



CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
Sitka, AK
(907)747-1811

Meeting Agenda City and Borough Assembly

*Mayor Mim McConnell
Deputy Mayor Matt Hunter
Vice-Deputy Mayor Phyllis Hackett, Pete Esquiro, Mike Reif,
Benjamin Miyasato and Aaron Swanson*

*Municipal Administrator: Mark Gorman
Municipal Attorney: Robin L. Koutchak
Municipal Clerk: Colleen Ingman, MMC*

Tuesday, February 25, 2014

6:00 PM

Assembly Chambers

WORKSESSION MEETING

Sitka Convention and Visitor's Bureau 5:00 - 5:50 PM

[14-044](#)

Worksession with the Sitka Convention and Visitor's Bureau Board

Attachments: [Worksession 2-25](#)

REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

[14-045](#)

Correspondence - Reminders

Attachments: [Reminders](#)

V. CEREMONIAL MATTERS

None scheduled.

VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Municipal Departments, School District, Students and Guests (time limits apply)

1) Legal analysis of automatic referendums - Atty. Mike Gatti (10 minutes)

VII. PERSONS TO BE HEARD

Public participation on any item off the agenda. Not to exceed 3 minutes for any individual.

VIII. REPORTS**a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other****IX. CONSENT AGENDA**

All matters under Item IX Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A** [14-037](#) Approve the minutes of the January 28 and February 11, 2014 Assembly meetings
Attachments: [Minutes 1-28; 2-11](#)
- B** [14-038](#) Appointments: Reappoint 1) James Poulson to a term on the Historic Preservation Commission; and 2) Angela McGraw to a term on the Sitka Convention and Visitor's Bureau
Attachments: [Appointments 2-25](#)
- C** [14-040](#) Adopt the Finance Director's interpretation of a sales tax and hotel, motel, bed and breakfast transient room tax exemption as it applies to bulk rental lodging and youth summer camp
Attachments: [Finance Dir Interpretation Youth Camp](#)
- D** [ORD 14-03A](#) Amending Sitka General Code Sections 3.16.030 entitled "Open Market Procedures", 3.16.060 entitled "Exceptions to Competitive Bidding Requirements", and adding Section 3.16.080 entitled "Procurement Monitoring"
Attachments: [Cover ORD 2014-03A Final](#)
 [Ordinance 2014-03A](#)

Third and final reading
- E** [ORD 14-04](#) Authorizing renewal of sublease of space by Nugget Restaurant at the Sitka Rocky Gutierrez Airport Terminal Building
Attachments: [Cover ORD 2014-04 2nd](#)
 [Ordinance 2014-04](#)

Second and Final reading
- X. UNFINISHED BUSINESS:**
- F** [ORD 14-02](#) Amending Sitka General Code at Chapter 9.20 entitled "Smoking in Public Places and Places of Employment" to modify Section 9.20.035 regarding prohibition of children in places where smoking is permitted

Attachments: [Cover ORD-02](#)
[Ord 14-02](#)
[Third hand smoke studies-2](#)
[TobaccoFree Tribal Resolution FINAL SAMPLE](#)

XI. NEW BUSINESS:

New Business First Reading

- G** [RES 14-02](#) Approving CBS to apply for an Alaska Department of Environmental Conservation Loan to finance the construction of a temporary Water Filtration Plant at Indian River - up to \$4.32 M

Attachments: [RES 14-02](#)

First and final reading loan application

Additional New Business Items

- H** [14-041](#) Authorize a Change Item 68 to Barnard Construction \$1,880,050 and approve additional funding for the Blue Lake Expansion Project - \$2,758,214
Attachments: [Change Item 68](#)
- I** [14-042](#) Authorize issuance of a Notice of Award to ASRC McGraw Constructors LLC, clarify and confirm final price and enter into an Agreement for Contract No. 8 the Reservoir Debris Management for Blue Lake Expansion Project and obligate project funds - \$2,383,714
Attachments: [Contract No. 8 Reservoir Debris](#)
- J** [14-039](#) Authorize advertising for a Request for Qualifications by the City and Borough of Sitka for a General Fund Comprehensive Management Plan
Attachments: [RFQ GF Comprehensive Management Plan](#)
- K** [14-043](#) Discussion on Long Range Budgeting
Attachments: [Cover sheet Long Range Budgeting](#)
 [Long Range Budgeting](#)

XII. PERSONS TO BE HEARD:

Public participation on any item on or off the agenda. Not to exceed 3 minutes for any individual.

XIII. EXECUTIVE SESSION

None anticipated.

XIV. ADJOURNMENT

Colleen Ingman, MMC

*Municipal Clerk
Publish: 2-21-14*



Legislation Details

File #: 14-044 **Version:** 1 **Name:**
Type: Item **Status:** AGENDA READY
File created: 2/20/2014 **In control:** City and Borough Assembly
On agenda: 2/25/2014 **Final action:**
Title: Worksession with the Sitka Convention and Visitor's Bureau Board
Sponsors:
Indexes:
Code sections:
Attachments: [Worksession 2-25](#)

Date	Ver.	Action By	Action	Result
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WORKSESSION
5:00 – 5:50 PM
Sitka Convention and Visitor's Bureau

The work session was requested by the Assembly during the Assembly's last visioning and goal-setting session, and they wanted to sit down with the SCVB Board. We were under the impression that we would discuss the future goals of the Bureau, how we can better work together, and outlook/issues/challenges we see in the future.



