

**REQUEST FOR PROPOSALS**  
**TO PROVIDE LEGAL SERVICES TO THE CITY AND BOROUGH OF SITKA**  
**EMPLOYMENT RELATIONS BOARD**

1.0 **GENERAL INFORMATION**

1.1 Purpose

The Employment Relations Board for the City and Borough of Sitka (“ERB”) was created in October 2005, as a result of an initiative vote approving Ordinance 2005-30. Ordinance 2005-30 enacted Sitka General Code Section 2.08.125. (ATTACHMENT A). From time to time, the ERB shall require legal service from an attorney certified to practice in Alaska by the Alaska Bar Association. Such legal service shall be for legal advice and/or to serve as hearing officer for the ERB.

If your firm desires to be considered to assist as legal counsel for the ERB, your firm must submit a Proposal to the City and Borough of Sitka (“CBS”) Municipal Clerk consistent with the requirements set forth below.

The total contract compensation for the selected firm shall not to exceed \$5,000 for the first year, with an automatic annual perpetual renewal for additional years unless CBS or the selected firm provides 30 days advanced written notice with or without cause of termination or if funds are not budgeted by the CBS Assembly for the upcoming fiscal year. CBS does not guarantee any minimum amount of work. An increase in this contract amount may occur if recommended by the ERB and approved by the CBS Assembly with a supplemental appropriation.

Any firm retained as legal counsel for the ERB must agree not to represent or assist private clients in connection with other claims, litigation, or other legal matters involving the ERB or the CBS, where such representation would constitute or appear to constitute a conflict of interest. Conflicts will be waived only on an exception basis by CBS Municipal Attorney upon prior written disclosure and request for waiver, and as agreed to by the ERB.

It is expected that any firm retained must be willing and able to accept matters referred after execution of a contract, which could occur by late June 2022. The contract will become effective when executed on behalf of CBS and the firm. It is the intent of CBS that the selected firm assigned matters under this contract will, so long as the representation is adequate, complete such assignments. As noted above, additional compensation beyond the contract amount may occur upon the recommendation of the ERB, and with the approval of the CBS Assembly.

## 1.2 Questions

Any questions regarding this request for proposals (“RFP”) are to be submitted in writing to:

Municipal Clerk  
City and Borough of Sitka  
100 Lincoln St., Room 306  
Sitka, Alaska 99835  
clerk@cityofsitka.com

## 1.3 Preparation Costs

CBS shall not be responsible for proposal preparation costs, nor for costs including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest ranked proposer and/or award of contract and/or rejection of proposal. By submitting a proposal each proposer agrees to be bound in this respect and waives all claims to such costs and fees.

## 2.0 **RULES GOVERNING COMPETITION**

### 2.1 Examination of Proposals

Proposers should carefully examine the entire RFP and any addenda, and all related materials referenced in the RFP. Proposers should become fully aware of the nature of the work and the conditions likely to be encountered in performing the work.

The proposer must acknowledge receipt of all addenda. It is the responsibility of the proposer to regularly check the website for addenda to the project for which they are proposing.

### 2.2 Proposal Acceptance Period

An RFP award is anticipated to be announced within 30 calendar days of the deadline for the proposals, which is July 8, 2022. However, all offers must be complete and irrevocable for 60 days following the submission date.

### 2.3 Confidentiality

The content of all proposals will be kept confidential until the selection of the Contractor is publicly announced. At that time the selected proposal is open for review. After the award of the Contract, all proposals will then become public information.

### 2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on:

- 1) conformance to the RFP instructions;
- 2) responsiveness to the RFP requirements; and
- 3) completeness and clarity of content.

## 2.5 Signature Requirements

All proposals must be signed. A proposal may be signed by: an officer or other agent of the firm, if authorized to sign contracts on its behalf; a member of a partnership; or other agent if properly authorized by a power of attorney or equivalent document. The name and title of the individual(s) signing the proposal must be stated below the signature.

## 2.6 Addendum

The proposer must acknowledge receipt of all Addenda in the proposal or as indicated in Bid Express.

