



MUNICIPALITY OF SKAGWAY

GATEWAY TO THE KLONDIKE
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AGREEMENT BETWEEN MUNICIPALITY OF SKAGWAY AND MUNICIPAL MASS TRANSIT PROVIDER

This Agreement made and entered into this 11th day of June in the year 2021 between the MUNICIPALITY of Skagway, an Alaska municipal corporation (hereinafter referred to as MUNICIPALITY) and Leo's Shuttle Co., LLC, (hereinafter referred to as CONTRACTOR):

Principal Office: 1077 Alaska Street
(Street Address)

Skagway, AK 99840
(City, State, Zip Code)

907-983-2743
(Phone)

THE MUNICIPALITY AND CONTRACTOR AGREE AS FOLLOWS:

1.0 GENERAL CONDITIONS

1.01 Length of Agreement.

The term of this Agreement shall be One (1) summer season, commencing on the start date provided herein or the date this Agreement is fully executed, whichever is earlier. The Agreement shall automatically terminate on the last day of the cruise ship season in 2021.

1.02 Fees

CONTRACTOR shall collect fares at a rate of \$2.00 from the vessel into town or \$5.00 for the day and retain all revenues in lieu of payment.

1.03 Notice of Intent to Terminate

Other provisions of this Agreement notwithstanding, in all instances where the MUNICIPALITY of Skagway determines that the CONTRACTOR has failed to perform

according to the terms and conditions of this Agreement, the MUNICIPALITY shall provide the CONTRACTOR written notice specifying the failure(s) and the MUNICIPALITY'S intent to terminate the Agreement unless the CONTRACTOR cures such failure(s) within ten (10) days of receipt of such notice, or such longer period as the MUNICIPALITY of Skagway may authorize in writing.

2.0 SCOPE OF SERVICES

2.01 Description of Required Services.

- A.** The CONTRACTOR will provide all related services, including but not limited to, management, dispatching, driver hiring and training, supervision, on-street operations, reporting, and ticket/pass sales.
- B.** The CONTRACTOR shall provide the facilities from which the service will operate except bus zones, passenger shelters, and signage shall be provided by the MUNICIPALITY.
- C.** For these services the CONTRACTOR shall provide revenue vehicles, fuel, oil and lubricants.
- D.** Contractor shall provide service only on those days when a cruise ship is at port, excluding the American Constellation.
- E.** Contractor will work with Skagway Tourism Director or designee to confirm days and times of shuttle operations. SMART will respond to all service requests received with 72 hours' notice.
- F.** The CONTRACTOR shall take all actions necessary to maximize efficient delivery of the service.

2.02 Suspension of Service.

Service may be temporarily suspended only upon concurrence of the Municipal Manager of the MUNICIPALITY of Skagway or his/her designee. Likewise, in the event of inclement weather or unusual circumstances, the Municipal Manager or his/her designee shall determine the waiving of service standards. Except as herein provided, service shall be continuously operated throughout the term of this Agreement, with the sole exception of interruptions by Acts of Nature.

2.03 Advertising on Revenue Vehicles.

CONTRACTOR shall not affix, and shall not permit to be affixed to or distributed on any vehicle, any other advertising, political or other printed or published material not approved by the MUNICIPALITY of Skagway and shall not utilize or permit to be utilized any loudspeaker, video or other device for the purpose of such advertising or other

communication without permission from the MUNICIPALITY of Skagway. 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 material, 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.

2.04 Service Area and Service Levels/Frequency

The service area is generally defined as the boundaries of the MUNICIPALITY and those routes specified and approved to be operated within those boundaries. The MUNICIPALITY of Skagway reserves the right to, from time to time and at its sole discretion, expand or eliminate any portion of the service area upon notice to the CONTRACTOR. This Agreement shall not grant to the CONTRACTOR exclusive rights to service provision within the service area. The service levels and areas to be served are shown in **Exhibit B**.

2.05 Vehicles.

- A.** Vehicles shall not exceed 35 feet in length.
- B.** Seating capacity of each vehicle shall be 13 to 36 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, if so equipped, 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.** No vehicles will be placed into service that fails to comply with the Municipality

of Skagway's "out of service criteria". The Contractor acknowledges by signing this Agreement a full understanding of the Municipality's "out of service criteria."

- K.** 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.
- L.** 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.
- M.** 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.
- N.** 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.
- O.** No deviation from these general specifications shall be permitted unless approved by the Municipality in writing.