SITKA CONVENTION & VISITORS BUREAU

NAME	CONTACT NUMBERS	TERM STARTS	EXPIRES	CATEGORY
MARY STENSVOLD Box 1042	747-4210 w 747-6734 kruzov@yahoo.com	5/12/09 8/24/10 9/24/13	8/14/10 8/24/13 9/24/16	Chair
EVY KINNEAR 1720 Edgecumbe Dr	747-3032 h 738-3032 c evy@fortressofthebear.org	1/14/14	1/14/17	Vice-Chair
RONALD HAUCK Box 1016	747-6241 w 747-6328 h wmsit-gm@hollandamerica.com	10/08/02 9/27/05 11/18/08 12/27/11	10/08/05 9/27/08 11/18/11 12/27/14	
ANGELA MCGRAW PO BOX 234	752-3102 c 744-3080 h angelamcgraw@rocketmail.com	2/22/11	2/22/14	
LINDA SPEERSTRA 210 Crabapple Drive	747-8316 moonspeer@gci.net	3/8/11 3/26/13	3/23/13 3/26/16	
TAD KISAKA PO Box 6398	738-2737 c 747-4640 h tad@flyfishsitka.com	4/9/13	4/9/16	
Mim McConnell 215 Smith St. Apt. G	747-2860 h 738-2888 c assemblymcconnell@cityofsitka.com			Assembly Liaison

7 members 3-year terms

Established by Ordinance 80- 431
Last Tuesday of each month, 1pm, Harrigan Hall
The schedule is revised for the summer months

Tonia Rioux, Director
Box 1226
747-5940 w 747-3739 f
director@sitka.org

Revised: January 16, 2014



Legislation Details

File #: 14-045 Version: 1 Name:
Type: Correspondence Status: AGENDA READY
File created: 2/20/2014 In control: City and Borough Assembly
On agenda: 2/25/2014 Final action:
Title: Correspondence - Reminders
Sponsors:
Indexes:
Code sections:
Attachments: [Reminders](#)

Date	Ver.	Action By	Action	Result
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REMINDERS

<u>DATE</u>	<u>EVENT</u>	<u>TIME</u>
<i>Tuesday, February 25</i>	<i>Worksession: Sitka Convention and Visitors Bureau</i>	<i>5:00 PM</i>
Tuesday, February 25	Regular Meeting	6:00 PM
<i>Tuesday, March 11</i>	<i>Worksession: Solid Waste Master Plan</i>	<i>5:00 PM</i>
Tuesday, March 11	Regular Meeting	6:00 PM
<i>Tuesday, February 25</i>	<i>Worksession: CAFR Presentation</i>	<i>5:00 PM</i>
Tuesday, March 25	Regular Meeting	6:00 PM





Legislation Details

File #: 14-037 Version: 1 Name:
Type: Minutes Status: AGENDA READY
File created: 2/14/2014 In control: City and Borough Assembly
On agenda: 2/11/2014 Final action:
Title: Approve the minutes of the January 28 and February 11, 2014 Assembly meetings
Sponsors:
Indexes:
Code sections:
Attachments: [Minutes 1-28; 2-11](#)

Date	Ver.	Action By	Action	Result
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If these items are pulled from the Consent Agenda
the following motion would be in order:

POSSIBLE MOTION

**I MOVE TO approve the minutes of the
January 28 and February 11, 2014 assembly
meetings.**



CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
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Minutes - Draft City and Borough Assembly

Mayor Mim McConnell
Deputy Mayor Matt Hunter
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Municipal Administrator: Mark Gorman
Municipal Attorney: Robin L. Koutchak
Municipal Clerk: Colleen Ingman, MMC

Tuesday, January 28, 2014

6:00 PM

Assembly Chambers

Worksession: 5:00pm to 5:50pm

14-020 Worksession Materials

A worksession on CBS funding support for the RIDE was held.

REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

Assembly Member Reif arrived at 6:10pm.

Present: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

IV. CORRESPONDENCE/AGENDA CHANGES

14-021 Correspondence Materials

V. CEREMONIAL MATTERS

None.

VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Municipal Departments, School District, Students and Guests (time limits apply)

Utility Director, Chris Brewton, introduced Steve Gordon the new T&D System Manager and his wife, Carol Gordon.
Brewton noted the Blue Lake Dam was continuing to spill which was causing

some issues for the project. Brewton also added contractors would begin work within the next two weeks to clear the intake area of the Howell Bunger valve.

VII. PERSONS TO BE HEARD

Jennifer Robinson, Executive Director of the Sitka Chamber of Commerce, briefed the Assembly on the schedule of future speakers at Chamber luncheons.

VIII. REPORTS

a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other

Mayor- provided a review of recently attended meetings: McGraw's and their cruise industry consultant, discussion of administrative powers and Sitka General Code with Michael Gatti and staff, Assembly Strategic Planning session, SCVB Board meeting.

Administrator - announced he would be traveling to Seattle and Florida with the McGraw's to meet with key cruise ship vendors, working on development of the Sitka Fish Summit, held a conference call with Senator Stedman regarding AEA funding, noted the preferred location for relocation of the library during the renovation was former Stratton Library, RFQ out for transportation from the Old Sitka Dock to Harrigan Hall.

Liaisons - Assembly member Hackett provided a report on the Tree and Landscape Committee and Sitka Community Hospital Board. Hackett noted she was resigning as an alternate liaison for the Tourism Commission. Assembly member Reif reported on a recent meeting he had with the Municipal Attorney, Administrator, and Mayor regarding administrative powers of the Assembly. Assembly member Esquiro provided a report on the recent Sawmill Cove Industrial Park Board meeting. Assembly member Hunter reported on the Port and Harbors Commission.

IX. CONSENT AGENDA

- A 14-013** Approve the minutes of the January 14, 2014 Assembly meeting
- This item was APPROVED ON THE CONSENT AGENDA.**
- B 14-014** Reappoint: 1) Jeff Mossige to a term on the Parks and Recreation Committee, 2) Chris Gale to a term on the Tree and Landscape Committee, and 3) Chris Spivey to a term on the Planning Commission

This item was APPROVED ON THE CONSENT AGENDA.

C 14-015

Grant preliminary approval for the sale of 10,797 square feet of tidelands off Katlian Avenue to North Pacific Seafoods

Reif noted Sitka Sound Seafoods (SSS) had leased the property for years and with the sale of the property SSS could better plan for future use/development of the property. Reif noted the revenue would go into the General Fund and generate money for years to come. The sale would also generate property tax.

