



**AMENDMENT TO THE TOUR BROKER AGREEMENT BETWEEN
M & M TOUR SALES, INC. AND THE MUNICIPALITY OF SKAGWAY**

ALWAY TO THE

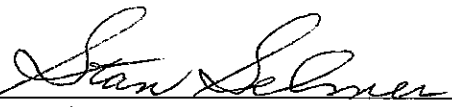
This amendment dated March 6, 2013 for the purpose of modifying and extending the existing agreement entered into September 29, 2006 between the Municipality of Skagway, an Alaska Municipal corporation (hereinafter Municipality) and M & M Tour Sales, Inc. (hereinafter Contractor) hereby extends the contract as follows:

SECTION TWO: CONTRACT PERIOD & COMPENSATION

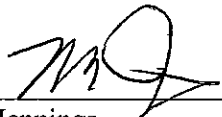
- A. The contract shall be for a 5-year term with the option of a 5-year renewal term, but will be evaluated on a yearly basis. The contract period shall commence on October 1, 2012 and terminate on September 30, 2017.

All other terms of the existing agreement shall remain unchanged. Any further modification shall be agreed upon by both parties in writing.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement Modification as of the date first written above.



Stan Selmer, Mayor
For the Municipality of Skagway
Date 3/16/13



Mark Jennings
M & M Tour Sales, Inc.
Date 4.10.13

ATTEST:


Emily Deach, Municipal Clerk
(SEAL)



City of Skagway Tour Broker Agreement

SECTION ONE: GENERAL CONDITIONS

- A. M&M Brokerage, Inc., hereinafter referred to as Contractor, shall provide assistance to the visitor industry by providing a tour brokerage system for all tour products offered in the City of Skagway. The City will supply the municipal property located near the end of the White Pass Dock, subject to the conditions set out below and only so long as Contractor is not in breach of this Agreement. The Contractor will be required to offer all tour products to visitors, including but not limited to bike, helicopter, horse, bus/van, etc., offered by interested companies. The contract is based on the conditions stated below and the Contractor's proposal that was submitted to and accepted by the City of Skagway. The Contractor must adhere to the following conditions:
- i) Contractor must offer tour products of all interested tour companies to the public, including, but not limited to, bike, helicopter, horse, bus/van, etc.
 - ii) Contractor shall not charge more than a 20% commission rate to all tour vendors, regardless of tour.
 - iii) Contractor shall not show a preference to any particular tour company.
 - iv) Contractor shall not refuse to offer any interested company's tour product unless the following circumstances apply:
 - a) Tour operator lacks insurance.
 - b) The tour company does not provide the tour that has been advertised.
 - c) The tour company does not perform, has a lack of historical knowledge, or misses scheduled tours.
 - d) Vehicle conditions are poor and not up to Federal, State & Municipal standards. Contractor shall provide documentation to the City of Skagway for any tour company that has been denied service for any of the above conditions.
 - v) Interested companies that wish to use the brokerage system must sign a contract with the broker, which must be pre-approved by the City Manager and the Tourism Director. Copies of all signed contracts shall be provided to the City.
 - vi) All forms of outcry are prohibited and shall be considered a violation of the broker's contract.
 - vii) Contractor is responsible for collecting and submitting the appropriate sales tax for all tour products sold through the brokerage system, to the City of Skagway.
 - viii) Contractor shall not operate or have any interest in any tour product sold in the City of Skagway.
 - ix) Signage of buildings must be pre-approved by the City of Skagway and must be submitted through a sign permit as required by the City of Skagway.
 - x) Contractor is solely responsible for any decision Contractor makes to refuse to offer any tour product under sections (iv)(b-d) above, and Contractor shall defend and hold harmless the City of Skagway in any suit, action, or administrative proceeding brought by any company whose tour has been refused by Contractor.

SECTION TWO: CONTRACT PERIOD & COMPENSATION

- A. The contract shall be for a 5-year term, but shall be evaluated on a yearly basis. The parties agree that the 12 months of the contract shall be construed as a probationary period. At least ninety (90) days before the end of the probationary period, the City of Skagway shall conduct a review of the Contractor's performance.
- B. Contractor will pay the City of Skagway 1% of gross annual revenue for M&M Brokerage. This shall be submitted to the City of Skagway on the first day of each month, beginning in June and ending in October for each year of the contract. The 1% payment shall be accompanied with a sales report of all gross revenue collected by the Contractor. The 1% payment shall be for the previous month, thus, the June payment shall be for gross revenue collected in May, and the October payment for September. Failure by the Contractor to remit payment to the City of Skagway for two successive months shall constitute a breach of this Agreement and the City of Skagway may terminate the Agreement at its option pursuant to Section Six.