## 2.7 Proposal Submission

Upload into Bid Express (located on the CBS website [www.cityofsitka.org](http://www.cityofsitka.org) under "Bids & RFPs") one (1) signed proposal **or** deliver one (1) signed original copy to the Municipal Clerk's office in a sealed box or envelope with the company name clearly indicated on the outside. Delivered proposals must be submitted no later than **2:00:00 PM, Alaska Standard Time, June 9, 2022** to the address shown below. **Facsimile or Email submittals will not be accepted.**

Municipal Clerk  
City and Borough of Sitka  
100 Lincoln St., Room 304  
Sitka, AK 99835  
PROPOSAL ENCLOSED

## 2.8 Disposition of Proposals

All materials submitted in response to this RFP will become the property of CBS. One copy shall be retained for the official files of the Municipal Clerk's office and will become public record after award of the Contract.

## 2.9 Oral Change/Interpretation

No oral change or interpretation of any provision contained in this RFP is valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when

changes, clarifications, or amendments to proposal documents are deemed necessary by CBS.

#### 2.10 Modification/Withdrawal of Proposals

A respondent may withdraw an electronically submitted or delivered proposal at any time prior to the final submission date by completing a withdraw via Bid Express, or sending written notification to withdraw a delivered proposal, signed by an agent authorized to represent the agency. The respondent may then upload a new proposal into Bid Express or deliver a new proposal prior to the Municipal Clerk's office prior to the final submission date; or submit written modification or addition to a proposal prior to the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final proposal cannot be changed or withdrawn after the time designated for receipt, except for modifications requested by CBS after the date of receipt and following oral presentations.

#### 2.11 Late Submissions

PROPOSALS NOT RECEIVED PRIOR TO THE DATE AND TIME SPECIFIED IN THE REQUEST FOR PROPOSAL WILL NOT BE CONSIDERED AND WILL NOT BE UPLOADED INTO BID EXPRESS AND DELIVERED COPIES WILL BE RETURNED UNOPENED AFTER RECOMMENDATION OF AWARD.

#### 2.12 Rejection of Proposals

CBS reserves the right to reject any or all proposals if determined to be in the best interest of CBS.

### 3.0 **SCOPE OF WORK**

CBS expects to retain a qualified firm to assist in providing legal services for the ERB, including providing legal advice and/or serving as a hearing officer. ERB is a quasi-judicial board of the CBS, and therefore maintains a neutral position concerning management and employee/union matters. The responsibilities and basic procedures of the ERB are set out in the attached SGC 2.08.125.

As legal counsel for the ERB, the selected firm shall assist the ERB in fulfilling its responsibilities, including interpreting SGC 2.08.125, developing procedures to implement the ERB's tasks, assisting the ERB at its meetings as needed by telephonic, videoconference, or in-person participation, reviewing and advising the ERB as to petitions for representation, position unit clarification, and unfair labor practices, and assisting with other related legal matters. Legal counsel may also assist in proposing amendments to SGC 2.08.125.

Successful handling of these types of matters requires experience not only in current federal and state labor law but also expertise in the unique nature of local government such as a home rule municipality such as CBS under Alaska Statutes Title 29. Proposing firms must have individual attorney(s) experienced in state and federal law and caselaw with respect to constitutional claims related to labor/employment issues, labor relations issues, Alaska Statutes Title 29, and municipal public employees' issues. Firms must be qualified to represent ERB in Alaska courts, U.S. District Court and before the Ninth Circuit Court of Appeals.

#### 4.0 **PROPOSAL AND SUBMISSION REQUIREMENTS**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified below. Proposals shall not exceed TWENTY (20) pages in length (excluding letter of transmittal, resumés, title page(s), index/table of contents and attachments). One page shall be interpreted as one side of single lined, typed, 8 ½ " by 11" piece of paper. The following Subsections at 4.1 – 4.8 outline further requirements regarding the content and/or format of the proposal.

##### 4.1 Title Page

Show the RFP title, the name of your firm, address, telephone number(s), name of contact person, and date.

##### 4.2 Letter of Transmittal (Limited to TWO (2) pages.)

4.2.1 Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.

4.2.2 Give the name(s) of the person(s) who are authorized to make representations for your firm, their titles, address, and telephone numbers.

4.2.3 **The letter must be signed by a corporate officer or other individual who has the authority to bind the firm.**

##### 4.3 Firm Organization

The overall organization, activities, experience and support staff.

##### 4.4 Personnel

Resumés of counsel, supervising counsel, paralegals and other professional personnel to be assigned to handle the cases. Legal counsel shall be members in good standing of the Alaska Bar Association.

##### 4.5 Experience/References

The firm's demonstrated experience, abilities, and past performance in handling constitutional law and local government issues. Please list any other information which relates directly to the firm's ability to perform the requested services. Include the names and current telephone numbers of five (5) Alaskan client references who are familiar with the firm's experience and abilities in the areas described above.

