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**Alaska Remote Seller Sales Tax Commission**  
**Board of Directors Meeting**  
**May 22, 2024 10:00 am – 11:00 am**  
*Virtual via Zoom*

Board of Director Attendees:

- **Libby Bakalar**, City of Bethel
- **Scott Bloom**, City of Kenai
- **Melissa Haley**, City & Borough of Sitka
- **Brandi Harbaugh**, Kenai Peninsula Borough
- **Ruth Kostik**, City & Borough of Juneau
- **Layton Lockett**, City of Adak
- **Cassee Olin**, City of Wasilla

1. Call to order
2. Approval of the Agenda
3. Public participation on Non-Agenda Items
4. Official Business
  - a. Review and approve AML / ARSSTC Service Agreement
5. Comments
6. Adjournment



## MEMORANDUM OF AGREEMENT

### Provision of Professional Services for the Alaska Remote Seller Sales Tax Commission

**Section 1. Purpose.** This Memorandum of Agreement (this “MOA”) is effective as of the 21<sup>st</sup> day of January 2024 (the “Effective Date”), between the Alaska Municipal League (“AML”), an Alaska intergovernmental, not-for-profit organization, and the Alaska Remote Seller Sales Tax Commission (the “Commission”), an interlocal governmental entity, to set forth the terms for AML to provide administrative and support services to the Commission.

**Section 2. Scope of Services.** AML will provide the following services for the Commission, and/or as directed by the Board of Directors (the “Services”):

- A. Support Commission Board, Subcommittee, and Member meetings, activities, and communications, including the following tasks:
  - i. Make meeting arrangements, and provide for notice in conformance with Commission Bylaws
  - ii. Provide agenda support
  - iii. Prepare meeting minutes
  - iv. Provide compliance oversight
- B. Support member meetings, activities, and communications, including the following tasks:
  - i. Maintain Commission member list
  - ii. Administer annual member meeting
  - iii. Conduct annual rate, boundary, and member Code review
  - iv. Send monthly emails with updates on compliance, reporting, and software development
  - v. Establish a Commission website with information available to members, taxpayers, and prospective members
  - vi. AML will provide or organize the provision of legal support, at the direction of the Commission, when legal services are needed for code enforcement actions or on behalf of the Commission.
- C. Enter into and manage software contracts necessary for collection, remittance, and reporting, and all other services as required by the Commission:
  - i. ~~With~~ With the provision that all contracts may revert to the Commission if the Alaska Municipal League no longer acts as the administrator on behalf of the Commission.
  - ii. -The Commission shall be notified at least 120 days prior to any amendment, extension or expiration of the applicable contract(s).

- iii. The Commission and AML shall work together, cooperatively for their mutual best interest in negotiations with third party contractor(s). The Commission will have the option to participate in contract negotiations, including any rate and fee negotiations.
- iv. The Commission may, at its discretion, delegate a member or members of the Board to participate in contract negotiations on behalf of the Commission after timely notification by AML as required under Subsection ii. -
- v. Once a draft agreement is reached in contract negotiations, AML shall submit notice to the Board requesting the Board hold a special meeting within the next 15 calendar days to consider the draft agreement.
- ~~vi.~~ Contracts will be approved by the Board for execution by AML; unless, ~~the Board after proper notice by AML the Board~~ fails to ~~hold~~have a regular or special meeting within 15 calendar days after notice by AML in time to meet applicable approval deadlines, in which case, the member or members delegated by the Commission to negotiate on behalf of the Commission shall have authority to approve applicable contracts on behalf of the Board.
  - ~~i.a.~~ GovOS Support – as required by contract attached as Exhibit A
  - ~~ii.b.~~ ATR Support – as required by contract attached as Exhibit B
- D. Coordinate Commission decision-making and operational activities through AML’s Executive Director
  - i. Communicate staffing roles and responsibilities
- E. Manage day-to-day operations of the Commission, including the following tasks:
  - i. Conduct outreach to online retailers and national contacts
  - ii. Conduct outreach to Alaska businesses
  - iii. Establish and manage separate accounting.
    - a. Reconcile accounts on a daily basis
    - b. Remit net revenue to members on an agreed-upon and consistent date
    - c. Report – review in partnership with members
  - iv. Follow the policies and procedures as set out by the board
  - v. Manage and respond to legal or other questions from or directed to the Commission
  - vi. Seller Compliance – review in partnership with members
  - vii. Contract for a compliance audit and prepare required materials for audit
    - a. Make available the auditor to present to the board, and provide to the board the audit and oversight documents
  - viii. Maintain (including, without limitation, backing up its computer files, and maintaining facilities and procedures for safekeeping and retaining documents) books and records of the Commission and its operations
  - ix. Provide an annual report

**Section 3. Equipment and Supplies.** AML will provide all necessary equipment and facilities to timely and efficiently perform the Services.

**Section 4. Standard of Care.** AML agrees, at all times, to complete the Services in a professional and timely fashion. In performing the Services, AML must exercise all due care and caution in accordance with the best industry practices. The Commission will cooperate fully to ensure that AML is capable of timely performing the Services.

