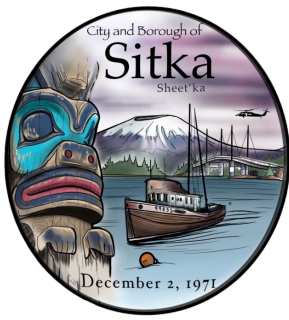


POSSIBLE MOTION

I MOVE TO approve a Memorandum of Understanding between the City and Borough of Sitka and the Sitka Dock Company, LLC and authorize the Municipal Administrator to execute the document.




CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

MEMORANDUM

To: Mayor Eisenbeisz and Assembly Members

From: John Leach, Municipal Administrator 

Date: October 14, 2024

Subject: Negotiated Agreement between the City and Borough of Sika (CBS) and Sitka Sound Cruise Terminal (SSCT)

Background

On May 16, 2024, the Assembly adopted the Tourism Task Force Recommendations at a Special Meeting. The Assembly further directed the Administrator the prepare an Action Plan for the recommendations that would return to the Assembly for their consideration at their June 25, 2024, regular meeting, however that action was postponed until the July 9, 2024, regular meeting. At the July 9, 2024 regular meeting, the Assembly adopted the Action Plan as presented.

Analysis

Recommendations 1 – 5 from the Tourism Task Force generated Action Item 1A, which states “Direct the Municipal Administrator to negotiate preliminary terms for an agreement the achieves the goals for levels of tourism as identified in the Task Force recommendations under Directive #1. Final approval of the agreement and terms by the Assembly”

Enclosed is a draft negotiated agreement between the CBS and SSCT for Assembly consideration. This agreement is intended to address Recommendations 1-5 from the Tourism Task Force as directed by the Assembly under Directive #1. Below are the recommendations and subsequent action explained.

- 1. Pursue mutual agreements with the industry.** The attached draft agreement achieves this objective. By entering into a mutual agreement with SSCT rather than with individual cruise lines, the CBS and SSCT can work collaboratively to ensure defined use of their facilities. Put simply, as owners of our respective facilities, we can set limits and restrictions as necessary to meet facility usage limits. SSCT has the ability to control their facility usage through their own private Berthing Policy.
- 2. Flatten the curve.** By entering into this negotiated agreement, the growth curve will

be flattened by setting daily limits not to exceed 7,000 passengers on high passenger days. The Tourism Task Force report indicated a community “sweet spot” of between 5,000 and 7,000 daily passengers based on lower berth capacity. This is outlined in Section 1.A. of the draft agreement.

- 3. Take out the peak.** This recommendation is similar to recommendation 2 above and is addressed in Section 1.A of the attached agreement.
- 4. Designated quiet days.** Section 1.A.(3) of the draft agreement outlines a “quiet day” that aligns with the SSCT Berthing Policy. That day is currently identified as Saturday, and CBS and SSCT must meet and confer to accommodate any changes to a scheduled quiet day. Such a change must be mutually acceptable to both parties.
- 5. Shorten the length of the season.** Section 1.A.(4) of the draft agreement outlines that the CBS will not allow any cruise ship with a lower birth capacity of greater than 1,000 passengers to tender to and CBS-owned facility during the months of April and October.

An important factor to be aware of is that the 2025 cruise calendar has already been populated and cruises have already been placed up for sale by the cruise companies. The CBS and SSCT will work collaboratively with the cruise companies to address any conflicts with this agreement, if approved.

A legal review of this draft agreement was completed by both CBS and SSCT with no legal concerns noted.

Fiscal Note

There are no additional costs associated with this draft negotiated agreement. However, there is an opportunity cost of implementing this agreement due to the potential lost revenue to the CBS from the restriction of cruise ships over 1,000 passengers, based on lower berth capacity, being permitted to tender to CBS-owned facilities under certain conditions as outlined in the negotiated agreement.

Recommendation

Direct the Municipal Administrator to execute the draft negotiated agreement with SSCT to go into effect immediately, with the commencement of the 2025 cruise season.