#### 4.6 Methodology

The expected organizational arrangements of the firm and the proposed method of performing the services. Such description should include, at minimum, identification of the principal contract counsel, other counsel who may be involved and staff to be assigned to CBS requests, identification of available administrative resources, and the general workflow.

#### 4.7 Conflicts

Legal services will be provided to ERB, which is a municipal quasi-judicial board of the CBS. CBS staff may appear before the ERB in an advocacy position on behalf of the employer/administration. Additionally, representatives of unions or CBS employee organization may appear before the ERB in an advocacy position on behalf of their union, organization or employees. Therefore, list all matters and/or cases where the firm currently represents an individual or entity with interests adverse to CBS, or in which the firm represents the CBS. Also list all matters and/or cases where the firm currently represents a union or employee organization/representatives that may qualify to represent CBS employees before the ERB.

#### 4.8 Fee Schedule

Include complete fee schedule for all levels of expertise required to perform the work anticipated under this contract. In the event ERB becomes involved in litigation which it anticipates will exceed the amount of this contract, it may discuss a separate fee agreement for that litigation. The fees will be public record for those firms which are awarded contracts.

### 5.0 **EVALUATION CRITERIA AND PROCESS**

#### 5.1 Criteria

The criteria to consider during evaluations, and the associated point values, are as follows:

- |                          |           |
|--------------------------|-----------|
| 1. Firm Organization     | 5 points  |
| 2. Personnel             | 15 points |
| 3. Experience/References | 30 points |

4. Conflicts	5 points
5. Methodology	10 points
6. Fee Schedule	35 points
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Total Points Available	100 points

## 5.2 Qualitative Rating Factor

Firms will be ranked using the following qualitative rating factors for each RFP criteria:

1.0	Outstanding
0.8	Excellent
0.6	Good
0.4	Fair
0.2	Poor
0	Unsatisfactory

The rating factor for each criteria category will be multiplied against the points available to determine the total points for that category.

For example, in evaluating the experience/reference factor, if the evaluator feels the response as provided was "Good," an assigned "qualitative rating factor" of 0.6 would be given for that criterion. The final score for that criterion would be determined by multiplying the qualitative rating factor of 0.6 by the maximum points available (30) and the resulting score of 18 would be assigned to the experience factor. This process would be repeated for each criterion.

## 5.3 Evaluation Process

ERB will perform evaluation of the proposals, with the non-voting assistance of the Municipal Attorney. ERB will rank the proposals as submitted.

The proposal may be selected solely based on the written proposal. However, ERB reserves the right to request oral interviews with the highest ranked firms (short list), which may occur by teleconference. The purpose of the interviews with the highest ranked firms is to allow expansion upon the written responses. If interviews are conducted, a maximum of three (3) firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final selection will be based on the total of all evaluators scores achieved on the second rating. The same categories and point ranges will be used during the second evaluation as for the first. The highest ranked proposer after the second scoring, if performed, may be invited to enter into final negotiations with CBS for the purposes of contract award.

## 6.0 SELECTION PROCESS

The Proposer with the highest total evaluation points may be invited to enter into contract negotiations with CBS. If an agreement cannot be reached, the second highest Proposer may be contacted for negotiations, including fee schedule. This process may continue until successful negotiations are achieved. However, CBS reserves the right to terminate negotiations with any proposer should it be in the CBS's best interest. CBS also reserves the right to reject any and all proposals submitted.

#### 7.0 **SAMPLE CONTRACT OR MINIMUM MANDATORY CONTRACT PROVISIONS**

In addition to carefully reading all of the information in the RFP, all proposers must carefully read and review the attached sample contract. The successful Proposer shall be required to enter into a Contract with CBS, which will be substantially similar to the sample.

Therefore, the Proposer must make any proposed changes to the sample Contract that the Proposer desires. All changes must be made legibly and conspicuously and include two copies of changes attached with the Original Proposal. This may be in a sealed envelope if desired. Page(s) on which the change(s) appear must be tabbed as to be easily identified. The respondent must also provide the rationale for all changes.

IF NO CHANGES ARE MADE, THE PROPOSER SHALL BE DEEMED TO HAVE ACCEPTED THE SAMPLE CONTRACT. IF THE RESPONDENT MAKES CHANGES, SUCH CHANGES WILL BE CONSIDERED IN ANY NEGOTIATIONS WITH CBS. CHANGES MADE TO THE SAMPLE CONTRACT SHALL NOT BE CONSIDERED DURING PROPOSAL EVALUATIONS.