**Section 5. Commission Scope of Responsibilities.** The Commission shall act in good faith in the execution of this MOA, the Commission Bylaws, and the Intergovernmental MOA. The Commission acknowledges the legal status of the Alaska Municipal League. The Commission has the following duties and authority:

- Review and work with AML to develop a budget consistent with the administrative needs of the Commission; and approve as determined by the Board.
- Review and approve annual staffing plan (recognizing the Commission has no direct authority over AML staff), consistent with the budget, in support of necessary Commission functions.
- Approve contracts related to the performance of services outlined in this agreement valued over \$10,000.
- Direct all Board and Commission inquiries and requests through the Executive Director of AML or designee.
- Establish administrative policies and procedures for the operations of the Commission.
- Review and approve ~~a marketing~~ marketing and communication plans and strategies.
- Approve implementation and amendment process of the MOA and Code.
- Participate in and receive the annual audit report and oversight documents.
- Conduct an annual performance review of AML's activities.

**Section 6. Term.** The term of this MOA shall expire June 30, 2024<sup>5</sup>. Subsequent terms shall expire and be renewed on a fiscal year (July 1 – June 30) schedule. Prior to expiration of the term, the parties will review the MOA and may amend the MOA as mutually desired and renew. After the term, the MOA (amended or not) may be renewed for two additional one-year terms upon approval of the board, unless sooner amended or terminated as provided below in this MOA.

**Section 7. Amendment.** This MOA may be amended at any time by mutual written agreement of the parties.

**Section 8. Renewal.** AML and the Commission may mutually agree to renew this MOA for two successive one-year terms after the initial term of this MOA.

**Section 9. Termination for Convenience.** This MOA may be terminated by either party upon 120 days' advance written notice. In the event that this MOA is terminated, all finished or unfinished documents, data compilations, reports, and/or other materials prepared by AML under this Agreement are the property of the Commission and AML hereby agrees to peaceably return all such items to the Commission by or upon the effective date of termination and as may be further instructed by the Commission. AML shall be entitled to receive compensation for invoiced work performed to the effective date of the termination.

**Section 10. Remediation.** If the Commission determines that AML has failed to fulfill in a timely and proper manner the obligations of this MOA, the Commission will notify AML in writing of these deficiencies, work with AML to take action to address deficiencies within thirty (30) days, with expected remediation within ninety (90) days.

**Section 11. Termination for Cause.** If, through any cause, AML shall fail to fulfill in a timely and proper manner the obligations under this MOA, unresolved within ninety (90) days and determined to be significantly detrimental to the governance or fiduciary oversight of the Commission, then the Commission shall thereafter have the right to immediately terminate this MOA, upon a vote of the Board of Directors, by giving written notice to AML and specifying the effective date thereof. The Commission reserves the right to terminate for cause within thirty (30) if Board determines that circumstances necessitate. In either event, all finished or unfinished deliverable items under this MOA prepared by AML shall, at the option of the Commission, become its property, and AML shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials prior to the effective date of termination. In such event, AML shall not be relieved of liability to the Commission for damages sustained by the Commission by virtue of any breach of this MOA, and the Commission may withhold any payment due AML for the purpose of setoff until such time as the exact amount of damages due the Commission from such breach can be determined.

**Section 12. Fees.** Fees will be applied to total revenues upon collection each month, deducted according to these terms, and the remainder of the revenue remitted to the member annual revenues are determined by the Commission’s fiscal year.

- A. GovOS. AML will facilitate payment of the Commission’s GovOS contracts fees, which may be reviewed and amended after five years after the effective date of the Commission’s contract (November 2024).

\$0-\$10M	\$10M-\$20M	\$20M+
12%	8%	4%

- B. ATR. AML will facilitate payment of the Commission’s ATR contract fees, which was renewed in December 2023 under a new pricing model. ATR’s fees are structured as follows, subject to a 5% annual increase.

Annual Revenue Collected	Annual Fee (Billed monthly)	Pro-rata Monthly Fee
Up to \$25 million	\$375,000	\$31,250
Up to \$30 million	\$400,000	\$33,333
Up to \$35 million	\$425,000	\$35,417
Up to \$40 million	\$445,000	\$37,083

C. Commission. The Commission's fees will be collected monthly, applied as an annual, board-approved percent of revenue to gross sales tax collected, consistent with the budget. The total percent collected from fees (between GovOS, ATR and AML) should be limited to not more than 20% in any one month, with the maximum preferred limit at 15% (and the intent to work toward lowering fees as quickly as possible). The Commission as a whole may approve a higher percentage if circumstances demand.

