



**MUNICIPALITY OF SKAGWAY**  
GATEWAY TO THE KLONDIKE  
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**SKAGWAY MUNICIPAL AREA REGIONAL TRANSIT  
Request for Proposals  
December 21, 2021**

**Project and Background**

The Municipality of Skagway is accepting proposals for Skagway Municipal Area Regional Transportation (SMART) or bus/shuttle service for Skagway and the surrounding area to accommodate and serve travelers, seasonal workers, and residents beginning April 1, 2022.

Skagway is located in the Upper Lynn Canal and is considered the northernmost point in Southeast Alaska, 80 air miles from the capital city of Juneau and 110 road miles from Whitehorse, Yukon Territory, Canada. The Port of Skagway is the northernmost ice-free, deep-water port in North America, and serves as a year-round transportation hub between Alaska, the Yukon Territory, Northern British Columbia, the Northwest Territories and Europe. The Municipality of Skagway Borough encompasses 452 square miles.

**Proposal Requirements, Evaluation Criteria and Selection Process**

**Scope of Services**

The Contractor shall establish and provide all related services, including but not limited to, management, dispatching, driver hiring and training, supervision, on-street operations, reporting, and ticket/pass sales and bus transportation service in such a manner that users are transported effectively, safely, and efficiently for a 5-year term. The Contractor shall provide the facilities from which the service will operate except bus zones, and signage which may be provided by the Municipality. For these services the Contractor will provide revenue vehicles, fuel, oil and lubricants. Contractor shall provide regular bus service beginning with the arrival of the first cruise ship and continue through the last cruise ship of each year, within the period of April through October. The Municipality of Skagway may determine to increase or decrease the amount of service to be provided from time to time. The Municipality of Skagway reserves the right to increase or decrease service twenty-five percent (25%) per year over or under the base service level originally awarded to the Contractor. Contractor will retain a percentage of revenues related to the service which will be proposed separately as detailed in the RFP. The remaining revenues will be submitted to the Municipality. The services provided by the Contractor will incorporate the following at minimum:

**Service**

- A. On-call services shall begin April 1, 2022 and continue through March 31, 2027

- B. Regular dock service hours shall be 7:00 a.m. to 9:00 p.m., when a cruise ship is in port.
- C. On-call shuttle service shall be 8:00 a.m. – 1:00 a.m. 7 days a week/365 days a year.
- D. Regular dock service seating capacity of each vehicle shall be 13 adults at minimum, not including the driver.
- E. Contractor shall have, at its immediate disposal, an adequate number of vehicles to properly service seasonal visitors arriving by cruise ship and On-call (independent travelers) in need of point-to-point shuttle service.
- F. At a minimum there should be a single designated point-to-point shuttle that would not be designated for cruise ship passengers.
- G. On-call shuttle service seating capacity of each vehicle shall be 6 adults at minimum, not including the driver.
- H. Additionally, there should be no less than 2 operating vehicles (capable of transporting 13 to 36 adults) per ship in port with additional vehicles available in the case of an unexpected breakdown.
- I. Regular dock service fares shall be \$3.00 per person one way or a \$5 per person Day Pass in the Skagway townsite.
- J. On-call service fares shall be \$5.00 per person within the Skagway townsite, \$10 per person past the Skagway River bridge and prior to the gravel portion of the Dyea Road, and \$15 per person past Liarsville Road and the gravel portion of the Dyea Road to the West Creek Bridge. Contractor shall be responsible for acquiring all applicable local, state, or federal permits required for these services.

## **Vehicles**

- A. Vehicles shall not exceed 35 feet in length.
- B. Seating capacity of each vehicle shall be 13 to 36 adults for regular dock service, not including the driver. On call vehicles must be able to accommodate at least 6 adults, not including the driver.
- C. Vehicle mileage shall not exceed 250,000 miles, or seventeen years in age. Approval of vehicles to be utilized will be at the Municipality's discretion.
- D. Vehicles shall meet the Municipality of Skagway's, State and Federal standards for condition and maintenance.
- E. Vehicles shall have working heating and working air conditioning systems.
- F. Vehicles used in revenue service shall meet ADA requirements for accessibility by persons with disabilities. In the event of wheelchair lift failure or unavailability, the Contractor shall have a vehicle available to transport passengers in wheelchairs within 20 minutes of discovery of such a requirement. Contractor will provide a minimum of two (2) vehicles with wheelchair lift.
- G. The Contractor shall provide radio communication with the Contractor's dispatcher.
- H. All vehicles shall be properly licensed and comply with Federal, State and local laws, as well as any requirements pertaining to motor vehicles.
- I. Vehicles shall have no apparent accident damage. All damage to vehicles shall be repaired within two weeks of occurrence in a high-quality manner.
- J. The Municipality of Skagway reserves the right to inspect vehicles and to remove from service any vehicle that it determines is not service ready or otherwise potentially unsafe.
- K. Contractor is required to have, at its immediate disposal, an adequate number of spare vehicles. Contractor shall maintain the number and condition of vehicles described in the