**CONTRACT TO PROVIDE LEGAL SERVICES TO THE  
CITY AND BOROUGH OF SITKA EMPLOYMENT RELATIONS BOARD**

The **City and Borough of Sitka** (“Sitka”) and \_\_\_\_\_ (“Contractor”), individually referred to as “Party” and collectively referred to as “Parties,” enter into this “Contract to Provide Legal Services to the City and Borough of Sitka Employment Relations Board” (“Contract”), which shall consist of the following:

- A. Part I, consisting of 13 sections of Special Provisions;
- B. Part II, consisting of 12 sections of General Provisions;
- C. Appendix A - Request for Proposal to Provide the City and Borough of Sitka with Legal Services for the Employment Relations Board, consisting of \_\_\_ pages, including attachments and cover letter; and
- D. Appendix B - Contractor’s response to request for proposal consisting of \_\_\_ pages, including title page, transmittal letter, resumes and table of contents.

**PART I  
SPECIAL PROVISIONS**

Section 1. Definitions. In this contract:

- A. “Administrator” means the Municipal Administrator for the City and Borough of Sitka.
- B. “Clerk” means the Municipal Clerk for the City and Borough of Sitka or designee.
- C. “Contractor” means \_\_\_\_\_.
- D. “ERB” means the Employment Relations Board for the City and Borough of Sitka.
- E. “Sitka” means the City and Borough of Sitka.

Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A and B, which is attached and incorporated in this Section by reference.
- B. Sitka shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.

Section 3. Effective Date/Term

- A. This Contract becomes effective (the “Effective Date”), after being recommended by the ERB and approved by the Sitka Assembly, and after being signed by the Parties.
- B. The Contractor shall commence performance of the work described in Section 2 on the Effective Date.
- C. The initial term of this Contract is one calendar year from the Effective Date.

- D. This Contract will automatically renew annually on the anniversary date of the Effective Date (the “Renewal Date”) unless either Party gives written notice of termination to the other Party at least thirty (30) days prior to the Renewal Date or this Contract is terminated under Section 5.

Section 4. Compensation; Method of Payment.

- A. In accordance with this Section and subject to the Contractor’s satisfactory performance, Sitka shall pay the Contractor for services performed under this contract but not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) for the initial year and any renewal year unless approved/appropriated by the Sitka Assembly.
- B. The maximum contract payment set out in subsection A above may be increased only upon the recommendation of the ERB, and with approval and appropriation of the Sitka Assembly.
- C. Sitka shall pay the Contractor in accordance with the schedule of professional fees attached as Appendix B and incorporated by reference, for services actually performed under this Contract.
- D. Each month the Contractor shall present a bill to the Clerk describing the work for which it seeks payment and documenting expenses and fees to the satisfaction of the Clerk. If any payment is withheld because the Contractor’s performance is unsatisfactory, the Clerk must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- E. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- F. As a condition of payment, the Contractor shall have paid all Municipal taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor’s Services.

The Contractor’s services under Section 2 may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Sitka, if Sitka notifies the Contractor in writing of its intent to terminate under this paragraph at least ten (10) days prior to the effective date of the termination.
- C. For cause, by either Party where the other Party fails in any material way to perform its obligations under this Contract. Termination under this subsection is subject to the condition that the terminating Party notifies the other Party of its intent to terminate, stating with reasonable specificity the grounds, and the other Party fails to cure the default within thirty (30) days after receiving the notice.

Section 6. Duties Upon Termination.

- A. If Sitka terminates the Contractor's services for convenience, Sitka shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this subsection shall never exceed the maximum compensation allowable under Section 4. All finished and unfinished documents and materials prepared by the Contractor shall become the property of ERB.
- B. If the Contractor's services are terminated for cause, Sitka shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Sitka because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the Contract rate for such services, and payment under this subsection shall not exceed ninety percent (90%) of the maximum compensation allowable under Section 4. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of ERB at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under subsections A or B of this Section, the Contractor shall remit the excess to the Clerk within thirty (30) days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Clerk all documents, records, work product, materials and equipment owned by ERB and requested by the Clerk.
- E. If the Contractor's services are terminated, for whatever reason, the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Sitka may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 does not affect any other right or obligation of a Party under this Contract.

Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Clerk with proof of insurance in accordance with subsection B of this Section in a form acceptable to the Administrator.
- B. The Contractor shall provide the following insurance:
  - 1) Worker's Compensation in the amount required by Alaska Law;
  - 2) Commercial Automobile Liability per occurrence in the amount of \$300,000, including owned, hired, and non-owned vehicles;
  - 3) Commercial General Liability in the amount of \$1,000,000 combined single limit; and



Section 11. Force Majeure.

- A. Any failure to perform by either Party due to force majeure shall not be deemed a violation or breach of this Contract.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed Party, which delays the completion of this Contract, including without limitation:
  - 1) Any interruption, suspension or interference resulting solely from the act of Sitka or neglect act(s) of Sitka not otherwise governed by the terms of this Contract;
  - 2) Strikes or work stoppages;
  - 3) Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences; or
  - 4) Order of court, administrative agencies or governmental officers other than Sitka.

Section 12. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Sitka and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 13. Funding Requirements.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the paid consideration.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

**PART II  
GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

The Contractor shall perform its obligations under this Contract as an independent contractor of Sitka, serving the ERB. Sitka may administer the Contract and monitor the Contractor's compliance with its obligations under this Contract. Sitka shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination.

Section 3. Permits, Laws and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Non waiver.

The failure of either Party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part of the Contract, or the right of such Party thereafter to enforce each and every provision of the Contract.

Section 5. Execution of Contract and Amendment.

- A. The Parties may separately execute this Contract by signing two copies of the Contract, and forwarding an original signed copy to the other Party.
- B. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the Parties, with the same formality as this Contract was executed.
- C. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the Parties are:

**Contractor:** \_\_\_\_\_

**City and Borough of Sitka:** Administrator or approved designee

- D. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the Superior Court for the First Judicial District of the State of Alaska at Sitka. The law of the State of Alaska shall govern the rights and obligations of the Parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments to this Contract embody the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the Parties.

Section 9. Liability.

The Contractor shall indemnify, defend, save and hold Sitka (including the ERB) harmless from any and all claims, lawsuits or liability, including attorney fees and costs, allegedly arising out of loss, damage or injury to persons or property or from any wrongful or negligent act, error or omission of Contractor, Contractor's agents, employees, subcontractors or invitees occurring during the course of, or as a result of the Contractor's, Contractor's agents, employees, contractors, subcontractors or invitees performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as ERB may deem necessary, make available to ERB for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract to ERB, in such form and at such times as ERB may reasonably require. The Contractor shall permit ERB to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this Contract. ERB may, at its option, permit the Contractor to submit its records to ERB in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Sitka and Sitka shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

Section 12. Conflict of Interest.

The Contractor may not represent or assist private or public clients in connection with other claims, litigation, or other legal matters where such representation would constitute or appear to constitute a conflict of interest in the opinion of the Municipal Attorney and the ERB. The Contractor shall comply with all relevant provisions of the Alaska Bar Rules and Alaska Rules of Professional Conduct concerning the prohibition of conflicts of interest among clients. For purposes of applying these standards, Sitka shall be regarded as though it were a private corporate client. The Contractor shall not accept any employment and shall not render any professional services to other parties if such action might be inconsistent with the above-referenced standards unless the prior written approval of the Municipal Attorney and the ERB has been obtained.

CITY AND BOROUGH OF SITKA

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: John Leach  
Its: Municipal Administrator

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, an Alaska home rule municipality, on behalf of the municipality.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: \_\_\_\_\_

CONTRACTOR

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: [NAME]  
Its: [TITLE]

STATE OF ALASKA            )  
  ) ss.  
FIRST JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by [NAME], [TITLE] for the [CORP/COMPANY NAME], an Alaska [corporation/company], on behalf of the [corporation/company].

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: \_\_\_\_\_

## ATTACHMENT A

### 2.08.125 Local control of labor relations through collective bargaining.

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A. Declaration of Policy. The assembly declares that it is the policy of the city and borough to promote harmonious and cooperative relations between government and its employees and to protect the public by ensuring orderly and effective operations of government. These policies are to be effectuated by recognizing the right of employees to organize for the purpose of collective bargaining, negotiating with and entering into written agreement with a labor organization in matters of wages, hours and other terms of employment, and maintaining merit system principles among city and borough employees.

It is further the policy of the city and borough to retain control over the management of its labor relations with its employees on a local level by providing a comprehensive scheme within the city and borough's ordinance system.