A motion was made by Hackett that this item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

X. UNFINISHED BUSINESS:

D ORD 13-47A

Modifying SGC 6.16.010 entitled "Sales-Permit, Fees and Regulations" regarding Outdoor Sales of Goods or Articles in the CBD District, Public Use Zone and Public Boat Harbors

A motion was made by Reif that this Ordinance be APPROVED. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

E ORD 14-01

Amending the official Sitka Zoning Map to rezone Lot 50, Block 1, U.S. Survey 2542 A&B, Sitka Indian Village from R-1 Single-Family and Duplex Residential to WD Waterfront

A motion was made by Swanson that this Ordinance be APPROVED. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

F ORD 14-02

Amending Sitka General Code at Chapter 9.20 entitled "Smoking in Public Places and Places of Employment" to modify Section 9.20.035 regarding prohibition of children in places where smoking is permitted

Margaret Peterson, manager of the American Legion, came forward to address the Assembly and spoke in opposition to the ordinance. She read an email she sent to the Assembly on January 22, 2014.

Speaking in opposition to the ordinance were: Robbie Martin, Serena DeTemple, Josephine Johnson, Ms. Carlson, Jackie O'Steadman, Stacey Joseph, Elaina Ziza, Ramona Kirkland, Calvin Carlson, and Ernest Karras.

Assembly deliberation:

Assembly members expressed their views. Some felt the intent of the original ordinance was to protect children from second hand smoke while others were uncomfortable supporting the amendment and felt there were ways to measure indoor air quality.

A motion was made by Hunter to POSTPONE the ordinance on second reading and send the ordinance as written to the Health Needs and Human Services Commission for further consideration to research the possibility of a verification system to use that would measure the indoor air quality and deem that a place was safe for children prior to an event. The ordinance would be brought back to the Assembly after the Health Needs and Human Services Commission had reviewed it and made recommendations. The motion to POSTPONE PASSED by the following vote.

Yes: 5 - Hunter, Esquiro, Reif, Swanson, and Miyasato

No: 2 - McConnell, and Hackett

A recess was taken from 7:17pm to 7:25pm.

XI. NEW BUSINESS:

New Business First Reading

G ORD 14-03A

Amending Sitka General Code Sections 3.16.030 entitled "Open Market Procedures", 3.16.060 entitled "Exceptions to Competitive Bidding Requirements", and adding Section 3.16.080 entitled "Procurement Monitoring"

Rob Parker and Karen Parker of Alaska Computer Center spoke in support of the ordinance. They stated local businesses were unable to compete with online competitors.

Marko Hernandez, a local business owner, noted there was not a process for competitive bidding.

Jennifer Robinson, Executive Director of the Chamber of Commerce, urged the Assembly to support the ordinance.

Assembly discussion:

Reif spoke in support of the ordinance and spoke to a clerical edit on Line 43. Reif also noted the need to insert language pertaining to emergency acquisitions.

A motion was made by Reif to AMEND the ordinance to direct the administrator to insert language into the ordinance regarding emergency acquisitions. The motion to AMEND PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

Rob Parker suggested an efficacy measurement be added into the ordinance to gauge the effectiveness of the policy.

Finance Director, Jay Sweeney, stated there was a way to capture local purchase data and report back to the Assembly each quarter.

A motion was made by Reif to AMEND the ordinance to include an efficacy measurement clause. The motion to AMEND PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

This item was PASSED ON FIRST READING AS AMENDED.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

A recess was taken from 8:00pm to 8:08pm.

Additional New Business Items

H 14-019

Request the Sitka Convention and Visitors Bureau form a planning committee for the one-off cruise ships scheduled in May

The Assembly discussed the idea of forming a planning committee for the "one-off" cruise ships that were scheduled to arrive in May at Old Sitka Dock.

Hackett was concerned about portraying a false sense of what Sitka was. Miyasato suggested there be a tribal piece incorporated to keep it authentic.

Other members expressed the need to put "our best foot forward" and stressed these "one-off" cruise ships were testing the water to see if they were interested in adding Sitka as a regular stop to their itinerary.

Tonia Rioux, Director of the Sitka Convention and Visitors Bureau, stated the committee would be comprised of stakeholders that were in the tourism industry. Once a plan was formed they would report back to the Assembly.

A motion was made by Reif that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

I 14-016

BOA: Approval of a conditional use permit for metal welding and fabrication at 115 Harvest Way Unit #3 filed by Brian Schauwecker

A motion was made by Reif to CONVENE as the Board of Adjustment. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

Planning Director, Wells Williams, and Planning Commission Chairman, Dick Parmelee, came forward to explain the request.

Applicant, Brian Schauwecker, addressed the Assembly and provided clarification on hours of operations, type of work, and storage of chemical tanks. He expressed he would like to see the hours of summer operation be extended to 11pm rather than 9pm as stated in the Planning Commission conditions.

Mayor noted the area was an industrial area and needed for economic survival.

A motion was made by Reif to AMEND condition #7 to read, "Hours of welding and fabrication limited to 8 am to 9 pm with extended hours of operation until 11pm during the summer months defined as June 1 – August 31." The motion to AMEND was PASSED by the following vote.

Yes: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

No: 1 - Hackett

A motion was made by Swanson to AMEND condition #8 to read, "All materials and work must be kept inside the unit unless otherwise required by Code." The motion to AMEND PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

A motion was made by Hunter to APPROVE the conditional use permit filed by Brian Schauwecker for metal welding and fabrication at 115 Harvest Way Unit #3 and adopt the conditions and findings as listed in their entirety as they appear below.

Conditions

1. The project shall be completed in conformance with the plans submitted in the conditional use permit application to the Planning Commission;
2. In addition, prior to the activation of the conditional use permit, the Planning Director shall indicate, in writing, that all permits have been received that the municipality considers necessary;
3. The applicant recognizes that other permits, not specifically mentioned by the municipality, may be required;
4. The applicant shall provide a narrative on the status of operations nine months after the activation of the conditional use permit;
5. The Planning Commission has an annual review of the first nine to twelve months of operation of the facility within one year of the activation of the conditional use permit. The purpose of the annual review is to determine what, if any impacts of operation, need to be mitigated. The Planning Commission, by its own motion, may undertake a second annual review if the board considers it to be necessary and;
6. The Assembly, at its discretion, may complete an annual review if any issues are not satisfactorily resolved at the Planning Commission level.
7. Hours of welding and fabrication limited to 8 am to 9 pm, with extended hours of operation until 11pm during the summer months defined as June 1 – August 31.
8. All materials and work must be kept inside the unit unless otherwise required by Code.
9. New site plan, showing exhaust being rerouted to front of building, must be submitted prior to Assembly review.

