

## PRODUCTION AGREEMENT

The following agreement is entered into between \_\_\_\_\_, a \_\_\_\_\_ company incorporated in \_\_\_\_\_, its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (collectively hereafter referred to as "Producer") and the City of Kodiak, Alaska, an Alaska municipal corporation (hereafter referred to as "the City") in order to accommodate Producer's desire to create programming depicting activities on City property. This Agreement is entered into for the express purpose of allowing Producer to film \_\_\_\_\_ ("Program"). Producer agrees to use reasonable diligence to assure that all necessary photography, video recording, and audio recording to create the anticipated program will be completed by \_\_\_\_\_. No photography, video recording, or audio recording will be permissible after \_\_\_\_\_ unless Producer and the City enter into a new agreement.

(1) The City hereby grants to Producer permission to photograph, video record, and/or audio record at the City \_\_\_\_\_ (location) and use the photographs/recordings in connection with the Program as well as promotion of the Program.

(2) Producer agrees to use reasonable care to prevent damage to the property of the City and injury to employees and volunteers of the City in connection with Producer's photographing, video recording, and/or audio recording the activities of the City engaging in activities in connection with or related to this Agreement. Producer also agrees to use reasonable care to prevent damage to the property of persons or entities other than the City and injury to persons who are not City employees or volunteers in connection with Producer engaging in the conduct.

(3) Producer agrees to defend, hold harmless, and indemnify the City, its departments, divisions, agents, employees, and affiliates as well as all firefighting, emergency response, and law enforcement agencies, firefighting, emergency response, and law enforcement agency employees, volunteer organizations, individual volunteers, search and rescue organizations, individual search and rescuers, and all other persons acting at the request of, or in conjunction with, the City ("City Actors") for any and all claims or demands of any and all non-City actors or entities that arise out of Producer's photographing, video recording, and audio recording the activities of the City in connection with or related to this Agreement. The scope of this duty to defend, hold harmless, and indemnify includes, but is not limited to, pre-production, production, editing, marketing, and publication activities.

(4) Producer shall require that all release agreements it obtains in connection with photographing, video recording, and/or audio recording the activities of the City in connection with or related to this Agreement from non-City actors to protect the interests of Producer also specifically extend the same protection to the City, its departments, divisions, agents, employees, volunteers, and affiliates as well as all firefighting,

emergency response, and law enforcement agencies, fire department, emergency response, and law enforcement agency employees, volunteer organizations, individual volunteers, search and rescue organizations, individual search and rescuers, and all other persons acting at the request of, or in conjunction with, the City or any department of the City.

(5) Producer shall have the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City named as additional insurers on all insurance coverage it secures or has in effect that may provide coverage for Producer's activities in connection with photographing, video recording, and/or audio recording the activities of the City in connection with or related to this Agreement.

(6) The insurance coverage Producer secures or has in effect to provide coverage for Producer's activities in connection with photographing, video recording, and/or audio recording the activities of the City or any department or agency of the City in connection with or related to this Agreement shall not provide for subrogation or any other claim against the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City.

(7) Producer shall secure and maintain in full force and effect the following policies of insurance to provide coverage for activities in which it engages in connection with or related to this Agreement. Written evidence in the form of one or more Certificate(s) of Insurance shall be provided to the City before Producer engages in any activity in connection with or related to this Agreement. These coverage requirements for the stated types and limits are not to be construed as a representation that such insurance coverage is adequate or limits Producer's liability.

Commercial General Liability insurance with coverage of not less than \$5,000,000 per occurrence, which shall include, but not be limited to, premises and operations, independent contractors, products/completed operations, and contractual obligations - including the duty to defend, indemnify, and hold harmless obligation set forth above in paragraph 3 of this Agreement.

Motor Vehicle Liability insurance with personal injury coverage of not less than \$1,000,000 per person and \$5,000,000 per occurrence; property damage coverage of not less than \$100,000 per person and \$250,000 per occurrence; and uninsured/underinsured coverage of not less than \$1,000,000 per person and \$5,000,000 per occurrence. This insurance coverage shall include, but not be limited to, coverage for all vehicles Producer uses while engaging in activities in connection with or related to this Agreement.