B. Rights of Employees. City and borough employees may self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.

C. Collective Bargaining Units. The board shall determine the unit or units appropriate for the purpose of collective bargaining. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided. A determination will be based on such factors as: community of interest, wages, hours, working conditions, history of collective bargaining and the desires of the employees. The board's decision on the appropriateness of any bargaining unit shall be appealable to the assembly, as provided by Charter and ordinance, within thirty days of the date the clerk certifies that written notice of the board's final order has been served.

D. Exemptions from Collective Bargaining. The following employees shall not be included within any bargaining unit:

1. Elected officials;
2. Exempt employees, including department heads; and
3. Confidential employees.

E. Representatives and Elections.

1. The board shall investigate a petition for representation of an employee group if it is submitted in a manner prescribed by the board and is:

a. By an employee or group of employees or an organization acting in their behalf alleging that thirty percent of the employees of a proposed bargaining unit which has been determined to be appropriate by the board:

- i. Want to be represented for collective bargaining by an organization as the exclusive representative; or

ii. Assert that the organization which has been certified by the board as a bargaining representative is no longer the representative of the majority of the employees in the bargaining unit; or

b. By the city and borough administrator alleging that one or more labor organizations have presented to it a claim to be recognized as the representative of the majority of employees in an appropriate unit.

2. Where a petition is filed the board shall provide for an appropriate hearing. Notice of the hearing shall be given by publishing notice in a newspaper of general circulation, at least five days prior to the date set for the hearing, and by mailed notice to the city and borough and to each organization which has presented a claim to be recognized. If the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the employees desire to be represented, and shall certify the results of this election. The board shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receive a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest number of votes cast in the election. If an organization receives a majority of the votes cast in the election, the organization shall be certified by the board at its next meeting as exclusive representative of all the employees in the bargaining unit.

3. No certification or decertification election may be held in a bargaining unit if a valid election has been held within the preceding twelve months.

4. Nothing in this chapter prohibits recognition of an organization as an exclusive representative by the city and borough by mutual consent.

5. No certification or decertification election may be directed by the board in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a ninety-day period preceding the expiration date of that agreement. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit, but not parties to the agreement, if more than three years have elapsed since execution of the agreement or the last annual renewal, whichever was later.

#### F. Recognition by Mutual Consent.

1. The city and borough and the labor organization may agree that the labor organization is to be the representative of the employees within a bargaining unit, provided the organization presents a majority showing from the employees of the bargaining unit authorizing the union to represent them for purposes of collective bargaining. If the labor organization desires to obtain certification by the board, the recognition agreement shall be filed with the board thirty days before its effective date. The board shall post the recognition agreement within the established bargaining unit at least twenty days before the effective date of the recognition agreement. If the recognition agreement is not filed as provided by this section, or, if within twenty days of the posting of the recognition agreement, a labor organization intervenes, or ten percent of the permanent and probationary employees of the established bargaining unit object to the recognition agreement, the board

shall refuse to certify the labor organization recognized by mutual consent. The board shall treat an intervention petition accompanied by a thirty percent showing of interest as a petition filed.

2. If no intervention or objection occurs within twenty days of the posting of the agreement, the board shall, after appropriate investigation and verification of the majority status of the labor organization, certify the labor organization recognized by the agreement as a representative of employees in the agreed-upon bargaining unit.

G. Collective Negotiations.

1. The city and borough's management representatives and representatives of an organized labor organization have a mutual obligation personally to meet and negotiate within a reasonable length of time in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation. Requests for meetings or negotiations by recognized labor organizations on matters requiring budgetary financing shall be submitted to the city and borough administrator in time for adequate discussion and consideration and action in connection with the budget deadlines.

2. The administrator shall keep the assembly apprised of the conditions of the negotiations from time to time during such negotiations, and shall be guided by the assembly as appropriate or necessary throughout the negotiations.

H. Mediation and Fact-Finding. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between the city and borough and a labor organization, the board may, either on its own initiative or on the request of one of the parties to the dispute, appoint a competent, impartial, disinterested person to act as mediator in any dispute; alternatively, the parties may also select a mediator to bring the parties together voluntarily under such favorable auspices as would tend to settle the dispute, but neither the mediator nor the board has any power of compulsion in mediation proceedings. With the consent of both parties, the board may also appoint a neutral party to determine facts in the dispute and to make public recommendation.