Encl: Draft Negotiated Agreement between CBS and SSCT

MEMORANDUM OF UNDERSTANDING

between the

CITY AND BOROUGH OF SITKA

and the

SITKA DOCK COMPANY, LLC

This Memorandum of Understanding ("**MOU**") is entered into by and between the City and Borough of Sitka ("CBS") and the Sitka Dock Company, LLC, an Alaska limited liability company ("**SDC**"), sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." The purpose of this MOU is to establish and define the agreed upon purposes, intentions, and expectations between the Parties with respect to the operation of their respective facilities to support the sustainability of cruise tourism in Sitka, Alaska.

Recitals

- A. The CBS is a home rule municipality, organized and operating under the laws of the State of Alaska; and
- B. The Sitka Sound Cruise Terminal ("**SSCT**") is a cruise ship port facility privately owned by SDC, established in 2020 as the cruise gateway to Sitka, Alaska, with a mission to provide travelers with the opportunity to experience the outdoors, the beauty of nature, and the serenity and charm of an authentic Small Town Alaska Cruise Port; and
- C. In the Spring of 2023, the CBS appointed a Tourism Task Force to guide Assembly policy consideration of issues related to cruise ships, tourists, and tour operators; and
- D. The CBS and SDC desire to begin working towards the implementation of those recommendations as is practicable and desirable; and
- E. The protection of destinations is a vital element of responsible tourism. The Parties recognize the importance of collaboration on initiatives that help preserve the integrity, cultural heritage, and beauty of the most precious visitor destinations in the world; and
- F. Sitka, as an island community, is limited in its resources and must carefully consider how it can transition to a more sustainable future without causing undue harm to the environment or the livelihoods of its residents; and
- G. Tourism is one of the major economic sectors that have consistently contributed to Sitka's financial well-being. It provides jobs, generates revenue, and supports local businesses; and
- H. The CBS and SDC desire to memorialize their agreed upon purposes, intentions, and expectations for the scheduling of cruise ship docking and tendering during the period April 15 through October 15 (the "**cruise season**") of each year so long as this MOU is in effect.

NOW, THEREFORE, highlighting the desire of the Parties to define a framework that will lay the foundations of an even more responsible tourism model to generate prosperity for future

generations, addressing the specific needs of Sitka and responding to the stated demands by members of Sitka's community, the Parties agree as follows:

Section 1. Port Calls and Berthing Guidelines

A. The Parties establish the following criteria for the planning of all cruise calls in Sitka for each day during the cruise season:

- (1) The CBS will not authorize and will take reasonable measures not to permit (such measures do not include filing a lawsuit or engaging law enforcement) any cruise ship with a lower berth capacity of more than 1,000 passengers to dock at or tender to O'Connell Bridge Dock, Crescent Harbor Dock, Marine Service Center Port Wall, Gary Paxton Industrial Park Dock, or any other CBS-owned facility (collectively, "CBS Docks") if doing so would result in the total number of cruise passengers docking at or tendering to CBS Docks and the SSCT exceeding 7,000 (based on lower berth capacity) passengers for the day.
- (2) On days when more than 4,500 passengers (based on lower berth capacity) are scheduled to dock at or tender to CBS Docks, SDC will not allow the docking of or tendering by any ships at the SSCT with a lower berth capacity of more than 1,300 passengers if doing so would result in the total number of cruise passengers docking at or tendering to CBS Docks and the SSCT exceeding 7,000 (based on lower berth capacity) for the day.
- (3) To maintain a "quiet day" for Sitka residents, CBS will not authorize and will take reasonable measures not to permit (such measures do not include filing a lawsuit or engaging law enforcement) any cruise ship with a lower berth capacity of more than 1,000 passengers to dock at or tender to CBS Docks on the SSCT-designated "weekend day reserved for one ship with a capacity under 1,250 guests". The Parties agree that Saturday will be the designated "quiet day" per this MOU. If there is a need to change the designated "quiet day," the Parties agree to hold discussions and come to a mutually acceptable decision.
- (4) During the months of April and October of every calendar year, CBS will not permit any cruise ship with a lower birth capacity of greater than 1,000 passengers to dock at or tender to CBS Docks.
- (5) CBS may approve additional docking at or tendering to CBS Docks for emergencies or unanticipated schedule changes.

B. To provide more readily accessible ship schedules and coordination for purposes of Section A, above, the Parties commit to:

- (1) Sharing quarterly schedules with a written narrative outlining any changes.
- (2) Providing the stated lower berth capacity for each ship scheduled for each day during the cruise season.
- (3) Drafting a berthing schedule no later than 18 months in advance of each cruise season.