2.06 Maintenance of Revenue Vehicles

- A.** At all times, CONTRACTOR shall cause all components of each vehicle, including its body, frame, furnishings, mechanical, electrical, hydraulic, or other operating systems, to be maintained in proper working condition free from damage and malfunction. CONTRACTOR shall cause any vehicle damaged in an accident or otherwise to be repaired immediately when the damage is impairing the proper and safe mechanical operation of the vehicle. In no event shall the MUNICIPALITY of Skagway be required to repair or maintain any vehicle. CONTRACTOR, at its sole cost and expense, shall maintain stores of and provides fuel, lubricants, repairs, parts and supplies required for the maintenance and operation of all vehicles utilized in providing services. These stores shall be sufficient to minimize vehicle downtime and ensure that peak vehicle requirements are met.
- B.** All repairs to vehicles utilized in transporting passengers under this Agreement with the MUNICIPALITY of Skagway shall be performed by CONTRACTOR or other vendors and suppliers subject to prior approval by the MUNICIPALITY of Skagway. Repairs shall include, but not be limited to, work to correct loss or damage, adjustments due to wear and tear, and overhaul, rebuilding or replacement of components. Repair work shall be conducted as soon as practicable upon learning that such work is required. CONTRACTOR shall perform repair work

expeditiously in response to identification of problems by drivers, other employees, or by the MUNICIPALITY of Skagway. CONTRACTOR shall assure the MUNICIPALITY of Skagway that required repairs shall not be deferred beyond a reasonable time.

- C. CONTRACTOR shall provide a preventive maintenance (P.M.) program for revenue vehicles that meets or exceeds the vehicle manufacturer's specified preventive maintenance program. Adherence to preventive maintenance schedules shall not be regarded as reasonable cause for deferred maintenance in instances where CONTRACTOR employees, maintenance personnel, or the MUNICIPALITY of Skagway has observed that maintenance is needed in advance of schedule. CONTRACTOR shall not defer maintenance for reasons of shortage of maintenance staff or operable vehicles, nor shall service be curtailed for the purpose of performing maintenance without consent of the MUNICIPALITY of Skagway. The CONTRACTOR shall adjust the maintenance work schedule as necessary to meet all scheduled services and complete preventive maintenance activities according to the schedule approved by the MUNICIPALITY of Skagway. Preventive maintenance and running repairs shall receive first priority in the use of the CONTRACTOR'S maintenance resources.

- D. CONTRACTOR shall utilize the inspection forms, work order forms, driver vehicle condition reports, and other forms used for vehicle maintenance which were submitted with CONTRACTOR'S original proposal documents to this Agreement. CONTRACTOR shall insure the MUNICIPALITY is provided with updated forms in the event the forms are modified. Any modifications to the forms supplied with CONTRACTOR'S original proposal are subject to the MUNICIPALITY'S written approval.

3.0 PROVISIONS AND CLAUSES

3.01 Governing Law.

The laws of the State of Alaska shall govern the interpretation and construction of this Agreement and all disputes arising out of or relating to this Agreement. The Superior Court for the First Judicial District for the State of Alaska, at Juneau, Alaska, shall be the exclusive jurisdiction and venue for any action of any kind and any nature arising out of or related to this Agreement or arising out of or related to the performance of the CONTRACTOR or the CONTRACTOR'S employees, agents, or subcontractors. CONTRACTOR specifically agrees that venue for trial shall be in Skagway, Alaska.

3.02 Applicable Laws and Codes.

All vehicles shall be maintained and operated at all times in compliance with all applicable laws, rules, regulations and codes governing the operation of vehicles of public conveyance in the area of operation under the Scope of Work and under the laws of the MUNICIPALITY of Skagway and those of the State of Alaska and the United States. Without limiting the generality of the foregoing, the CONTRACTOR shall obtain and

maintain all permits and licenses necessary in order to operate each bus and equipment under all such applicable laws, rules, regulations and codes. All vehicles shall be maintained in accordance with all manufacturers' servicing schedules, warranties, and specifications. All current federal, state, and local guidelines and protocols for COVID-19 mitigation will be implemented.

