

## MEMORANDUM OF UNDERSTANDING

between the

CITY AND BOROUGH OF SITKA

and the

SITKA RECREATION FOUNDATION

This Memorandum of Understanding ("MOU") is entered into by and between the City and Borough of Sitka ("CBS") and the Sitka Recreation Foundation ("Foundation"), collectively referred to as the "Parties." The purpose of this MOU is to establish and define the rights, responsibilities, and obligations between the Parties with respect to the continued success and prosperous growth of the CBS Parks and Recreation Program ("Program").

### Recitals

- A. The CBS is a home rule municipality, organized and operating under the laws of the State of Alaska; and
- B. The CBS, through its "Program", owns, operates, and maintains real estate, buildings and other recreational facilities, and operates a wide variety of parks and recreation programs and services; and
- C. The Program maintains the stated balanced, sustainable and value focused system of parks, recreation and public spaces that creates a sense of community; and
- D. The Program's mission is to:
  - (1) deliver parks, recreation programs and public spaces that reflect the priorities of the community;
  - (2) support tiered levels of service that recognize the diverse needs of the community; and
  - (3) focus on sustainability of core programs, services, and facilities through efficient and effective business practices; and
- E. The Foundation was formed in 2023, and supports the quality of life in our community, and with the purpose to support the vision and strategic goals of the Program; and
- F. The primary purpose of the Foundation will support community recreation programs, services, and facilities by facilitating financial and human investments in recreational opportunities; and
- G. The Foundation operates as a legal entity separate from the CBS, and is governed by an independently elected Boards of Directors; and
- H. The Foundation and the CBS wish to assure the continued success and prosperous growth of the Program by memorializing the responsibilities and obligations of the Foundation and the CBS.

**MOU BETWEEN CBS AND SITKA RECREATION FOUNDATION**

**NOW, THEREFORE**, in consideration of the mutual efforts to support the development of the Program, the CBS and the Foundation agree as follows:

**Section 1. Operating Procedures**

- A. The Foundation shall communicate the following information to prospective donors:
- (1) The Foundation is a separate, legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the community of Sitka and may include the Program.
  - (2) Responsibility for governance of the Foundation, including investment of gifts and endowments, resides with the Foundation's Board of Directors.
  - (3) Charitable gifts from donors to the Foundation in support of any of the Parks and Recreation programs, services, or facilities should be made to the Foundation, and not to the CBS or the Program.
  - (4) Any gift made for a designated purpose will be dedicated in its entirety to that purpose unless
    - a. it is specifically understood by the donor when the gift was made, or subsequently agreed to by the donor in writing, that an administrative charge will be applied or that the gift can be used for another purpose if the original purpose has been satisfied, or
    - b. the CBS objects to the designated purpose of the gift.
- B. The Foundation agrees that in accepting gifts on behalf of the Program , the Foundation shall:
- (1) Advise donors that any restrictive terms and conditions the donor attaches to gifts for the Program are subject to the CBS's approval.
  - (2) Collaborate to ensure that gifts designated for specific Program purposes are in compliance with the Program's master plans, vision, mission and philosophy before accepting the gift.
  - (3) Coordinate its funding goals, programs and campaigns with the Program.
  - (4) Receive prior written approval from the CBS Assembly or its designee for any gift, grant, or contract that includes a financial or contractual obligation binding upon the CBS.
- C. The Foundation shall be responsible for reporting to a donor regarding the use of the donor's funds.
- D. In return for the Foundation's contributions to and support of the Program and its programs, the CBS shall assist the Foundation in the following manner:
- (1) At the discretion of the Municipal Administrator, and consistent with applicable federal, state, and local law, and CBS policies and administrative directives, the CBS shall provide the Foundation with assistance as follows:
    - a. Program shall provide a staff liaison to the Foundation; and

- b. Program will collaborate with the Foundation in developing opportunities encouraging voluntary, private gifts, trusts, and bequests for the benefit of the Program,
  - c. CBS and the Program will collaborate with the Foundation in providing appropriate public relations to the community,
- (2) Assist the Foundation by suggesting potential donors to the Foundation.
  - (3) Allow the Foundation to use the name and images of the Program. The Foundation shall not be permitted to use the official Seal of the City and Borough of Sitka.