Contractor's original proposal documents for this Agreement unless written consent otherwise is obtained by the Municipality.

- L. Vehicles provided by the Contractor for use in revenue service shall be painted with a paint scheme and/or with a logo appropriately displayed as designated and approved by the Municipality of Skagway. The Municipality of Skagway shall determine the name of the transportation service.
- M. Vehicles provided by Contractor shall carry dash cards, provided by the Municipality of Skagway, identifying the vehicle as a vehicle in revenue service for the Municipality of Skagway. Contractor shall prominently display an information and customer comment telephone number.
- N. No deviation from these general specifications shall be permitted unless approved by the Municipality in writing.

### **SMART Zones for Regular Dock Service**

1. Second Avenue:
  - a. South side, beginning 150 feet from the east corner of Broadway and extending 100 feet east.
  - b. North side, beginning 20 feet from the west corner of Spring Street and extending 35 feet west.
  - c. North side, beginning 20 feet from the east corner of Spring Street and extending 80 feet east.
2. Broadway Street:
  - a. West and East sides, beginning 20 feet from the south corners of Third Avenue and extending 80 feet south.
  - b. West and East sides, beginning 20 feet from the north corners of Fifth Avenue and extending 80 feet north.
  - c. West side, beginning 20 feet from the north corner of Seventh Avenue and extending 80 feet north.
  - d. East side, beginning 20 feet from the south corner of Fourteenth Avenue and extending 80 feet south.
3. East side of Spring Street and Seventh Avenue in front of the Museum entrance to the McCabe Building.
4. West side of Congress Way, beginning 45 feet from the southeast corner of the public bathrooms and extending 125 feet south along the turnaround.
5. At the Ore Terminal Dock, beginning near the power pole and extending 100 feet across from the southern pedestrian access bridge at the Ore Dock.
6. West side of State Street beginning 20 feet from the north corner of Ninth Avenue and extending 60 feet north.

All drivers must be licensed in accordance with the laws of the State of Alaska, to include the appropriate CDL endorsement. All staff operating vehicles associated with the Municipality of Skagway's services shall be in possession of a valid driver's license with appropriate Commercial Driver's License (CDL) endorsement. Contractor shall provide or contract with knowledgeable, trained mechanics to perform corrective maintenance procedures to include, but which are not limited to, the engines and transmissions utilized in the vehicles operated, and electrical, heating and air conditioning, braking, hydraulics, fuel, body, air suspension, and steering systems.

Drivers shall not promote tours of any kind. There shall be no promotion of any kind for goods or services by the Contractor or permitted by the Contractor. In the event that the Contractor shall receive any payment or other consideration paid in connection with any such promotion material or goods, the payment or consideration shall be promptly delivered to the Municipality of Skagway, and any and all advertising revenues shall be the property of the Municipality of Skagway. Drivers shall not engage in any smoking or vaping activity of any kind during the provision of any revenue service or aboard vehicles.

Proposals which do not address the items listed in this Scope of Services section may be considered incomplete and may be deemed non-responsive by the Municipality of Skagway in its sole discretion. It is the responsibility of the firms submitting proposals to determine the actual efforts required to complete the project.

Interested firms shall submit one electronic copy and one paper copy of the completed proposal in an envelope marked “**SKAGWAY MUNICIPAL AREA REGIONAL TRANSIT**” and are due no later than 2:00 p.m. on January 12, 2022 at the address listed above, or delivered directly to the Municipal Offices on 7<sup>th</sup> and Spring Street. Faxed or e-mailed proposals will not be accepted.

