

GRANT AGREEMENT

between

MATANUSKA-SUSITNA BOROUGH

and

MATANUSKA-SUSITNA CONVENTION & VISITORS BUREAU

This Agreement is made and entered into this ____ day of _____, 2018, by and between the **MATANUSKA-SUSITNA BOROUGH** (hereinafter the "Borough") and the **MATANUSKA-SUSITNA CONVENTION & VISITORS BUREAU** (hereinafter the "Grantee"), for the purposes and subject to the terms and conditions set forth herein.

WHEREAS, the Borough in the Fiscal Year 2019 Operating Budget had appropriated grant funds in the amount of \$747,500 from the areawide fund (Fund 100) to the Grantee for the purpose of providing operating funds for Fiscal Year 2019; and

~~WHEREAS, in addition to the \$747,500 grant, the Borough in Assembly Memorandum 18-___ agreed to provide the grantee with 65% of the actual bed tax revenues collected for the fiscal year, as determined using accrual based accounting, in excess of \$1,150,000; and~~

WHEREAS, the assembly has given the Borough Manager the authorization to extend this agreement for three years through June 30, 2021; and

WHEREAS, the Borough has the authority to expend funds to carry out said powers; and

WHEREAS, the Borough has the authority to enter into this Agreement with the Grantee to carry out the purposes contained herein; and

WHEREAS, the Grantee represents and warrants it has the legal capacity to enter into this Agreement and carry out the purposes contained herein; and

WHEREAS, the Grantee acknowledges and represents that the grant funds are public funds and that it will handle, use, expend, account for and be responsible for the public funds in accordance with applicable laws and standards pertaining to public funds; and

WHEREAS, the Grantee acknowledges that the grant funds are for operating expenses only of the Grantee; and

WHEREAS, the Grantee represents that it has a policy and practice of open membership which encourages the participation of persons from all segments of the community; and

WHEREAS, the Grantee represents that it has a policy and practice of non-discrimination based on race, color, religion, national origin, sex, marital status, physical disability and age; and

~~WHEREAS, 65% of the revenues collected in excess of the \$1,150,000 will be allocated as are they received.~~

NOW, THEREFORE, the parties agree as follows:

Section 1. **Definitions.** In this Agreement:

- A. The term "grant funds" means the total sum as approved by the Borough Manager.
- B. The term "project completion" means completion of all contract duties by the Grantee under this Agreement and acceptance by the Borough.
- C. The term "project report" means a complete description of the uses of the funds including, but not limited to, equipment and materials purchased or partially purchased with grant funds, labor paid or partially paid with grant funds, improvements paid with or partially paid with grant funds and any other use of the grant funds.
- D. The term "Grantee" means the Matanuska-Susitna Convention and Visitors Bureau, Inc.
- E. The term "Grantor" means the Matanuska-Susitna Borough.
- F. The term "grant period" means July 1, 2018 through June 30, 2019, unless sooner terminated under the terms and conditions of this Agreement. Additionally, the Borough Manager can extend this agreement through June 30, 2021.
- G. The term "in-kind contribution" means any service and/or materials provided by the Grantee which are not reimbursable under this Agreement but may be part of the total project which the Grantee agrees to provide.

Section 2. **Contract Documents.**

- A. The documents which make up this Agreement between the Borough and the Grantee consist of this contract, titled Grant Agreement.

Section 3. **Period of Performance.** This contract shall become effective July 1, 2018. Performance of all duties and responsibilities of the Grantee shall be completed at the end of each fiscal year.

Section 4. **Scope of Work.** The Grantee shall perform the work of the project in accordance with the terms, conditions, and provisions of this Agreement. The Grantee specifically and generally agrees to use grant funds for operation of tourism marketing, and operate the Visitor Center (to the extent one exists) on seasonal basis. Furthermore, the Grantee shall not decrease the Visitor Center budget without prior written approval from the Borough. The Grantee further specifically and generally agrees to operate and maintain on a continuous basis the Visitor Center building (to the extent that one exists), including, but not limited to, the payment of all utilities, janitorial costs, insurance, basic maintenance and snow removal through the term of the grant period.