Required Findings

1. The Planning Commission finds that the proposed conditional use permit will not:

- a. Be detrimental to the public health, safety, and general welfare;
- b. Adversely affect the established character of the surrounding vicinity;

nor

- c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located;

2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation. Specifically Sections 2.5.2 of the Comprehensive Plan, to encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas;

3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced. Specifically the 9 conditions added to the conditional use permit;

4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard;

5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services;

6. Burden of Proof. The applicant has met the burden of proof;

The requests supported by general approval criteria as follows:

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;

2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;

3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;

4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements

5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts, specifically the limitation on outside storage;

1. The following criteria in Determining Impacts of Conditional Uses have been considered:

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses;

- b. Amount of noise to be generated and its impacts on surrounding land uses;

- c. Odors to be generated by the use and their impacts;

- d. Hours of operation;

- e. Location along a major or collector street;
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario;
- g. Effects on vehicular and pedestrian safety;
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site;
- i. Logic of the internal traffic layout;
- j. Effects of signage on nearby uses;
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site;
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan;
- m. Other criteria that surface through public comments or planning commission assembly review.

The motion **PASSED** by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

A motion was made by Swanson to RECONVENE as the Assembly in regular session. The motion PASSED by a unanimous voice vote.

J RES 14-01

Authorizing a loan application to the Alaska Energy Authority Power Project Fund for funding construction of the Blue Lake Hydroelectric expansion project

Gorman and Sweeney gave an overview of the request. \$18.5 million is needed to fund the remainder of the project. One option was to apply for a loan from the Alaska Energy Authority at a lower interest rate than what would be obtained on the open market through bonds. If the loan were not received, the City could still obtain funding through the bond bank authority.

A motion was made by Hunter that this Resolution be APPROVED. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

K 14-017

Approve sending a member of the Assembly to the Cruise Shipping Miami Expo in March to promote Sitka to the cruise industry

Executive Director of the Sitka Chamber of Commerce, Jennifer Robinson, urged the Assembly to send the Mayor and stressed the importance of having a presence at the Expo. We need to take advantage of every opportunity to market Sitka.

Tonia Rioux, Director of the Sitka Convention and Visitors Bureau, also urged the Assembly to send an Assembly representative. It shows goodwill and desire for a community to have their business.

A motion was made by Reif to send Mayor McConnell to the Cruise Shipping Miami Expo in March to promote Sitka to the cruise industry. The motion PASSED by the following vote.

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

- L **14-018** Discussion/Decision/Direction on tasking a CBS Board, Commission, or Committee with the development of a community compost area
- No action was deemed necessary by the Assembly. Public Works Director, Michael Harmon, informed the Assembly that a composting area was intended to be part of the future Solid Waste Management Master Plan.

XII. PERSONS TO BE HEARD:

None.

XIII. EXECUTIVE SESSION

None.

XIV. ADJOURNMENT

A motion was made by Miyasato to ADJOURN. Hearing no objection the meeting ADJOURNED at 9:14pm.

ATTEST: _____
 Sara Peterson, CMC
 Acting Municipal Clerk



CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
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(907)747-1811

Minutes - Draft City and Borough Assembly

*Mayor Mim McConnell
Deputy Mayor Matt Hunter
Vice-Deputy Mayor Phyllis Hackett, Pete Esquiro, Mike Reif,
Benjamin Miyasato and Aaron Swanson*

*Municipal Administrator: Mark Gorman
Municipal Attorney: Robin L. Koutchak
Municipal Clerk: Colleen Ingman, MMC*

Tuesday, February 11, 2014

6:00 PM

Assembly Chambers

WORKSESSION: 5:00PM to 5:50PM

14-033 Community Land Trust Presentation

Mike Brown a partner with Burlington Associates hired as a consultant by Sitka Community Development Corporation gave a presentation and answered questions regarding a Community Land Trust proposal for Sitka.

REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

Present: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

Excused: 1 - Hackett

IV. CORRESPONDENCE/AGENDA CHANGES

None.

14-032 Correspondence Materials

V. CEREMONIAL MATTERS

None.

VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Municipal Departments, School District, Students and Guests (time limits apply)

Tim Fulton with Sitka School District announced that February is the month they recognize the School Board. Their math committees are busy picking curriculum. Lon Garrison, board president, spent time in Washington DC and in Juneau advocating for Sitka youth and education issues. Executed a working agreement between the District, Sitka Tribe and the Parks Service on knowledge of herring. Thanked everyone involved with the superintendent selection and reminded that tomorrow from 5-6:30 PM there is an opportunity to meet superintendent candidates and Thursday they plan to conduct interviews. Pacific High will hold an Open House February 17th, 5-7 PM.

Representative Jonathan Kreiss-Tompkins spoke telephonically to capital projects and revenue sharing and related that, in short, the state is going broke exhausting reserves by 2022. The capital budget is looking skeletal. He believes that the Alaska Marine Highway, Fisheries and Education will struggle for funding after this year. An invasive tunicate contract of \$500,000 still included. He will be presenting HB 201 concerning herbicides spraying and their relation to water sheds etc.

Tonia Rioux, Director of the Sitka Convention and Visitors Bureau gave an overview on their accomplishments to date. They plan on hiring someone who will be involved in marketing and media. Went over their FY 2014 Funding. Spoke to the services they offer and their newest publication, and the travel and trade shows they attended in 2013.

VII. PERSONS TO BE HEARD

None.

VIII. REPORTS

a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other 3 minutes each

Mayor - Attended the following events: Change of Command for the USCG Maple, SHS Drama Debate, Health Needs and Human Services Committee (where they listen to testimony on the smoking ordinance), and the School Board Worksession. She will be traveling to Juneau later this week, AML and Washington DC. March 2.