## **PROPOSAL FORMAT AND CONTENT**

**Title Page (one page maximum)** – At a minimum, the title page shall show the name of the project being proposed upon, the firm name, address, telephone numbers, name of contact person and the date.

**Letter of Transmittal (one page maximum)** – The transmittal letter shall identify the project for which the proposal has been prepared: state your firm’s understanding of the services to be provided; make a positive commitment to provide the services specified; and give the name, title, address, and phone number of the persons authorized to make representations for your firm. The letter shall be signed by a corporate officer or other individual designated by the firm with the authority to bind the firm.

**Proposal Narrative (ten pages maximum)** – The proposal narrative shall provide the following information:

**Service Contract Understanding and Approach** – This section shall outline your team’s approach to assuring the successful delivery of service. At a minimum, it must address the following:

Service objectives and proposed approach;

- Your understanding of the potential issues which may affect successful delivery;
- Specific approach methodology to assure effective budget utilization.

**Proposed Operations Manager** – This section shall present the proposed operations manager and at a minimum address:

- General qualifications to perform this assignment;
  - Experience on similar projects;
  - Experience in the Southeast Alaska area, in particular Skagway, Alaska;
- The firm will notice the MOS, in writing, with the name and contact information for the Operations Manager prior to the initiation of the contract or any time there is a change in the Operations Manager.

Firm Resources and Experience – At a minimum, address the following:

- Size, resources, and business history;
- Firm experience with special note to any that is similar in ownership, service and use as Skagway, Alaska

Equipment Fleet Description and Maintenance Plan

- Demonstrate sufficient busses and personnel to transport cruise passengers at peak demand (12,000 passenger days)
- Rotating fleet for maintenance and unexpected breakdowns.
- Detailed annual maintenance plan

**Separated sealed bid:** Include a sealed bid providing the proposed percentage of the collected fares that will be paid to the MOS on a monthly basis from May through October for each of the five years of operation. **Do not provide financial details outside of the sealed bid.** The fee shall be a percentage of the monthly fees collected for each month of operation from May through October. The contractor will be allowed to retain 100% of the fares collected from November through April.

**Evaluation Criteria and Selection Process** – The Municipality of Skagway reserves the right to reject any and all proposals submitted in the best interests of the Municipality and shall not be liable for any costs incurred by any proposer in response to this solicitation or for any work done prior to the issuance of a notice to proceed.

A review committee will evaluate the proposals and make a recommendation that the contractor can meet the requirements of the request for proposal. All proposals that meet the requirements of the proposal will then move to the second round of the selection process where the sealed bids providing the proposed fee that will be paid to the MOS will be opened. The Contractor providing the highest fee to the MOS will be awarded the bid.

All Submittals will be evaluated for their ability to meet or exceed the following criteria.

Service Contract Understanding and Approach	Meet or Exceed: Yes or No
Proposed Operations Manager	Meet or Exceed: Yes or No
Firm Resources and Experience	Meet or Exceed: Yes or No
Equipment Fleet and Maintenance Plan	Meet or Exceed: Yes or No

All proposals that meet or exceed the four criteria above will be selected to open their sealed fee bid. If a proposal does not meet or exceed any of the four criteria above, they will not be selected and their sealed fee bid will not be reviewed. The Contractor that meets or exceeds all of the criteria above and provides the greatest financial benefit to the MOS will be contracted to provide the SMART Bus Service, upon Assembly approval of a signed contract.

Award will be based explicitly on applicant’s ability to meet or exceed the minimum required conditions of the RFP and the overall financial benefit to the Municipality of Skagway.

## General Conditions and Notices

**Proposal Evaluation/Award:** The Municipality reserves the right to reject any or all proposals received for any reason if it is in the best interest of the Municipality. The Municipality reserves the right to waive minor informalities and irregularities of proposals received if it is in the best interest of the Municipality. The Municipality reserves the right to not go forward with the project after receiving bids. The project may be cancelled in whole or in part in the sole discretion of the Municipality.

**Proposal Package Fee:** There is not a fee for this proposal package.

**Project Site:** It is the sole responsibility of the Proposers to evaluate the job site and make their own technical assessment of the project site for determining the proposed design process and any equipment utilization and to make a valid financial proposal. The Municipality will not make any additional compensation or payments if the project conditions are different from that assumed by the Proposer or as believed to be by the Proposer or as represented to the Proposer by any source. The Municipality specifically makes no representations as to the conditions of the project site and no employee, Assembly member; the Mayor or any other representative of the Municipality has any actual or apparent authority to make any oral or written representations as to the conditions of the project site. The Municipality shall not allow later adjustments to the fee agreed upon in the Contract due to or as the result of weather. The Proposer's fee as submitted under Section 3F above shall fully account for the weather in Skagway.