Section 5. **Payment: Schedule and Progress Report.**

A. Subject to the provisions of this Agreement, the Borough shall pay the amount of \$747,500; ~~except if the actual fiscal year bed tax revenues collected exceed \$1,150,000, as determined using accrual based accounting, then 65% of the excess will also be paid to the Grantee.~~

B. Equal payments of \$373,750 will be made by July 31 and January 31 of each fiscal year the contract is extended.

C. Once the total of each Fiscal Year 2019, 2020, and 2021 bed tax revenues collected exceed

\$1,150,000, payment of 65% of the excess revenues, greater than \$1,150,000, will be remitted annually ~~quarterly~~ to the Grantee. ~~The Schedule will be as follows: November; payable in February; May and August.~~

D. As a condition precedent to the disbursement of any payment to the Grantee, performance objectives and budget report must be submitted by the Grantee by March 1 for the following fiscal year. As a minimum, the report shall contain a brief description of each program work accomplished, an overview of the anticipated work schedule for the upcoming fiscal year, and a summary of expenditures and balances. The manner and description of report requirements can be altered or amended at any time with the written consent of both Borough and Grantee.

E. This grant is subject to and shall not exceed funds lawfully appropriated for its purpose. The Assembly may, at its sole discretion, reduce the appropriated funds hereunder by lawful means.

Section 6. **Award of Contracts by Grantee.**

A. The Grantee shall not permit the involvement of a person with a financial or other private interest in the contractor, or contract, to participate in the contract award or supervision. Any conflict of interest arising from the award of a contract shall be disclosed to the Borough prior to the contract award. The Borough shall not be liable for reimbursement to the Grantee for any contract awarded by the Grantee in violation of this subsection.

B. This section is intended solely to ensure that public funds are expended responsibly and in the best interest of the public as a whole. It creates no rights or remedies in persons except for the Borough.

The Grantee shall not contract for the operation of the Visitor Center without the prior written approval of the Borough.

Section 7. **Final Project Report.** Not later than 90 days after completion of all other contract duties by the Grantee, the Grantee shall submit a final annual report to the Borough in a sufficient form and with sufficient detailed information so that proper reports can be made by the Borough to any state, federal or other agency which may request such reports. The annual final report shall include all actual costs incurred, the in-kind contributions provided and the value thereof, describe the work accomplished, and present any findings and recommendations for future consideration. This report shall be in a form satisfactory to the Borough.

Section 8. **Payment Conditions.** Upon receipt of the statement of actual cost of the project and completion of the project by the Grantee to the Borough in accordance with the terms of this Agreement, the Borough and Grantee shall submit such documentation as required, if any, to the state of Alaska, federal agencies or any other governmental agencies or agent/contractors thereof.

Section 9. **Review and Compliance.** The programs will periodically be reviewed by the Borough for compliance with this Agreement. A final review will take place upon completion of the contract duties of the Grantee and before final acceptance. Should inspection reveal non-compliance with this Agreement, the Grantee will be solely responsible for bringing the programs into full

compliance. Any grant funding not used in compliance with the terms and conditions of this Agreement or used unlawfully shall be returned to the Borough forthwith.

Section 10. **Audits, Financial Reports and Records.**

A. The Grantee shall utilize recognized professional accounting procedures in expenditure of grant funds and in generating and retaining control documents necessary to allow subsequent audits.

B. The Grantee shall allow, on request, an audit by the Borough of its expenditures of monies made available to the Grantee under this Agreement and of transactions related to those expenditures.

Section 11. **Indemnification.** The Grantee shall save, defend and hold the Borough harmless from any claim, demand, suit or liability, including attorney's fees and costs arising from any loss, damage to property or injury to persons or any other damage or injury occurring directly or indirectly in connection with performance of its duties under this contract or otherwise by its partners, employees, attorneys, officers, agents, contractors, sub-contractors or suppliers.

Section 12. **Notice of Delays.** The Borough shall be notified should the Grantee encounter or anticipate difficulty in meeting major Agreement requirements. The notice shall be in writing, and include pertinent details of the delay. This provision shall not be construed as a waiver by the Borough of any delivery schedule or date or of any rights or remedies provided by law or under this contract.