D. AML Expenses

AML will submit monthly reports of expenses to the Board, and the Commission will pay AML's direct expenses and ~~8%~~ overhead expenses upon approval by the board or designee. The overhead expenses rate will be set at 8% and may be renegotiated annually as part of approving the Commission's fiscal year budget. Overhead will be applied to direct expenses as compensation for rent, computers and electronic equipment, telecommunication equipment and services, and indirect staff time in proportion to the Commission's share of each line item as approved in the budget. Direct and indirect expenses will be evaluated annually to ensure appropriate allocation. Cost beyond costs approved in the budget are not a reimbursable direct expense and must be approved by the board of directors. AML's direct expenses include, and as provided for in the annual budget are:

1. Staff who are directly responsible for Commission programs. Costs include salary and benefits.
2. Contracts, insurance, and miscellaneous costs directly related to AML's performance of the Services
3. Any Commission-approved loan or start-up capital by AML will be repaid in subsequent years in a manner as determined by the Board and in agreement with AML, to include any agreed upon interest.
4. AML expenses paid by the Commission may not exceed the approved budget in any fiscal year, unless a prior request to amend and increase the budget has been received and approved by the Board of Directors.

**Section 13. Insurance.**

AML will maintain general (currently \$2,000,000) and professional liability insurance coverages at all times during this MOA with limits and retention amounts in commercially-prudent amounts consistent with industry standards to cover any loss arising as a result of any real or alleged negligence, errors, or omissions on the part of AML's officers, agents or employees (minimum \$1,000,000) in any aspect of the performance of services under this MOA. Notwithstanding, the commercial general liability must include minimum coverage of \$1,000,000.

The policy must name the Commission as an additional insured and provide that the policy may not be cancelled without 30 days' prior written notice to the Commission. Upon reasonable

request, the Commission shall be furnished with a certificate evidencing issuance of such policy of liability insurance, and such certificate shall recite that said policy may not be canceled without 30 days' prior written notice to the Commission.

AML shall also maintain Worker's Compensation and Employers Liability Insurance (with minimum limits of \$100,000 per accident). Worker's compensation insurance and employers' liability insurance shall be in compliance with the statutory requirements of the State of Alaska, and any other statutory obligation, whether federal or state pertaining to compensation of injured employees. The worker's compensation insurance and employers' liability insurance shall contain a waiver of subrogation provision in favor of the Commission.

#### **Section 14. Indemnification.**

- A. AML's Obligation to Indemnify. AML shall, indemnify, defend and hold the Commission harmless, including its directors, officers, employees, representatives, affiliates, successors, and permitted assigns (the "Commission Indemnified Parties") from and against all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorneys' fees asserted against, imposed upon or incurred by any Commission Indemnified Party arising out of or resulting from: (a) any breach or nonfulfillment by AML of, or any failure by AML to perform, any of the covenants, terms, or conditions of, or any of its duties or obligations under, this MOA, including without limitation any failure of AML to assume responsibility for any of the Services in a timely manner in accordance with this MOA except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any Commission Indemnified Party; (b) any negligent acts or omissions or willful misconduct related to this MOA; or (c) any successful enforcement of this indemnity.
- B. The Commission's Obligation to Indemnify. To the extent allowed by law and subject to availability and appropriation of funds by Members, the Commission shall indemnify and hold harmless AML and its directors, officers, employees, representatives, affiliates, successors, and permitted assigns (the "AML Indemnified Parties") from and against all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorneys' fees asserted against, imposed upon or incurred by any AML Indemnified Party arising out of or resulting from: (a) any breach or nonfulfillment by the Commission of, or any failure by the Commission to perform, any of the covenants, terms or conditions of, or any of its duties or obligations under, this MOA except to the extent that such breach, nonfulfillment, or failure is caused by the actions of any AML Indemnified Party; (b) any negligent acts or omissions or willful misconduct related to this MOA; or (c) any successful enforcement of this indemnity.

**Section 15. Miscellaneous.** This MOA does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a party to this MOA. Nothing in this MOA shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Commission and AML. This MOA may not be assigned without the prior written consent of the other party, which may not be

unreasonably withheld. This MOA represents the entire agreement and understanding between the parties with respect to the subject matter of this MOA and supersedes all prior or contemporaneous, express or implied, written or oral MOAs, representations, and conditions between the parties with respect to the subject matter of this MOA. This MOA may be executed in any number of counterparts, including by electronically transmitted signature, and each counterpart shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same MOA. This MOA may only be modified upon mutual MOA in writing by both parties. The failure of the Commission to enforce a provision of this MOA shall in no way constitute a waiver of the provisions of this MOA or a waiver of any subsequent breach of the same or similar condition or provision of this MOA, nor shall it in any way affect the validity of this MOA. If any section or clause of this MOA is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, it is the intent of the parties that the remainder of this MOA shall remain in full force and effect.

**Section 16. Contract Administration.** The Commission Board President, or the President's designee, shall be the representative for administering this MOA on behalf of the Commission. The Executive Director of AML shall be the representative for administering this MOA on behalf of AML.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this MOA effective as of the Effective Date.

**The Commission:**

ALASKA REMOTE SELLER  
SALES TAX COMMISSION

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

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

**AML:**

ALASKA MUNICIPAL LEAGUE

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

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