Administrator - Submitted the Alaska Energy Project. Gave kudos to Brewton and Sweeney for their work. Traveled to Florida with Chris McGraw, where they had many one-on-one conversations with cruise line officials. It is a relational business. Sitka is clearly seen as a authentic and real port of call. The Cruise Industry was interested on how the head tax dollars are being spent in Alaska and we were able to showcase some of our projects, of which they were pleased. Especially the cost of the shuttle bus to the Old Sitka Dock. One thing Sitka needs to address is the limited number of shore excursions offered. This coming year will probably be our low point in visitor numbers. Celebrity is to add three additional ships in 2015. The Disney Wonder and Norwegian Pearl will both have inaugural trips in May. Payment in Lieu of Taxes (PILT) has been signed by the President. The pilings in ANB Harbor are at 65% completion.

Liaisons - Swanson attended STA Tribal Counsel and Police & Fire where they are beginning to address parking ticket appeals.

Reif attended Health Needs Commission meetings where they supported the smoking clarification ordinance as written. Attended UAA Hard Rock Underground Mining presentation. Mining has made huge leaps. Water quality is the biggest

concern and the resulting water quality tests are excellent.

Hunter informed that Ports and Harbors meets tomorrow at 6 PM where they are busy rewriting the harbor code.

Miyasato attended the Parks and Recreation Committee where they are discussing what project to complete this year and are looking at Sea Walk Phase II. The Library Board discussed their 15 minute drop off parking arrangement.

Clerk - Mentioned that there were dollars budgeted to attend Southeast Conference and neither the mayor or deputies are able to attend. Therefore, she handed out the proposed agenda and asked that if anyone is interested to advise her office in the next couple days.

Other - Reif asked Harmon about roll over Passenger Fee Funds from the Crescent Harbor Parking Lot project. Harmon responded that they will be coming to the Assembly in the next month or so for approval and final design.

IX. CONSENT AGENDA

X. UNFINISHED BUSINESS:

- A **ORD 14-03A** Amending Sitka General Code Sections 3.16.030 entitled "Open Market Procedures", 3.16.060 entitled "Exceptions to Competitive Bidding Requirements", and adding Section 3.16.080 entitled "Procurement Monitoring"

A motion was made by Swanson to approve this ordinance. The motion PASSED on the following vote.

Yes: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

Absent: 1 - Hackett

XI. NEW BUSINESS:

New Business First Reading

- B **ORD 14-04** Authorizing renewal of sublease of space by Nugget Restaurant at the Sitka Rocky Gutierrez Airport Terminal Building

A motion was made by Swanson to approve the sublease renewal. The motion PASSED on the following vote.

Yes: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

Absent: 1 - Hackett

Additional New Business Items

- C **14-026** Discussion/Direction/Decision on inclusion of up to \$25,000 for the RIDE's

fixed route public transit service in the FY15 budget

Miyasato recused himself as he has a conflict with his legislative role with STA and additionally, serves as STA's Chairman of Transportation Committee.

Gerry Hope, a member of the Transportation Committee explained their request.

Reif asked for clarification, of if it is STA's desire that the City include \$25,000 in their FY2015 budget.

Sweeney apologized that he was of the understanding the request was for this FY14 year and his memo reflected that. Reif sees the request as premature. Hunter echoed it is very difficult to prioritize until they see the budget. Following Reif's motion Gorman said he will place this as a place holder to be brought forward during the budget process.

A motion was made by Reif to direct the Administrator to add a place holder for up to \$25,000 for consideration of Community Ride's request in the FY2015 Budget. The motion PASSED on the following vote.

Yes: 5 - McConnell, Hunter, Esquiro, Reif, and Swanson

Recused: 1 - Miyasato

D 14-027

Approve a loan in the amount of \$350,000 to the Baranof Island Brewing Company from the Southeast Alaska Economic Development Revolving Loan Fund

Mayor recused herself as they were one of her clients over the past year. Deputy Mayor Hunter assumed chairmanship of the meeting.

Rick Armstrong and Suzan Hess with Baranof Island Brewing Company spoke to the application, stating they have been working with Sweeney to provide a Performa. They were asked about a possible purchase of a building next door. They have looked at every available property and one in the neighborhood because they are looking to expand. As of the last conversation they do not have any plans to purchase property. This loan request is already earmarked, with plans to operate in the present location. This process began months before that property came up on the market.

Reif noticed that canning of beer is taking off. Armstrong informed that three lines are already operating in Alaska - a mini keg in a can. Cost of bottles and the associated shipping is high. Shelf life is 6-9 months longer with cans. This particular loan will be used for upgrades in equipment and allow them to do double batches.

Esquiro mentioned that they had been before the Assembly a couple times and wondering how many times they foresaw coming before the Assembly in the future. Esquiro inquired as to the Economic Development Loan Fund balance, Sweeney responded \$3,000,000. Esquiro had further questions wondering if this was the only financing they had available and had they thought about selling shares? Hess felt their loan request fit the program because they are growing economically and it is difficult for a small business to get a loan.

Reif had a question on the terms of this loan on whether Sweeney would be allowed to discuss with other members of staff and the Assembly. Sweeney and the borrower indicated yes. Sweeney added that one of the risks can become cash flow challenges. One of the things we need to assure is that we would have significant warning. He has met with the Armstrong's and they wish to keep their business

records private as possible to be able to compete and that resulted in this provision.

Armstrong believes this is a good investment with a brewery and realizes the city doesn't want to own a brewery. In the unlikely event that happened the business and its assets would be very liquidable. They have also invested a substantial amount of money personally.

Swanson supports because it is bringing jobs and helping the economy. Deputy Mayor Hunter pointed out that it is new money and wished them the best of luck.

A motion was made by Swanson to approve the loan. The motion PASSED on the following vote.

Yes: 4 - Hunter, Reif, Swanson, and Miyasato

No: 1 - Esquiro

Recused: 1 - McConnell

E 14-028 Approve a special emergency grant submitted by the Sitka Community Development Corporation in the amount of \$7500

Randy Hughey spoke to the Community Land Trust. A presentation was held earlier in an hour long worksession. Mike Brown spoke to the number of homes. The largest CLT is in Vermont. There are 13,500 nationwide. Esquiro inquired where was the smallest population. Probably Deadwood, South Dakota.