I. Impasse Submitted to an Arbitrator.

1. If, upon conclusion of negotiations and after use of mediation and/or factfinding as appropriate, no agreement is reached, all questions and disputes shall be referred to a neutral arbitrator for final decision and determination. The arbitrator shall be selected upon written request of either party, or the board, either by mutual consent of the parties, or, if the parties cannot agree, from a list of regional arbitrators provided by such an organization as the American Arbitration Association or Federal Mediation and Conciliation Service.

2. A hearing upon the matters in controversy shall be heard promptly by the selected arbitrator. The arbitrator shall have the power to determine all relevant facts including but not limited to workload, productivity, economic feasibility, cost of living, the parties' bargaining history, relevant market comparisons in the public sector and relevant market comparisons in the private sector, taking into account the cost of living in the markets compared, the employer's past practice and impact on personnel or workplace morale.

3. The arbitrator shall be limited in his authority to selection on a subject-by-subject basis from each of the parties' last best offers. On each subject, the arbitrator shall select one party's proposal in its entirety. The arbitrator shall not have the authority to select or prepare his own offer nor select or combine portions of either party's last best offers on a given subject. In exercising his or her discretion to select between competing proposals by subject, the arbitrator shall base his or her decisions solely on the facts determined in accordance with subsection (1)(2) of this section and applicable law.

4. The decision of the arbitrator shall be reduced to writing and shall be final and binding upon the parties. The collective bargaining agreement, in compliance with the arbitrator's decision, shall be prepared and executed by the parties. Collective bargaining agreements awarded through binding interest arbitration may not exceed three years in duration from the date of the arbitrator's award. The city and borough shall submit the financial aspects of the negotiated agreement or of the arbitrator's decision to the assembly for approval and funding.

5. Decisions of the arbitrator may be appealed to the superior court for the state only for abuse of discretion, fraud or misconduct on the part of the arbitrator. On appeal to the superior court, legal determinations of the employee relations board shall be reviewed de novo by the superior court. An appeal must be made within thirty days of the certification of service of the arbitrator's final decision.

J. **Strike Prohibited.** Employees shall not engage in strikes. Upon a finding by the city and borough administrator that employees are engaging or about to engage in a strike, the assembly may authorize the city and borough attorney to petition the superior court for an injunction, restraining order or such other order as may be appropriate.

K. **Agreement.** Upon completion of negotiations between the city and borough and the bargaining representative, the terms and conditions shall be reduced to writing in agreement form. The agreement shall be presented to the appropriate employee unit for ratification by secret ballot and to the city and borough assembly for ratification by resolution.

L. **Merit System and Efficient Delivery of Services.**

1. It is the purpose of this section to reserve to management, and to exclude from the bargaining process, those decisions which permit the city and borough to maintain the efficient delivery of uninterrupted service to the community and to take necessary actions to carry out its mission in emergencies; provided, however, that the exercise of these rights does not preclude employees or their representatives from consulting or raising grievances about the practical consequences that decisions on the above matters have on wages, hours and other terms and conditions of employment.

M. **Unfair Labor Practices.**

1. The city and borough or its agents shall not:

- a. Interfere, restrain or coerce an employee in the exercise of rights guaranteed by this section;
- b. Dominate or interfere with the formation, existence or administration of an organization;

- c. Discriminate in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization;
- d. Discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint, or given testimony under this section;
- e. Refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including the discussion of grievances with the exclusive representative.

2. A labor organization or its agents shall not:

a. Restrain or coerce:

- i. An employee in exercise of rights guaranteed in this section; or
- ii. The city and borough in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances;

b. Discriminate against any employee because of race, religion, creed, color, sex, national origin or ancestry, or any person with regard to the membership or terms and conditions of membership in a labor organization;

c. Refuse to bargain collectively in good faith with the city and borough if it has been designated in accordance with the provisions of this chapter as the exclusive representative of the employees in an appropriate unit;

d. Refuse to meet and confer in good faith at reasonable times, places and frequency with city and borough management representatives on matters which are properly within the scope of representation;

e. Cause or attempt to cause an employer to discriminate against an employee in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization.

3. Nothing in this section prohibits the city and borough from making an agreement with an organization to require as a condition of employment payment to the exclusive bargaining agent for the expense of representing the members of the bargaining unit; however, such payments shall not exceed that portion of the dues paid by a member which is retained by the organization for local use.