The Municipality will not provide any representations, estimates, guarantees or any other analysis related to the possible number of cruise ship visitors for the years 2022-2026. Proposers are solely responsible for undertaking their own analysis and determinations as to the projected or planned number of cruise ship visitors for the years of their Proposal and for submitting their Proposal solely on the basis of their analysis and investigation. By submitting a Proposal, the Proposer certifies that the Proposer is not relying on any statements, representations, assurances, comments, studies or any other information from the Municipality, whether verbal or in writing, or from any employee, staff, mayor, assembly member, or attorneys.

**Project Contact and Technical Questions:** Proposers shall familiarize themselves with project requirements. All technical questions shall be in writing and directed to the Deputy Borough Manager at [e.deach@skagway.org](mailto:e.deach@skagway.org) , no later than January 5, 2022 at 4:00 p.m.

**Submittal Deadline and Location:** Proposers are responsible to assure delivery prior to deadline. Only proposals received prior to the date, time and received at the location specified shall be considered. Faxed proposals will not be accepted.

**Proposals to Remain Open:** The Proposers shall guarantee the proposal for a period of sixty (60) calendar days from the date of the proposal opening.

**Beginning of Work:** Work may begin upon signing the Professional Services Agreement and after receiving the Notice of Award and the Notice to Proceed from the Municipality.

**Delays Beyond Proposers Control:** Proposers are expected to be familiar with the potential extreme and challenging weather conditions in Skagway, Alaska, and the Municipality will assume

all proposers have considered weather in preparing their proposals. Extraordinary weather delays may be considered and addressed through contract modification in the sole discretion of the Municipality. Suspension of work caused by Acts of God, which are beyond the control of the Proposer, may not be cause for termination unless the Municipality terminates the project or suspends the project. If such Acts suspend work on the project, any delay caused may be negotiated and an addendum to this contract issued, which will be signed by both the Municipality and the Proposer, outlining the time schedule and costs associated with any delay in substantially completing the project.

**Insurance & Indemnification:** No contract for services shall be issued or continued unless there is presented to the Municipality of Skagway a certificate of insurance showing that the business owner/operator has obtained at least two million dollars (\$2,000,000.00) general liability insurance and two million (\$2,000,000.00) of professional liability errors and omissions insurance and professional pollution liability. Proof of such insurance shall be provided to the Municipality as a condition of entering the contract. Failure to maintain such insurance shall constitute a material breach of contract. The certificate of insurance must establish that the Municipality is named as an additional insured on such policy, and that the insurer thereof shall notify the Municipality twenty (20) days before the policy is canceled, or terminated. Additionally, the Proposer shall execute an instrument under the terms of which the Proposer will agree to indemnify, defend and hold harmless the Municipality of Skagway from any and all claims for injury or damage, including death, to persons or property as a result of the holder's activities.

If the Proposer intends to subcontract out any of the work in its proposal, the Proposer shall insure that all subcontracts fully comply with this provision and that the insurance of subcontractors shall list the Municipality as an additional insured.

Proposer shall provide Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30et seq., and federal jurisdiction where the work is being performed.

**Compensation:** There is no compensation from the Municipality of Skagway in the project.

**Responder's Responsibility:** Responding Proposers have the responsibility of understanding what is required by this solicitation. The Municipality shall not be held responsible for any firm's lack of understanding. Should a firm not understand any aspect of this solicitation, or require further explanation or clarification regarding the intent or requirements of this solicitation; it shall be the responsibility of the proposing firm to seek guidance from the Municipality. Requests for information will be done in writing and directed to [e.deach@skagway.org](mailto:e.deach@skagway.org) Further, by submitting a proposal in response to this solicitation, a firm certifies that it has thoroughly read and understands this solicitation in its entirety and has submitted the proposal in agreement with the terms and conditions of this Request for Proposals.