Miyasato pointed out when he ran last year one of the major issues was affordable housing in Sitka. At least four families were physically leaving because they could not afford to live here. Deadwood's population is 1300. Hunter asked if there is land already identified. Mim McConnell, Executive Director of the Sitka Community Development Corporation stated that they have a grant in which Michael Brown was hired and there is a timeframe to submit. Esquiro stated we are going on faith that is going to go through and that something will happen. and if it doesn't the \$7,500 is chalked up to experience. McConnell is confident it will happen.

A motion was made by Swanson that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 4 - Hunter, Reif, Swanson, and Miyasato

No: 1 - Esquiro

Absent: 1 - Hackett

Recused: 1 - McConnell

F 14-029 Authorize the Municipal Administrator to execute a lease between S&S General Contractors and CBS for Block 4 Lots 3 and 6 of the Sawmill Cove Industrial Park

A motion was made by Miyasato that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

G 14-030 Authorize the Municipal Administrator to execute Amendment No. 2 to the

lease agreement between CBS and S&S General Contractors & Equipment Rentals Inc. to extend the lease for approximately 38,000 square feet of property located at the Granite Creek Industrial area "Pit Run" site for approximately 6 months

A motion was made by Hunter that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 6 - McConnell, Hunter, Esquiro, Reif, Swanson, and Miyasato

H 14-025

Authorize the Municipal Administrator to execute a contract with Shaw Environmental, Inc; a Chicago Bridge & Iron Company to complete a not to exceed time and materials contract for the City and Borough of Sitka Municipal Solid Waste Management Plan and transfer up to \$250,000 from the Solid Waste Fund available working capital to project #90764 to create a budget for this work

A motion was made by Hunter that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 5 - McConnell, Hunter, Reif, Swanson, and Miyasato

No: 1 - Esquiro

XII. PERSONS TO BE HEARD:

None.

XII. ADJOURNMENT

With no further business nor objection the Mayor ADJOURNED the meeting. The meeting ADJOURNED at 8:05 PM.

ATTEST: _____
Colleen Ingman, MMC
Municipal Clerk



Legislation Details

File #: 14-038 Version: 1 Name:

Type: Appointment Status: AGENDA READY

File created: 2/14/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Appointments: Reappoint 1) James Poulson to a term on the Historic Preservation Commission; and
2) Angela McGraw to a term on the Sitka Convention and Visitor's Bureau

Sponsors:

Indexes:

Code sections:

Attachments: [Appointments 2-25](#)

Date	Ver.	Action By	Action	Result
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Should this item be pulled from the consent agenda, the following motion is suggested:

Appointments

I MOVE to re-appoint: 1) James Poulson to a term on the Historic Preservation Commission, and 2) Angela McGraw to a term on the Sitka Convention and Visitor's Bureau.



Application for Appointment to Boards, Committees, and Commissions
City and Borough of Sitka

Historic Preservation Commission

Board/Commission/Committee: _____
Name: **James Poulson** Daytime Phone: **747-3219**
Address: **1610 Sawmill Creek Road** Evening Phone: **747-6567**
Email Address: **photo@sitkasentinel.com** Fax Number: _____
Length of Residence in Sitka: **42** Registered to vote in Sitka? Yes No
Employer: **Sitka Sentinel**

Organizations you belong to or participate in:

Community Schools Soccer program coach, Sitka Maritime Heritage Society volunteer, Sitka Fine Arts Camp SJ building committee, Alaska Arts Southeast board member, Sitka Community Development Corp. board member.

Explain your main reason for applying:

I am interested in finishing the historic preservation plan that we have been working on.

What background, experience or credentials will you bring to the board, commission, or committee membership?

I've been on the commission since 2011. I have worked to restore a number of historic buildings in town.

Please attach a letter of interest, outline, or resume which includes your education, work, and volunteer experience that will enhance your membership.

→ (To be considered, your application must be complete AND be accompanied by one of the above supporting documents.)

Date: **Feb. 6, 2014** Signature: 

Your complete application and resume should be returned to the Municipal Clerk's Office by noon on the Wednesday prior to an advertised Assembly meeting. Applications received after the deadline will be considered but will not be included in the Assembly packets for review prior to appointment.

Appointments are normally made during open session of an Assembly meeting, however, Assembly members may vote to discuss applicant(s) in closed executive session. In this case, do you wish to be present when your application is discussed? Yes No

Return to:
Sara Peterson, Deputy Clerk
100 Lincoln Street
Fax: 907-747-7403
Email: sara@cityofsitka.com

Dear Assembly member,

I am submitting an application for renomination to the historic preservation commission. My interest in preserving the town's unique history has only increased since joining the commission in 2011.

There are several projects that I would like to continue working on. Seeing the completion of the historic preservation plan is one of them.

Working on bettering the permitting process with the planning department when historic buildings, or buildings in historic neighborhoods are affected is another area of interest.

Thank you for your consideration,

James Poulson



HISTORIC PRESERVATION COMMISSION

NAME	CONTACT NUMBERS	TERM STARTS	EXPIRES	CATEGORY
JAMES KINSMAN 114 Wolff Dr	747-4228 w 966-3335 h jaykinsman@yahoo.com	5/11/10	5/11/13	CHAIR At Large
PETER GORMAN 103 Rands Dr.	747-5553 pcgorman@gmail.com	12/23/03 1/9/07 12/22/09 1/8/13	12/23/06 1/9/10 12/22/12 1/8/16	VICE-CHAIR At-large
ROBERTA LITTLEFIELD 4102 Halibut Point Road	738-4004 c 747-6866 h roblylittlefield@gci.net	7/13/10 4/24/12	01/27/12 4/24/15	SECRETARY Native community
JUDITH OZMENT 2028 Halibut Point Road	738-7811 jozment@gci.net	4/27/10 9/11/12	9/22/12 9/11/15	Historical Society
JAMES POULSON 1610 Sawmill Creek Rd	747-3219 w 747-6567 h sitka@operamail.com	2/22/11	2/22/14	At large
ANA DITTMAR 407 Hemlock St	623-7537 anadittmar1@hotmail.com	4/10/12	4/10/15	At large
Maegan Bosak Planner I	747-1814 maegan@cityofsitka.com			Staff Liaison/ Secretary
Aaron Swanson 1410 C Sawmill Creek Rd	747-5499 h 623-7869 c assemblyswanson@cityofsitka.com			Assembly Liaison