Section 13. **Agreement Changes.** The Grantee shall provide the Borough with adequate notice of proposed anticipated major changes to the Agreement. The proposed change will describe whether or not the cost or performance time is increased or decreased. The Grantee is responsible for fulfilling the Agreement until both the Grantee and the Borough can, in writing, determine what adjustments may be made and, in any case, such changes are subject to the approval of the Borough.

Section 14. **Contract not Affected by Oral Agreement.** Oral statement of any person shall not modify or otherwise affect the scope of work, or other terms and conditions as herein stated. All modifications to the Agreement must be made in writing by the Grantee to the Borough and, in any case, are subject to the approval of the Borough.

Section 15. **Defaults.**

A. The Borough shall not be responsible and the Grantee shall hold the Borough harmless should the Grantee or any of its subcontractors fail to complete the provisions of this Agreement. Upon evidence of breach of this Agreement, including, but not limited to, the failure to complete the project, the Borough may give a notice of default to the Grantee terminating the entire or any part of this Agreement thirty (30) days from the date the notice is mailed.

B. Upon termination of the Agreement in whole or in part, any unexpended funds may be used by the Borough to settle any claim(s) and/or to complete the project; in doing so, the Borough may procure services similar to those terminated and the Grantee shall be liable to the Borough for any excess costs for such services; provided that the Grantee shall continue performance of this Agreement to the extent not terminated by this section.

C. The Grantee will be liable to the Borough for any claim(s) or outstanding liabilities of the Grantee or of the Borough as a result of the acts or omissions of the Grantee in default of the Agreement, and shall be liable for the return of funds not expended in accordance with the terms of the Agreement.

Section 16. **Additional Work.** No claim for additional funds not specifically herein furnished to the Grantee shall be paid for by the Borough, provided, however, that the Grantee may at its own expense provide such other work as it may deem appropriate and consistent with the purposes and terms of this Agreement.

Section 17. **Other Grants.** In the event grant funds are used for the purpose of providing "matching" funds required in connection with any other project, facility or service of the Grantee supported by other federal, state or local monies, those grant funds shall be spent in compliance with contracts or grant agreements governing those other projects, facilities, or services in addition to the terms and conditions of this Agreement.

Section 18. **Jurisdiction; Choice of Law.** Any civil action arising from this Agreement shall be brought in the Palmer Superior Court for the Third Judicial District of the State of Alaska at Palmer. The Law of the State of Alaska shall govern the rights and obligations of the parties under this Agreement.

Section 19. **Non-Waiver.** The failure of the Borough at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way effect the validity of this Agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

Section 20. **Permits, Laws and Taxes.** The Grantee shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the Grantee under this Agreement shall comply with all applicable Borough, state and federal statutes, ordinance, rules and regulations. The Grantee shall pay all taxes pertaining to its performance under this Agreement.

Section 21. **Non-Discrimination.** The Grantee shall not, in the course of performing its duties under this Agreement, discriminate against any person on the basis of race, religion, color, national origin, sex, age, marital status or physical handicap.

Section 22. **Relationship of the Parties.** The Grantee shall perform its obligations hereunder as an independent contractor of the Borough. The Borough may administer this Agreement and monitor the Grantee's performance within this Agreement but shall not supervise or otherwise direct the Grantee except as provided herein.

Section 23. **Integration.** This Agreement and any exhibits and amendments hereto embody the entire Agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or Agreements, either oral or written, between the parties hereto.

MATANUSKA-SUSITNA BOROUGH

MATANUSKA-SUSITNA CONVENTION
& VISITORS BUREAU, INC.

John M. Moosey
Borough Manager

Bonnie Quill
Executive Director

STATE OF ALASKA)
) ss.
Third Judicial District)

On _____, 2018, Bonnie Quill of Matanuska-Susitna Convention & Visitors Bureau, Inc., personally appeared before me,

(check one)

1. _____ who is personally known to me,
2. _____ whose identity I proved on the basis of _____.
3. _____ whose identity I proved on the oath/affirmation of _____,
a credible witness,

and acknowledged before me that she signed the assignment of lease on behalf of the municipal corporation.

Notary Public for State of Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
Third Judicial District)

On _____, 2018, John M Moosey, Borough Manager of the Matanuska-Susitna Borough, who is personally known to me, appeared and acknowledged before me that she signed the assignment of lease on behalf of the municipal corporation.

Notary Public for State of Alaska
My commission expires: _____