**Addenda:** The Municipality will make a reasonable effort to provide all addenda to Proposers when issued. Addenda may be issued by any reasonable method such as by email and will be located at the borough website, [www.skagway.org](http://www.skagway.org). It is the Proposers responsibility to ensure receipt of all addenda. No claim or protest will be allowed based on the Proposers allegation that the Proposer did not receive all of the addenda.

**Cost Incurred in Proposal Preparation:** No contract shall be in effect until the Municipality executes a written agreement. The Municipality is not liable for any cost incurred by any Proposer in the response to this solicitation, including any work done, even in good faith, prior to the execution of a contract.

**Proprietary Information:** Proposers shall not include proprietary information in proposals if such information should not be disclosed to the public. Any language with a submittal purporting to render all or portions of a proposal confidential will be disregarded.

**Minor Informalities:** The Municipality reserves the right to waive any minor informality, negotiate changes or reject any and all proposals and to not award the proposed contract, if it is in the Municipality's best interest. Minor informalities mean matters of form rather than substance which are evident from the submittal, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other Proposers.

**Receipt and Proposal Opening:** The Municipality must receive all proposals including any amendment or withdrawal prior to the scheduled time for submitting proposals. Any proposal, amendment, or withdrawal, which has not been actually physically received by the Municipality prior to the scheduled time for submitting proposals, shall not be considered. No responsibility shall be attached to any officer, employee or agent of the Municipality for the premature opening of, or failure to open, a proposal improperly delivered, addressed or identified.

Until the award of a contract, the Municipality reserves the right to reject any or all proposals, to waive technicalities or to advertise for new proposals without liability against the Municipality. Receipt of proposals will be publicly acknowledged at the submittal deadline and location.

**Disqualification of Proposers:** Any Proposer may be disqualified for the following reasons: More than one proposal for the same work from an individual, firm, or corporation under the same or different name. (A party that has quoted prices to a Proposer is not disqualified from quoting prices to other Proposers or from submitting a proposal directly for the project).

**Rejection of Proposals:** The Municipality reserves the right to reject any and all proposals. The Municipality reserves the right to reject the proposal of any Proposer who has previously failed to perform properly on any contract or project, or failed to complete any contract or project on time, or required amendments to its original scope of work to complete a project. The Municipality reserves the right to reject the proposal of any Proposer who is not, in the sole opinion of the Municipality, in a position to perform the contract or whose proposal does not appear to assure services through the completion of the project; and to reject a proposal as non-responsive where the Proposer fails to furnish the required documents, fails to complete the required documents in the manner directed, or makes unauthorized alterations to proposal documents.

**Non-Responsive Proposals:** Proposals shall be considered non-responsive and shall be rejected if there are unauthorized additions, conditional or alternative proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

**Documents for Successful Proposer:** Prior to contract execution and Notice to Proceed, the successful Proposer shall complete and submit the following documents within seven (7) days



following Notice of Intent to Award, as well as any other documents that may be requested by the Municipality.

- Proof of Insurance showing the Municipality as an Additional Insured
- Copy of State and Municipal Business License

**Award and Execution of Contract:** All Proposers will be notified of the Municipality's Intent to award the contract by e-mail or fax and the successful Proposer will be requested to execute the project documents that shall include the Professional Services Agreement. No contract shall be considered as effective until it has been fully executed by both parties (Proposer and Municipality).

**Failure to Execute Contract:** Failure of the successful Proposer to execute and return the Professional Services agreement and other contract documents within seven (7) days after receipt of the Municipality's Notice of Intent to Award, will be, in the sole discretion of the Municipality, cause for the rejection of the award. Award may then be made to the next lowest responsive, responsible and qualified Proposer, or the work may be re-advertised, in the sole discretion of the Municipality Manager. Except for the fee, which may be subject to negotiation in accordance with Section 4 above, the Municipality will not negotiate any other section, clause, provision or condition in the Professional Services Agreement attached to this RFP as Attachment A.

If the Municipality does not execute the contract agreement within thirty (30) days following receipt from the Proposer of all required documents executed for the award of the contract, the Proposer shall have the right to withdraw its proposal without penalty. If the Proposer fails to withdraw its Proposal in accordance with this provision, the Proposer remains obligated to accept the award for the full sixty days that it guaranteed its Proposal upon submission.

**Ownership of Proposal Submittals:** Once proposals are received, they become the property of the Municipality, and shall not be returned. Proposals may be withdrawn by submitting a written withdrawal request to the same address to which the proposal was submitted if the request is received by the Municipality one (1) hour prior to the deadline for submitting proposals.