N. Complaint.

1. Filing and Investigation of Complaints. Any person claiming to be aggrieved by a practice prohibited under this section may file a verified written complaint with the board. The complaint must be filed with the clerk within thirty days of the time the person first learned of the claimed prohibited practice. The board shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion.

2. Complaint and Accusation. If the board fails to eliminate the prohibited practice by conciliation and fails to obtain voluntary compliance with this section, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with procedures adopted by the board.

3. Powers. At a minimum, the board's powers shall include the power to conduct hearings, to investigate, to compel testimony, and to issue complaints, subpoenas and orders.

O. Enforcement by Injunction. The board may apply to the superior court for an order enjoining the prohibited acts specified in the order or decision of the board.

P. Funding. The monetary impact of any agreement negotiated under this section is subject to assembly approval and to funding through budgetary appropriations.

Q. Payroll Deductions for Dues and Fees. Upon written authorization of an employee within a bargaining unit, the city and borough shall deduct monthly from the payroll of the employee the amount of dues, service fees and/or other fees as certified by the executive officer of the exclusive bargaining representative and shall deliver it to the chief fiscal officer designated by the exclusive bargaining unit representative.

R. Employment Relations Board.

1. There is hereby created an employment relations board which shall have the power in the first instance to enforce this section. The board shall be comprised of three members, of which a majority shall constitute a quorum at any meeting, and shall have the power to conduct hearings, compel testimony and the production of documents, and to perform all other acts necessary to effect the provisions of this section.

2. The composition of the board shall be three members: one member shall be selected by the city and borough assembly; one member shall be chosen by the city and borough unions represented, nonexempt and non-confidential employees in a secret ballot election to be conducted by the city clerk; and a third member shall be selected by the two other board members who have been appointed/elected. The third member selected by the other two shall become the chairperson and shall preside at all meetings of the board. The term of each board member shall be for three years.

3. Each board member shall serve without compensation, but shall be paid an appropriate per diem and/or reimbursed for other expenses reasonably incurred in the performance of official duties. The city and borough assembly shall fund the activities of the employment relations board.

4. Matters to be filed with the board shall be presented to the city and borough clerk, who shall promptly inform the chairperson of any filings. The chairperson shall then contact any parties for the purpose of scheduling meetings, hearings, or other such proceedings for the purpose of exercising jurisdiction.

5. Where appropriate, the board may delegate its hearing responsibilities to a hearing officer who shall not be employed by the city and borough nor have a conflict of interest by virtue of any relationship with the city and borough, but who shall have the skills necessary to conduct a quasi-judicial administrative proceeding, and who shall know applicable principles of labor law and rules of evidence and procedure. The hearing officer shall make a recommended decision to the board, which shall then review the record and, where it so deems necessary, conduct further proceedings, take further testimony and/or receive additional evidence. The board shall then decide whether to accept, modify, or reject the hearing officer's recommendations. The hearing officer shall be paid by the city and borough a reasonable rate consistent with the value of the services provided.

S. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Board" means the city and borough's employment relations board.
2. "City and borough" means the city and borough of Sitka, Alaska, and its nonexempt and exempt regular employees, including employees of the Sitka Community Hospital, but excludes the school district and its employees.
3. "Collective bargaining" means the performance of the mutual obligation of the city and borough or its designated representative and the representatives of the employees to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith in respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement and execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession.
4. "Confidential employee" means an employee who assists and acts in a confidential capacity to a person who formulates, determines or effectuates management policies.
5. "Election" means a proceeding conducted by the board in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter.
6. "Grievance," under the terms of any agreement pursuant to this chapter, means a complaint, misinterpretation or inequitable application of any of the provisions of such agreement concerning wages, hours or terms and conditions of employment.
7. "Management employee" means an employee classified as within the exempt service; an employee who regularly assumes, or is appointed to assume for a significant length of time, a substantial part of the duties of a department head during such employee's absence; and any employee who is responsible for the effectuation or the supervision of the effectuation of management policies.

8. "Organization" means a labor organization in which the employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment.

9. "Terms and conditions of employment" means the hours of employment and the compensation and fringe benefits and the employer's personnel policies affecting the working conditions of the employees, but does not include the general policies describing the function, purpose and budget of the city and borough, reserved by ordinance, nor matters regulated by a personnel system adopted pursuant to the Charter of the city and borough.

(Ord. [08-11](#) § 4, 2008; Ord. [05-30](#) § 4, 2005.)