Producer shall be solely responsible for workers compensation as required by law for all persons who act on its behalf in photographing, video recording, and/or audio recording the City employees or volunteers or associates engaging in activities in connection with or related to this Agreement.

This insurance coverage shall protect the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City against any and all claims or demands of any and all persons or entities that arise out of Producer's engaging in activities in connection with or related to this Agreement.

This insurance coverage shall be considered primary to any and all insurance coverage secured or maintained by the City, its departments, divisions, agents, employees, affiliates, and all other persons acting at the request of, or in conjunction with, the City through self-insurance or otherwise.

(8) The City grants Producer all rights to the photographs, video recordings, and audio recordings, in any and all media throughout the world, now known or hereafter devised, of the activities of the City it obtains pursuant to or in connection with this Agreement for use in connection with the Program. Producer may publish the Program locally, nationally, or internationally. Copyright rights in the materials are to be vested with Producer – except Producer agrees to provide, upon written request by the City and with Producer's written pre-approval, the City's limited and reasonable use of materials, without charge, for recruiting, training, and public relations purposes.

(9) Except as provided in paragraph 1 above, Producer shall not use any photograph, video recording, or audio recording it obtains of City Actors or objects/items reflecting the official capacity of City Actors pursuant to or as a result of the terms of this Agreement in connection with any promotion, sale, or endorsement of any product.

(10) Producer shall not use in any manner photographs, video recordings, or audio recordings it obtains pursuant to or as a result of the terms of this Agreement beyond or outside the scope and purpose of this Agreement without entering into a further agreement with the City. Producer is not obligated to actually use the materials in producing the Program. Producer shall notify the City in writing within 30 days of the date it makes the decision not to produce the Program. Notification shall be provided to the attention of the City Manager at the address specified in Paragraph 28 of this Agreement.

(11) Producer agrees that the portrayal of the City, its departments, divisions, agents, employees, affiliates, and all other persons acting at the request of, or in conjunction with, the City will be positive and favorable in any and all promotion, marketing and programming that arises out of or relates to the terms of this Agreement.

(12) A breach or default of any provision of this Agreement by Producer shall result in immediate termination of this Agreement and may result in a claim for damages by the City and other criminal and civil penalties against Producer as applicable under law.

(13) At all times while filming City employees or volunteers or while operating or conducting business on City property, Producer shall abide by any and all instructions, directions, and/or demands made by designated City representatives. Failure to immediately comply with any instructions, directions, and/or demands by the designated

City representative shall result in a breach of this Agreement by Producer. Upon verbal notification by a designated City representative that Producer has violated this section of the Agreement, Producer shall immediately exit City Property and stop any filming activities of City employees, volunteers, or any other personnel, and immediately remove any and all equipment, personnel, representatives, designees, volunteers, and/or employees from City property.

(14) Producer shall comply at all times with relevant laws and all requests by City designed to guarantee compliance with such laws, including but not limited to the blurring of faces or redaction, deletion or exclusion of details upon City request. Producer shall not use any footage, photography, video or audio recording of any third person or the property of a third person while engaging in filming, photographing or recording City Actors without first obtaining written permission from such persons.

(15) Any case or controversy or claim arising under or from this Agreement shall be brought only and exclusively in a court located in Anchorage, Alaska. This provision is a mandatory forum selection clause.

(16) Producer shall provide the City the opportunity to review all formal "sit down" (as opposed to out in the field) interviews of persons associated with or employed by the City or acting at the request of, or in conjunction with, the City which Producer desires to use in promotion, marketing or programming. Producer also shall provide the City the opportunity to review rough cut versions of the Program. The City is to be afforded a period of five (5) working days to review such interviews and rough cut versions of the Program before Producer publically discloses any portion(s) thereof. The City, in its discretion, may waive the requirement of Producer to provide the City the opportunity to review "sit down" interviews for interviews that took place in the presence of the City Attorney, the City Manager or the Manager's designee. Producer shall provide the City the opportunity to review all "sit down" interviews absent a written and signed waiver from the City. The City shall exercise all reasonable efforts to make a representative from the City Attorney's office or the City Manager or her designee present at "sit down" interviews of all City Actors.