Proposers are responsible to assure delivery prior to deadline. Only Proposals received prior to the date, time and received at the location specified will be considered. The Municipality of Skagway is not responsible for any costs incurred in the preparation of proposals. The Municipality reserves the right to reject any or all proposals. The Municipality reserves the right to cancel the project, or delay the project, or decide not to fund the project, all in its sole discretion.

**The Municipality of Skagway is an equal opportunity employer.**



# MUNICIPALITY OF SKAGWAY

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## **ATTACHMENT A** **(Proposer) AND MUNICIPALITY OF SKAGWAY/ PROFESSIONAL SERVICES AGREEMENT FOR Project**

THIS agreement made and entered into this \_\_\_<sup>st</sup> day of \_\_\_\_\_ by and between the Municipality of Skagway, an Alaska municipal corporation (hereinafter MUNICIPALITY) and (Proposer) (hereinafter CONTRACTOR).

### **Section 1. CONTRACTOR'S Representation and Warranty and Manner of Performance.**

- (A) CONTRACTOR represents and warrants to the MUNICIPALITY, and the MUNICIPALITY relies upon the representations and warranties, that CONTRACTOR is a professional in the subject area in which services are to be provided and that CONTRACTOR has adequate experience, skill, knowledge and competence to perform the services set forth in this Agreement.
- (B) CONTRACTOR accepts the relationship of trust and confidence between CONTRACTOR and the MUNICIPALITY. CONTRACTOR agrees to perform their services under this Agreement with due diligence, due care, and in a good and professional manner.

### **Section 2. Scope of Services.**

The CONTRACTOR shall perform all the services provided for by this Agreement, CONTRACTOR'S Written Proposal dated (DATE) (Attachment "A").

### **Section 3. Time of Performance.**

The services of the CONTRACTOR shall commence upon execution of this Agreement by CONTRACTOR and the MUNICIPALITY and shall terminate, subject to Sections 8 and 9, on the completion of the project. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

### **Section 4. Method and Time of Payment.**

- (A) The CONTRACTOR shall compensate the MUNICIPALITY monthly for the right to operate SMART Bus and collect fees in the amount of [insert % of fees collected] payable no later than the 15<sup>th</sup> day of each month.

**Section 5. Termination of Agreement for Cause.**

If, for any reason, the CONTRACTOR shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Agreement, the MUNICIPALITY shall thereupon have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

**Section 6. Termination for Convenience of MUNICIPALITY.**

The MUNICIPALITY may terminate this Agreement at any time by giving written notice to the CONTRACTOR of such termination and specifying the effective date of such termination.

**Section 7. Modifications.**

- (A) The parties may mutually agree to modify the terms of the Agreement only by way of it being in writing and signed by the Municipality and the CONTRACTOR. Modifications to the Agreement shall be incorporated into the Agreement by written amendments. Only the Mayor or the Borough Manager have any authority to sign any modification on behalf of the Municipality.
- (B) It is expressly understood that the MUNICIPALITY may require changes in the scope of services and any unreasonable refusal by the CONTRACTOR to agree to modification in the scope of services will be the basis for termination of the Agreement for cause.
- (C) CONTRACTOR understands and agrees that no officer, employee, the Mayor, Assembly person, consultant, or representative of the MUNICIPALITY has any actual or apparent authority to orally modify, change or amend the terms of this Agreement or orally modify, change or amend the Scope of Work in Attachment A. No modification, change or amendment to this Agreement or the Scope of Work shall be effective unless it is in writing and signed by the CONTRACTOR and the MUNICIPALITY.

**Section 8. Equal Employment Opportunity.**

The CONTRACTOR will not discriminate against any employee or applicant for employment in violation of law, to include without limitation, because of race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran. Such actions shall include, but not be limited to the following: Employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The CONTRACTOR agrees to post in conspicuous places in their places of work available for employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

**Section 9. Non-Assignability.**

- (A) The CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement without the prior written consent of the MUNICIPALITY. The CONTRACTOR agrees and acknowledges that the Municipality will not consent to any assignment of this Agreement to an LLC unless the CONTRACTOR signs a personal guarantee for the performance of the LLC or all the individual members of the LLC sign personal guarantees for performance of the Contract.
- (B) The CONTRACTOR shall not delegate duties or otherwise subcontract work or services under this Agreement without prior written approval by the MUNICIPALITY.