Established by Ordinance 02-1683

7 members from selected categories 3-year terms

Sitka Historical Society (1), Native Community (2 - one representing Sitka Tribe of Alaska), At-Large (4)

Established by Ordinance 92-1075

Second Wednesday, 6 p.m. – Harrigan Centennial Hall

Quorum is met when 4 Commission members are present

Revised: October 23, 2013



**Application for Appointment to Boards, Committees, and Commissions
City and Borough of Sitka**

Board/Commission/Committee: Sitka Convention + Visitors Bureau
 Name: Angela McGraw Daytime Phone: 752-3102
 Address: PO Box 734 Evening Phone: 747-3080
 Email Address: angelamcgraw@rocketmail.com Fax Number: _____
 Length of Residence in Sitka: 28 yrs Registered to vote in Sitka? Yes ___ No
 Employer: Sitka Comm. Hospital

Organizations you belong to or participate in:

Old Sitka Dock, New Archangel Dancers

Explain your main reason for applying:

To continue on Board.

What background, experience or credentials will you bring to the board, commission, or committee membership?

Please attach a letter of interest, outline, or resume which includes your education, work, and volunteer experience that will enhance your membership.

→ (To be considered, your application must be complete AND be accompanied by one of the above supporting documents.)

Date: 2/14/14 Signature: Angela

Your complete application and resume should be returned to the Municipal Clerk's Office by noon on the Wednesday prior to an advertised Assembly meeting. Applications received after the deadline will be considered but will not be included in the Assembly packets for review prior to appointment.

Appointments are normally made during open session of an Assembly meeting, however, Assembly members may vote to discuss applicant(s) in closed executive session. In this case, do you wish to be present when your application is discussed? Yes ___ No

Return to:
 Sara Peterson, Deputy Clerk
 100 Lincoln Street
 Fax: 907-747-7403
 Email: sara@cityofsitka.com

ANGELA R. MCGRAW

EDUCATION

May, 1992 <i>High School Diploma</i>	Sitka High School Sitka, Alaska
September, 1992-May, 1993 <i>General & Business Classes</i>	North Idaho College Coeur d'Alene, Idaho
September, 1993-May, 1995 <i>Associate of Science Degree</i> <i>Health Information Management</i>	University of Alaska SE Sitka, Alaska
October, 1995 <i>Earned Accredited Record Technician (ART) Credential</i> <i>(Held until 2001)</i>	AHIMA

EMPLOYMENT

2008 – Current <i>Executive Assistant/Community Relations Coordinator</i>	Sitka Community Hospital, Sitka
<ul style="list-style-type: none">▪ Hospital Board Recording Secretary▪ Maintain hospital forms▪ Manage hospital leased apartments▪ Classroom and conference room schedules▪ Maintain contracts and agreements▪ Advertising	
1993-2007 <i>Project Manager</i>	McGraw's Custom Construction, Inc., Sitka
<ul style="list-style-type: none">▪ Prepare bid documents▪ Prepare subcontracts, purchase orders, change orders, pay requests▪ EEO Officer▪ Create and update forms▪ Create submittal registers and contact lists▪ Track and renew State of Alaska Business and Contractor Licenses▪ Manage Trierschild Building in downtown Sitka (four apartments and five lease spaces)▪ Correspond with Architect and Owner	

Summer, 1993

SEARHC Community Health, Sitka

Summer Extern

- Rotated to a new department every 3 weeks
- Completed a specified project within each department

OTHER

March, 2004-Current

Volunteer, New Archangel Dancers

Director of Public Relations (2006-current); Secretary (2004-2006)

- Created a tri-fold brochure
- Advertising in the form of newspaper ads, PSA's, flyers, and brochures for annual auditions, open house, and Alaska Day Performance
- Create and distribute monthly summer performance schedule to local businesses and interested individuals
- Coordinate photo shoots
- Policy Manual Committee, Audition Committee
- Attend board meetings

Other: State of Alaska Notary; familiar with Microsoft Office, Adobe Illustrator, Adobe Photoshop, the internet; avid photographer.

REFERENCES

Available upon request.



Legislation Details

File #: 14-040 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 2/18/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Adopt the Finance Director's interpretation of a sales tax and hotel, motel, bed and breakfast transient room tax exemption as it applies to bulk rental lodging and youth summer camp

Sponsors:

Indexes:

Code sections:

Attachments: [Finance Dir Interpretation Youth Camp](#)

Date	Ver.	Action By	Action	Result
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If this item is pulled from the Consent Agenda the following motion is suggested:

POSSIBLE MOTION

I MOVE to adopt the Finance Director's interpretation of that bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is exempt from sales tax and hotel, motel, bed and breakfast transient room tax.



Sales Tax Interpretation 14-01

Clarification of Student Camp Tax Exemptions

The City and Borough of Sitka General Code section 4.09.100 (Z) states that “*Fees charged for nonprofit youth camps primarily serving persons under eighteen years of age are exempt (from sales tax)*”.

The City and Borough of Sitka General Code section 4.24.050 states that “*The provision of housing to students attending youth recreation, summer and similar camps primarily serving persons under eighteen years of age are exempt from the tax levied in this chapter, which is commonly called the ‘bed tax’*”.

A question has arisen as to whether the bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is subject to the tax exemptions listed above.

It is my interpretation of the Sitka General Code that the intent of the exemptions, when enacted by the Assembly, was to ensure that no portion of the procurement chain for lodging in conjunction with a youth summer camp was to be taxed.