- C. Contractor is responsible for a yearly lease value of the Municipal land and building. The lease amount will be based on an appraisal of fair market value (see attached). The lease amount will be determined by multiplying:
 The appraised annual value of the land on a per square foot basis (\$17.50 per S.F.), by
- ❖ 2000 square feet, by
 - ❖ Eight percent (8%)
- The lease amount shall be \$2,800 (plus applicable taxes) – Two Thousand-Eight Hundred Dollars, annually. For the first year of the agreement, the lease amount shall be paid in two installments, the first being July 1, 2001 (\$1,400 plus tax – One Thousand-Four Hundred Dollars) the second September 1, 2001 (\$1,400 plus tax – One Thousand-Four Hundred Dollars). The subsequent 4-years of the agreement shall be paid on a monthly basis, May through September, with the payment being made by the first day of each month for \$560.00 plus tax (Five Hundred-Sixty Dollars).
- D. The annual rental payable pursuant to any lease shall be subject to adjustment on the third anniversary of the date of the original agreement (January 1, 2001), and at each three-year interval thereafter. The adjusted annual rent shall be computed at that percentage of the fair market value of the land as set by the lease, inclusive of any improvements thereon made by the city, but exclusive of any portion of value created by expenditures by Contractor, except that the value of any improvements credited against rentals shall be included in the value. Such fair market value shall be determined by an appraisal made by the city assessor and reviewed and approved by the council, whose decision is final. The new rental amount shall be effective at the beginning of the three-year interval to which it applies.
- E. Contractor shall not assign, sublet, sell, transfer or otherwise dispose of any interest in this Agreement without prior written approval of the City of Skagway. The contract agreement shall be binding upon and inure to the benefit of the contract parties, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person. Neither this contract nor any amounts due or to become due hereunder shall be assigned, in whole or in part, without the prior written consent of the contracting officer.

SECTION THREE: CITY'S RESPONSIBILITY

- A. City shall designate a person to act as the City's representative with respect to the services to be rendered under this agreement. This representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the Contractor's services.
- B. The City will provide the Contractor with an enclosed structure on the White Pass Dock location. The structure shall be capable of being secured after regular business hours. The building shall have access to utilities (electrical and phone), which shall be paid by the Contractor. The size of the structure may be reevaluated after the first year.

SECTION FOUR: CONTRACTOR'S RESPONSIBILITIES

- A. Contractor shall provide a representative who shall have complete authority to transmit instructions, receive information, interpret and define the Contractor's policies and decisions with respect to this agreement.
- B. Contractor shall provide equal opportunity employment.

SECTION FIVE: INSURANCE AND INDEMNIFICATION

- A. Contractor agrees to defend, indemnify and hold harmless the City against any and all claims or actions for injuries or damages sustained by any person or property arising out of, or in connection with, or incident to the performance of this Agreement, including any action or claims by any company offering any tour product.

- B. Contractor shall provide general liability insurance at a minimum of \$500,000, which protects the Contractor from any in connection with the brokerage. The City shall be listed as an additional insured on this policy claims arising. Proof of such insurance shall be provided to the City as a condition of entering into this Agreement. Failure to maintain such insurance shall constitute a breach of this Agreement.
- C. Any tour company product offered by Contractor must secure general liability insurance at a minimum of \$500,000, listing the Contractor and the City of Skagway as an additional insured, agreeing to defend, indemnify, and hold harmless the City and the Contractor against any and all claims or actions for injuries or damages sustained by any person or property arising out of, or in connection with, or incident to the performance of this Agreement. Proof of such insurance must be attached Contractors signed agreement, and a copy supplied to the City.

SECTION SIX: TERMINATION AND SUSPENSION

The City of Skagway may, by written notice of default to the Contractor, terminate the whole or any part of this contract, including but not limited to the following circumstances:

- A. If the Contractor fails to perform the service within the time specified herein or any extension thereof, or
- B. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the City of Skagway may authorize in writing) after receipt of notice from the City of Skagway specifying such failure.
- C. Except with respect to defaults of subcontractors, the contractor shall not be liable for any excess costs if failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to the following: acts of God or of the public enemy, acts of the City of Skagway, fire, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather conditions which render road conditions unsuitable for safe operation, provided, however, in every case the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be those provided in the "Termination of Convenience" clause hereof. Failure to agree to any such adjustment shall be a dispute concerning a question of fact.
- E. The rights and remedies of the City of Skagway provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- F. The City of Skagway may, whenever the interest of the City of Skagway so require, terminate this contract in whole or in part, of the convenience of the City of Skagway. The City shall give written notice of the termination to the Contractor no less than ninety (90) days before the effective date of the termination specifying the part of the contract terminated and when termination becomes effective. In the event of such termination, the following provisions shall apply:
- G. The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor will stop working the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The City of Skagway may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City of Skagway. The contractor must still complete the