- (4) Notify the other Party of impactful schedule changes made within three months prior to or within the cruise season. Changes will be sent to the CBS Municipal Administrator, SSCT, the CBS Harbors Department, and the CBS Tourism Manager.

Section 2. Effective Date

Once executed by the Parties, this MOU shall be effective immediately, with the commencement of the 2025 cruise season. Knowing that the 2025 cruise season has already been scheduled and put on sale by cruise companies, both CBS and SSCT agree to review the schedule and coordinate in good faith to achieve the purposes, intentions, and expectations set forth in this MOU to the greatest extent possible..

Section 3. Term

This MOU will be reviewed every five years to be updated to meet the Parties' goals and the purposes set forth in this MOU while improving their mutual understanding of impacts of this MOU on cruise operations and the community.

The Parties agree to meet annually no later than November of each year to review lessons learned, to review and optimize the subsequent cruise season's operations, and to align on community and industry parameters, goals, expectations, and opportunities.

If the Parties do not mutually agree on an update at the completion of any five-year term, the MOU shall continue until an update is agreed upon and signed, unless either Party notifies the other Party in writing that it will not agree to an update and renewal of this MOU.

Section 4. Dispute Resolution

The Parties agree that if there is a dispute as to any provision of this MOU or the implementation of it by the other Party, the Party may give notice in writing of the dispute. The Parties agree to meet to resolve the dispute within thirty (30) days of receipt of the notice. If the Parties fail to resolve the dispute within sixty (60) days of such notice or longer period, if agreed to in writing by the Parties, the Parties agree to bring in a mediator to resolve the dispute. Alternatively, a Party may terminate this MOU as provided in Section 6.

Section 5. Notice

Any notice or notices required or permitted to be given pursuant to this MOU shall be given by email or certified mail, postage prepaid, and return receipt required, as follows:

To the City and Borough of Sitka:

Municipal Administrator
City and Borough of Sitka
100 Lincoln Street

{01542996}

Sitka, AK 99835
administrator@cityofsitka.org

To Sitka Sound Cruise Terminal:

Chris McGraw
Sitka Dock Company, LLC
P.O. Box 718
Sitka, AK 99835
chris@sitkadock.com

Section 6. Termination

This MOU may be terminated by either Party by (a) delivering written notice of termination to the other Party at least ninety (90) days prior to the effective date of any termination; or (b) if any provision of this MOU is determined to be prohibited by any law, by delivering written notice of termination to the other Party, which shall be effective immediately upon delivery.

Section 7. Governing Law and Compliance with Laws

The laws of the State of Alaska, without giving effect to its conflicts of laws principles, will govern all questions concerning the construction, validity, and interpretation of this MOU. The Parties shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or thereafter adopted, validly enacted in the performance of its obligations set forth herein.

Section 8. Relationship of the Parties

Neither this MOU nor any other documentation or communication between the Parties shall constitute or create a joint venture, partnership, legal entity, or other similar business combination or arrangement between the Parties. Each Party shall act only on an individual and several basis. No Party shall have the right to act as an agent for or a servant or employee of the other Party, to make commitments or assume obligations for and on behalf of the other Party, or to bind the other Party for any purpose whatsoever.

Section 9. Costs and Expenses

Each Party shall be responsible for its costs and expenses in connection with the preparation and implementation of this MOU.

Section 10. Non-Binding MOU; Modification

This MOU is entered into by the Parties to evidence their in-principal, non-binding, purposes, intentions, and expectations. The Parties acknowledge that no legally binding obligations are intended to arise between them as a result of this MOU. This MOU may be modified only by a writing signed by authorized representatives of each Party.

{01542996}

Section 11. No Third-Party Beneficiaries

Nothing in this MOU is intended or shall be construed to confer any interests, rights or remedies upon a person or entity not a Party to this MOU.

Section 12. Counterparts.

This MOU may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute the MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed on the dates written below.

[SIGNATURE AND ACKNOWLEDGEMENTS ON NEXT PAGE]

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 _____, 2024, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

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

SITKA DOCK COMPANY, LLC

Date

By: Chris McGraw
Its: General Manager

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Chris McGraw, General Manager for SITKA DOCK COMPANY, LLC, on behalf of the corporation.

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