**Section 10. Interest of CONTRACTOR.**

The CONTRACTOR covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONTRACTOR further covenants that in the performance of this Agreement they shall not knowingly employ any person having any such interest and that they shall reasonably ascertain of all their employees that they have no such interest.

**Section 11. Officials Not to Benefit.**

No members of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from this Agreement. No member of the legislature or officer of the State of Alaska or the MUNICIPALITY shall be admitted to any share or part of this Agreement or to any benefit to arise from this Agreement.

**Section 12. Audits and Inspections.**

At any time during normal business hours and as often as the MUNICIPALITY may deem necessary, there shall be made available for examination all of CONTRACTOR'S records with respect to all matters covered by this Agreement and CONTRACTOR will permit representatives of the MUNICIPALITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all materials covered by this Agreement. Except in case of emergency, CONTRACTOR must make such records available upon five (5) days' notice. In case of emergency, CONTRACTOR must make such records available immediately upon request. In performing such audits and investigations, the MUNICIPALITY and its representatives shall not unduly interfere with the ability of CONTRACTOR to perform their duties under this Agreement.

**Section 13. Jurisdiction; Choice of Law.**

The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction for any action of any kind and any nature arising out of any action or omissions of the CONTRACTOR and to any action of any kind and any nature arising out of or related to this Agreement. Venue for trial in any action shall be in Skagway, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties. The CONTRACTOR specifically waives any right or opportunity to request a change of venue for trial pursuant to A.S. 22.10.040.

**Section 14. 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 provisions, nor in any way affect the validity of this Agreement or any part of this Agreement, or the right of the party thereafter to enforce each and every provision hereof.

**Section 15. Permits, Laws and Taxes.**

The CONTRACTOR shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing their obligations under this Agreement, CONTRACTOR shall comply with all applicable statutes, ordinances, rules and regulations. The CONTRACTOR shall pay all taxes pertaining to its performance under this Agreement.

**Section 16. Relationship of the Parties.**

The CONTRACTOR shall perform their obligations in this Agreement as an independent contractor of the MUNICIPALITY. The CONTRACTOR is not an employee of the MUNICIPALITY. None of CONTRACTOR'S employees are employees of the MUNICIPALITY. The CONTRACTOR has no actual or apparent authority to act on behalf of the MUNICIPALITY or to represent to Third Parties that they as any authority to act on behalf of the MUNICIPALITY. The MUNICIPALITY may administer this Agreement and monitor the CONTRACTOR'S compliance with the Agreement, which administration and monitoring by the MUNICIPALITY does not change the relationship of INDEPENDENT CONTRACTOR as between the CONTRACTOR and the MUNICIPALITY.

**Section 17. Administration of this Agreement.**

- (A) The Borough Manager or their designee will be the representative of the MUNICIPALITY administering this agreement.
- (B) The services to be furnished by the CONTRACTOR shall be administered by the Borough Manager or their designee. In the event that CONTRACTOR is unable to serve for any reason to perform Their obligations under this Agreement, the CONTRACTOR shall appoint a successor in interest but such appointment will be subject to written approval of the MUNICIPALITY and such approval shall be only under the conditions of Section 12.

**Section 18. Integration.**

This Agreement and all appendices and amendments constitute the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement; and this Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth in the Agreement: CONTRACTOR'S Written Proposal dated (DATE) (Attachment "A").

**Section 19. Defend, Hold Harmless, and Indemnify**

The CONTRACTOR shall indemnify, hold harmless, and defend the MUNICIPALITY, its officers and employees from and against any suit, action, claim or liability, of any kind and any nature, including death, arising out of any performance or omission of the CONTRACTOR under this Agreement, or arising out of or relating to this Agreement.

**Section 20. Interpretation and Enforcement.**

This Agreement is the result of good faith, arm's length negotiations by the parties. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction – to the effect that any ambiguities are to be resolved against the drafting party - shall not be employed in the interpretation of this Agreement or any exhibits or amendments to this Agreement. The titles of sections in this Agreement are not to be construed as limitations or definitions, but are for identification purposes only.