## Section 2. Record Keeping

- A. The CBS and the Foundation acknowledge and agree that all Foundation correspondence, financial records, and all Foundation documents are the property of the Foundation and shall be kept separate and apart from all CBS records.
- B. The Foundation shall prepare and reconcile on an annual basis a Treasurer's Report. In addition, the Foundation may provide upon request to the CBS a financial report prepared in accordance with Statements of Financial Accounting Standards "Financial Statements for Not-for-Profit Organizations." The financial report shall be provided to the CBS on or before June 30 of each year during this MOU, but shall not include any information regarding individual Foundation donors. The Foundation shall provide necessary financial reporting requirements for grant requirements or other CBS required needs.

## Section 3. Independent Contractors

In the performance of this MOU, both the CBS and the Foundation will be acting in an individual capacity and not as agents, employees, partners or joint venturers or associates of one another. The agents or employees of one shall not be construed to be the agents or employees of the other. CBS employees shall remain employees of the CBS, notwithstanding the fact that they may assist the Foundation.

Neither the CBS nor its agents, volunteers, servants, employees or officials shall be responsible or liable for any claim or suit arising from contracts, agreements, understandings or arrangements made by the Foundation with any person or entity covering services or goods procured by the Foundation, or for the negligent or willful acts of the Foundation or those for whom the Foundation acts.

## Section 4. Term

The initial term of this MOU will be for five (5) years, effective July 1, 2023 through June 30, 2028. This MOU may be renewed for additional five-year terms with the written consent of both Parties.

## Section 5. Dispute Resolution

The Parties agree that if there is a dispute as to any provision of this MOU or if either party materially breaches or fails to perform its obligations under this MOU, the other party may give notice in writing of the dispute or material breach. The parties agree to meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or longer period, if agreed to in writing by the parties, the parties agree to bring in a mediator to resolve the dispute.

## Section 6. Notice

Any notice or notices required or permitted to be given pursuant to this MOU shall be given by certified mail, postage prepaid, return receipt required, as follows:

To the City:

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

To the Foundation:

President  
Sitka Recreation Foundation  
324 Wachusetts Street  
Sitka, AK 99835

## Section 7. Termination

This MOU may be terminated by either party by delivering written notice of termination to the non-terminating party at least ninety (90) days prior to the effective date of any termination.

## Section 8. Governing Law and Venue

This MOU shall be deemed to be an Alaska contract and shall be as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the law of the State of Alaska, and a question arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this MOU shall be deemed to have been delivered and accepted by the parties in the State of Alaska. The Foundation shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or thereafter adopted, in the performance of its obligations set forth herein. Any and all suits for any claims or for any and every breach of dispute arising out of this MOU shall be maintained in the appropriate court of competent jurisdiction in the City and Borough of Sitka.

## Section 9. Severability

**MOU BETWEEN CBS AND SITKA RECREATION FOUNDATION**

Any provision of this MOU which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

#### Section 10. Entire Agreement

The parties agree that this writing constitutes the entire agreement of the parties and that there may be no modification to this MOU, except in writing, executed by the authorized representatives of the CBS and the Foundation.

As evidenced by their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

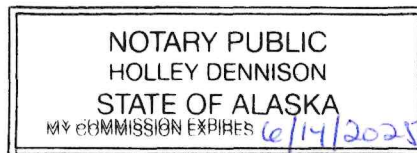
[SIGNATURE AND ACKNOWLEDGEMENTS ON NEXT PAGE]

CITY AND BOROUGH OF SITKA

10/10/2023  
Date

[Signature]  
By: John Leach  
Its: Municipal Administrator

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )



The foregoing instrument was acknowledged before me this 10 day of October, 2023, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

[Signature]  
Notary Public in and for the State of Alaska  
My Commission Expires: 06/14/2025

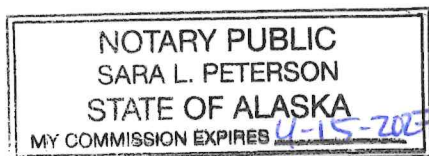
SITKA RECREATION FOUNDATION

10/4/2023  
Date

[Signature]  
By: Kevin Knox  
Its: President

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this 4 day of October, 2023, by Kevin Knox, President for the SITKA RECREATION FOUNDATION, an Alaska Nonprofit corporation, on behalf of the corporation.



[Signature]  
Notary Public in and for the State of Alaska  
My Commission Expires: 4-15-2027

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