3.03 Workers' Compensation Insurance, Industrial Insurance, and Medical Aid Premium.

CONTRACTOR and his subcontractors shall maintain Workers' Compensation and Industrial insurance in the amount and type required by law for all employees employed under this Agreement who may come within the protection of Workers' Compensation and Industrial Insurance Laws. The CONTRACTOR and subcontractors shall maintain Employer's Liability insurance in amount, form and company satisfactory to the MUNICIPALITY of Skagway for the benefit of all employees not protected by Workers' Compensation and Industrial Insurance Laws. The CONTRACTOR agrees to defend, indemnify, and hold harmless the MUNICIPALITY of Skagway from any actions arising out of or in connection to any claims filed by an employee of the CONTRACTOR under the Alaska Workers' Compensation Act. The CONTRACTOR shall make all payments arising from the performance of this Agreement due the State of Alaska pursuant to all applicable laws and regulations.

3.04 Hold Harmless and Indemnification

A. The CONTRACTOR assumes all responsibility, risk, and liability for the operation of, use of, control, maintenance, repair, and condition of the bus service which is subject to this Agreement. In addition to, and in no way limiting the CONTRACTOR'S other indemnity obligations under this Agreement, the CONTRACTOR shall defend, indemnify, and hold harmless the MUNICIPALITY from and against any and all demands, causes of action (whether in the nature of an action for damages, indemnity, contribution, government cost recovery or otherwise), fines, judgments, suits, claims, actions, losses, costs (including attorney's fees and litigation costs), expenses, charges, forfeitures, liens, liabilities to, personal injury, death, environmental contamination, nuisance, or property damages, arising out of, in connection with, or resulting directly or indirectly from, or otherwise incident to, the bus service which is subject to this Agreement, or any activities of any subcontractor under this agreement. The MUNICIPALITY may tender any such cause of action, lawsuit, or other proceeding brought against the MUNICIPALITY to the CONTRACTOR and such tender shall immediately be accepted by the CONTRACTOR. Any attorney's fees or costs incurred by the MUNICIPALITY prior to such tender of defense shall be the complete and sole responsibility, without limitation, of the CONTRACTOR. The obligation of the CONTRACTOR under all of the defend and indemnification provisions of this Agreement shall survive beyond the termination or expiration of the term of this Agreement.

- B.** The CONTRACTOR agrees that the above provision shall be included in all subcontracts which are entered into pursuant to this Agreement.
- C.** The parties agree that this section in no way limits any other indemnification provision in this document.
- D.** If a lawsuit with respect to this hold harmless provision ensues, the CONTRACTOR shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by the MUNICIPALITY of Skagway, its officers, agents, employees and volunteers, the CONTRACTOR shall pay the same in full.

3.05 Federal/State and Local Taxes.

The CONTRACTOR shall be responsible for paying all applicable taxes associated with this Agreement.

3.06 Insurance.

- A.** The CONTRACTOR shall maintain, during the life of the Agreement at its own expense, Workers' Compensation insurance by an insurance company licensed to write such insurance in the State of Alaska for all of its agents, servants, employees, and personnel who in any way are employed with respect to this project in accordance with Alaska Workers' Compensation Law. The CONTRACTOR shall furnish to the MUNICIPALITY certificates evidencing such insurance, each year, during the term of this agreement.
- B.** The CONTRACTOR shall maintain at the CONTRACTOR'S expense, during the life of this Agreement, Commercial General Liability, Comprehensive Auto, Garage Keeper's Liability and Property Damage insurance as shall protect it and any subcontractors performing work or services covered by this Agreement, and the MUNICIPALITY of Skagway and its agents, and employees from any claims of any nature, whether meritorious or otherwise, including death and property damage which may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be as follows:
 - 1)** Commercial General Liability - ISO 1993 form or equivalent in the amount of \$2,000,000 combined single limit bodily injury and property damage which provides the following coverage:
 - a.** Premises and Operations;
 - b.** Explosions, Collapse and Underground Hazards (Where Applicable);
 - c.** Products/Completed Operations;
 - d.** Contractual Liability;