(17) Producer agrees that it will not use in any manner in promotion, marketing, programming or otherwise any photograph, video recording, or audio recording it obtains pursuant to or as a result of the terms of this Agreement; or any interview or portion thereof obtained pursuant to or as a result of the terms of this Agreement that the City deems, in its discretion, to be inaccurate or concern sensitive or confidential information. The City acknowledges that, other than to assure accuracy and to protect against disclosure of sensitive or confidential information, creative and editorial control of promotion, marketing, and programming rests with Producer - other than as agreed above in paragraph 11.

(18) Upon request of the City, the crew(s) of Producer will attend briefings prior to any and all photographing, video recording, or audio recording sessions in order to become familiar with safety, local community, and/or cultural issues.

(19) No authorization from the City is necessary to enable Producer to proceed with activities to create the Program beyond full execution of this Agreement and compliance with its terms.

(20) This written document constitutes the entire Agreement between the City and Producer relating to Producer's desire to create the Program. However, the General Release of Liability and Indemnification Agreement executed by the City and Producer regarding Producer's presence on City property continues in full force and effect. No other written or oral agreements exist regarding this matter. Any dispute regarding the terms of this Agreement shall be resolved in Alaska state courts and in accord with Alaska state law.

(21) No employment or agency relationship is created by this Agreement. Producer's employees, representatives, designees, personnel, members, participants, and volunteers shall at all times be considered agents or employees of Producer and not of the City. Producer shall assume full responsibility for the actions or inactions of Producer's employees, representatives, designees, directors, officers, personnel, members, participants or volunteers, and Producer shall be solely responsible for the supervision, direction, and control of such persons.

(22) All applicable taxes or assessments that are relevant or the result of Producer's filming activities shall be the responsibility of and shall be paid for by Producer.

(23) This Agreement cannot be transferred or assigned without the City's prior written consent.

(24) Any provision or clause of this Agreement that is deemed invalid by a court or otherwise by law shall not affect the validity of the remainder of the Agreement.

(25) The failure of the City at any time to enforce a provision or part of this Agreement shall in no way constitute a waiver of such provision or part, nor in any way affect the validity of this Agreement or any part of this Agreement. A waiver by the City of any provision or part of this Agreement shall not be construed as a continuing or future waiver of such provision or part or as a continuing or future waiver of any other provision or part of this Agreement. Any waivers of the Agreement conditions shall be in writing and signed by both parties.

(26) No provision of this Agreement shall be construed to create a partnership or joint venture or any other arrangement between the City and Producer under which the City would be liable for debts, losses or liabilities of Producer.

(27) This Agreement has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and shall be interpreted according to its fair meaning and intent and not for or against either party.

(28) At the signing of this Agreement, Producer shall provide the City with the names of two (2) contact persons with authority for activities and events under this Agreement and addresses and telephone numbers for such contact persons that the City may use to communicate and give notices to Producer. All written notices given by Producer to the City shall be either hand delivered or mailed to the City Manager at the following address: City of Kodiak, Attn: City Manager, 710 Mill Bay Road, Kodiak, Alaska 99615. Mailed notices shall be deemed effective when they are sent as determined by the postmark date. All hand delivered documents and notices should be delivered to the City of Kodiak Harbormaster for immediate delivery to City Hall.

(29) Producer hereby warrants and represents that it has authority to enter into and perform the obligations of this Agreement and that the individual(s) signing this Agreement have the authority to sign this Agreement on behalf of Producer.

The undersigned individuals represent and warrant that they have all rights and authority to enter into this Agreement.

**AGREED AND ACCEPTED:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF KODIAK, ALASKA**

\_\_\_\_\_

Mike Tvenge  
City of Kodiak Manager

Date: \_\_\_\_\_