO.

b. **Request for Review: Pacific Tower Properties – SJ replat/subdivision.**

Chair Pollnow identified three lots: Stevenson Hall; corner of Jeff Davis and Lincoln Streets (Armstrong Building); area behind school (Cemetery).