- e. Broad Form Property Damage;
 - f. Independent CONTRACTORS;
 - g. Personal Injury/Advertising Liability;
 - h. Stop Gap Liability (\$1,000,000 per persons/\$1,000,000 per occurrence.
 - 2) Comprehensive auto liability in the amount of \$1,000,000 combined single limit bodily injury and property damage which provides the following coverage:
 - a. Owned Vehicles 20;
 - b. Non-Owned Vehicles;
 - c. Hired Vehicle.
 - 3) All deductible payments are the responsibility of the CONTRACTOR.
 - 4) Each insurance policy shall name the MUNICIPALITY of Skagway as additional insured.
 - 5) Any insurance obtained by the CONTRACTOR to satisfy the requirements of this Agreement shall not exclude environmental damage or pollution.
 - 6) The failure of the CONTRACTOR to provide the MUNICIPALITY with a certificate of insurance for each policy showing the MUNICIPALITY to be additionally insured constitutes a material breach of this and the MUNICIPALITY may immediately terminate the Agreement in its sole discretion.
- C.** The CONTRACTOR shall bear all risks of damage, loss, theft or destruction, partial or complete, with respect to any vehicle, facility, or equipment (including software) provided to the CONTRACTOR by the MUNICIPALITY of Skagway or any item thereof. The CONTRACTOR shall, at its own expense, keep all property and vehicles associated with this project insured against all risk, with extended coverage with such insurance company satisfactory to the MUNICIPALITY of Skagway and with losses, if any, payable to the MUNICIPALITY of Skagway as the MUNICIPALITY of Skagway interest may appear. Any policies with respect to such insurance shall name the MUNICIPALITY of Skagway as additional insured and loss payee as the MUNICIPALITY of Skagway interest may appear and specifically identify any equipment or vehicles provided by the MUNICIPALITY of Skagway. A certificate of insurance for auto physical damage acceptable to the MUNICIPALITY of Skagway shall be furnished to the Contracting Officer.
- D.** The MUNICIPALITY of Skagway reserves and retains its rights of subrogation. The MUNICIPALITY of Skagway shall further have the right, at its election and expense, to pursue collection and recovery from any and all responsible third-parties. The CONTRACTOR shall cooperate with the MUNICIPALITY of

Skagway in such recovery and collection, and shall make its records and personnel available.

As to any accident or incident to which this paragraph is applicable, any and all sums so recovered by the MUNICIPALITY of Skagway as provided hereunder, after deduction only of court costs, shall be reimbursed to the CONTRACTOR. The pendency of any collection efforts against third-parties, including litigation, shall in no way delay or diminish the obligation of the CONTRACTOR to promptly remit the sums due to the MUNICIPALITY under the provisions of this Paragraph.

- E.** The CONTRACTOR shall not commence work under this Agreement, nor shall the CONTRACTOR allow any subcontractor to commence work, until it has obtained all insurance required under this article and such insurance has been approved by the MUNICIPALITY of Skagway and the MUNICIPALITY has been provided a Certificate of Insurance showing the MUNICIPALITY as an additional insured on each policy.
- F.** The CONTRACTOR shall furnish the MUNICIPALITY of Skagway, satisfactory written proof of coverage of the insurance (Certificates of Insurance), which shall be required each year for the term of this Agreement. Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the MUNICIPALITY of Skagway has received written notice of such cancellation or reduction by certified mail."
- G.** This Agreement is in no way intended to be a third-party beneficiary contract and confers no rights on anyone other than the MUNICIPALITY and the CONTRACTOR. Nothing herein will constitute any imposition or acceptance of any personal obligation or liability not otherwise imposed by law upon or by any individual associated with the MUNICIPALITY or CONTRACTOR.
- H.** It is expressly agreed and understood that the officers, proprietors, owners, agents, servants, and employees of the CONTRACTOR are in no way entitled to any benefits whatsoever (including so-called employee benefits or fringe benefits) from the MUNICIPALITY of Skagway.
- I.** Each contract of insurance required hereunder, including but not limited to extensions and renewals, shall be by companies authorized to enter into such contract of insurance or to transact insurance business in Alaska.

3.07 Compliance with Federal Law.

The CONTRACTOR shall comply with all applicable local, state and federal laws, to include but which are not limited to, requirements of the Americans with Disabilities Act of 1990 (ADA, 42 USC 12101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, section 16 of the Federal Transit Act, as amended, 49 USC app. 1612, and the following regulations and any amendments thereto:

- A. U.S. DOT regulations, "A Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. DOT regulation, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. DOJ regulations, "Nondiscrimination on the basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
- J. All current federal, state, and local guidelines and protocols for COVID-19 mitigation will be implemented.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MUNICIPALITY OF SKAGWAY

DATED: _____

 Andrew Cremata, Mayor
 MUNICIPALITY of Skagway

ATTEST:
Emily A. Deach, Municipal Clerk
(SEAL)

DATED: _____

Stuart Brown, Owner
Leo's Shuttle Co., LLC

EXHIBIT B

MUNICIPAL RESOLUTION SKAGWAY SMART STOP ZONES