**Section 21. CONTRACTOR Insurance.**

- (A) The CONTRACTOR shall, at their own expense, secure and maintain and will file with the MUNICIPALITY the following proper and acceptable insurance coverage, including defense and indemnification of the MUNICIPALITY:
  - (1) Worker's Compensation Insurance in compliance with the laws of the jurisdiction where the work is being performed if applicable.
  - (2) Commercial General Liability Coverage: Limit \$2,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include subjects substantially as follows: Premises Operation, Products/Completed Operations, Independent Contractors, Blanket Contractual, Broad Form Property Damage and Personal Injury.
  - (3) If applicable, unemployment Insurance by payment of employment security taxes for all employees hired by the CONTRACTOR to work on this project. In the event of the CONTRACTOR'S failure to pay such taxes, the MUNICIPALITY will withhold an amount sufficient to pay such taxes from any payments owed to the CONTRACTOR by the MUNICIPALITY. The MUNICIPALITY also reserves the right to contact the Alaska State Department of Labor in order to determine whether unemployment security taxes have been paid by the CONTRACTOR. The MUNICIPALITY further reserves the right to withhold that portion of employment security taxes owned to any employees pending notification of the CONTRACTOR'S unemployment security tax clearance from the Alaska State Department of Labor.
- (B) A lapse in insurance coverage is a material breach of this Agreement which shall result in immediate termination of the Agreement, pursuant to Section 8, in the sole discretion of the Municipality.
- (C) Each policy of insurance required by this section shall provide for no less than 30 days advance notice to the MUNICIPALITY prior to cancellation. No contract for services shall be issued or continued unless there is presented to the Municipality of Skagway a certificate of insurance showing that the business owner/operator has obtained at least two million dollars (\$2,000,000.00) general liability insurance and at least two million dollars (\$2,000,000) in Professional Liability (Errors and Omissions). Proof of such insurance shall be provided to the MUNICIPALITY as a condition of entering the contract. Failure to maintain such insurance shall constitute a material breach of contract. The certificate of insurance must establish that the MUNICIPALITY is named as an additional insured on such policy. The failure to name the MUNICIPALITY as an additional insured on the general liability insurance shall constitute a material breach of the Contract.

- (D) CONTRACTOR shall insure that all subcontracts and consulting agreement have the same provision and that all subcontractors and consultants list the Municipality as an additional insured on their general liability insurance. The failure of the CONTRACTOR to comply with this provision shall constitute a material breach of this Agreement and the CONTRACTOR shall defend, indemnify and hold the Municipality harmless in any action instituted against the Municipality alleging any acts or omissions by a subcontractor or consultant of the CONTRACTOR with whom the CONTRACTOR failed to require the subcontractor or consultant to list the Municipality as an additional insured on its general liability insurance.

**Section 22. Understanding.**

The CONTRACTOR acknowledges that the CONTRACTOR has read and understands the terms of this Agreement and has had the opportunity to review the Agreement with counsel of their choice, and is executing this Agreement of their own free will. CONTRACTOR acknowledges and agrees that CONTRACTOR is not relying on any statements or representations of the Municipality or its attorneys in entering this Contract.

**Section 23. Severability.**

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

**Section 24. Compliance with Law.**

CONTRACTOR shall comply with all applicable Federal, State of Alaska and Municipal laws, regulations and ordinances in performing their duties in this Agreement. CONTRACTOR shall be familiar with the Migratory Bird Treaty Act and shall comply with the provisions of those federal laws as applicable to migratory birds, eggs, and nests in Skagway Borough.

CONTRACTOR shall comply with all federal, state and local mandates and protocols related to COVID-19 and CONTRACTOR shall insure that all employees, subcontractors, consultants, and invitees of CONTRACTOR shall similarly comply with all such mandates and protocols.

**Section 25. No Third Party Beneficiary**

The provisions of this Agreement are and will be for the benefit of CONTRACTOR and MUNICIPALITY only and are not for the benefit of any third party and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

**Section 26. Notices.**

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

MUNICIPALITY      Municipal Manager  
Municipality of Skagway  
P.O. Box 415  
Skagway, Alaska 99840

CONTRACTOR

\_\_\_\_\_  
Andrew Cremata, Mayor  
For the Municipality of Skagway

Date \_\_\_\_\_

\_\_\_\_\_  
Owner  
For Company

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Steve Burnham Jr., Borough Clerk

(SEAL)