It is, therefore, my determination as Finance Director, as authorized by Section 4.09.400 of the Sitka General Code, that the bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is exempt from sales tax and hotel, motel, bed and breakfast transient room tax. This determination is hereby promulgated and shall be submitted to the Assembly for adoption or rejection. Until such time as the Assembly takes action on this interpretation, this interpretation shall govern all applicable business transactions within the City and Borough of Sitka.

February 10, 2014

John P. Sweeney III
Finance Director

4.09.400 Rules and regulations.

The finance director shall from time to time cause to be promulgated rules and regulations as are necessary and advisable to provide for the application and interpretation of this chapter and to submit them to the assembly for its adoption or rejection, and to cause to be provided methods and forms for reporting and collecting the tax in accordance with this chapter and regulations. (Ord. 03-1758 § 4(B), 2004.)

CITY AND BOROUGH OF SITKA**ORDINANCE NO. 03-1758****AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 4, REVENUE AND FINANCE, OF THE SITKA GENERAL CODE TO REPEAL SITKA GENERAL CODE CHAPTER 4.08, SALES TAX, AND ENACTING A NEW CHAPTER 4.09, SALES TAX**

1. **CLASSIFICATION.** This ordinance is of a permanent nature, and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** Chapter 4.08, Sales Tax, of the Sitka General Code is being replaced with a revised version based on the recommendations of the Sales Tax Committee, Finance Department, Legal Department, and work sessions with the City and Borough of Sitka's Assembly. The new Chapter 4.09, Sales Tax, contains definitions to clarify areas of contention between businesses and staff on interpretation of the existing Code.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

A. Title 4 of the Sitka General Code is hereby amended by repealing Chapter 4.08, Sales Tax.

B. Title 4 of the Sitka General Code is hereby amended by adding a new Chapter 4.09, Sales Tax, as follows:

Chapter 4.09 Sales Tax**4.09.010 Levy of sales tax.**

- (a) There is levied a consumer's sales tax on sales, rents, and leases made in the City and Borough of Sitka. This tax applies to sales, rentals, and leases of tangible personal property; sales of services sold within the City and Borough of Sitka; sales of services performed wholly or partially within the City and Borough of Sitka when the provision of such services originates or terminates within the City and Borough of Sitka; and rentals and leases of real property located within the City and Borough of Sitka. Notwithstanding any provision of law, air or sea charter services, provided a person or entity in the business of providing such charter services, are exempt from sales tax by the City and Borough of Sitka if the charter does not commence and end within the City and Borough of Sitka.
- (b) The rate of levy of the sales tax levied under (a) of this section is five percent on sales

made during the months of October, November, December, January, February, and March. Effective April 1, 2004 the rate of levy of the sales tax levied under (a) of this section is six percent on sales made during the months of April, May, June, July, August, and September. The rate of levy of the sales tax shall become five percent all year around three days after the Administrator certifies in writing to the Assembly that either (a) any and all bonds issued pursuant to the ratification by the voters on March 18, 2003 of propositions set out in Ordinances Nos. 02-1707 and 02-1712 are entirely paid off or (b) the seasonal sales tax increase of one percentage point on sales made during the months of April, May, June, July, August, and September described in the previous sentence has generated (or-based on historical projections-will generate in the next succeeding quarter) sufficient revenues to pay off any and all bonds issued pursuant to the ratification by the voters on March 18, 2003 of propositions set out in Ordinances Nos. 02-1707 and 02-1712, whether or not such bonds have been paid off.

- (c) All moneys accumulated under the terms of this chapter shall be deposited by the Finance Director in the General fund of the City and Borough of Sitka and shall be used for the general operating expenses of the City and Borough of Sitka in such proportion as deemed advisable from time to time by the Assembly.

4.09.020 Collection of tax.

The tax described in SGC 4.09.010(a) is imposed on the purchaser and must be collected by the seller and paid to the City and Borough of Sitka by the seller as provided in SGC 4.09.270. The seller holds all taxes collected in trust for the City and Borough of Sitka. The tax must be applied to the sales price.

4.09.030 Presumption of taxability; sales price and purchase price.

- (a) In order to prevent evasion of the sales tax and to aid in its administration, it is presumed that:
- (1) all sales by a person engaging in business are subject to the sales tax; and
 - (2) all property purchased or sold by any person for delivery into the City and Borough of Sitka is purchased or sold for a taxable use in the City and Borough of Sitka.
- (b) In a sale in which the amount of money paid does not represent the value of the property or service purchased, the sales tax must be imposed on the value of the property or service purchased.
- (c) For purposes of this chapter, the sales price or purchase price of property must be determined as of the time of acquisition.
- (d) For purposes of this chapter, a sale of services occurs at the time the services are provided.

4.09.040 Separate statement of tax; no advertising to absorb or refund tax.

- (a) If any person collects a tax in excess of the tax imposed by SGC 4.09.010(a), both the

tax and the excess tax must be remitted to the City and Borough of Sitka.

- (b) The sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines, sales of drinks in a bar, sales on the dock, sales from street vending carts, admission fees, taxi fares, and other sales as determined by regulation by the Assembly of the City and Borough of Sitka.

4.09.100 Exemptions.

The following sales are exempt from taxation:

- (a) **Casual Sales.** A casual and isolated sale not made in the regular course of business is exempt from the levy of sales tax imposed by SGC 4.09.010(a).
- (b) **Church Sales.** Sale of tangible property or the sale of services by a church are exempt, except where the sale or service is incidental to a business for a profit.
- (c) **Court Fixed Fees.** Any sale where the price is fixed by law, by a court of competent jurisdiction, or by other authority beyond the control of the seller, and where, if the tax were applied, in effect would become an income tax upon the seller, is exempt.
- (d) **Dues and Fees.** Dues or fees paid clubs, labor unions and fraternal organizations are exempt.
- (e) **Federal and State Prohibitions.** A sale which the municipality is prohibited from taxing under the Constitution and laws of the United State or the Constitution of the State of Alaska is exempt.
- (f) **Freight and Wharfage.** Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Warehouse and storage services are taxable.
- (g) **Governmental Agencies.** A sale directly to the United States government, the State of Alaska and its political subdivisions, the City and Borough, or any departments thereof, is exempt. Any sale made to Sitka Tribe of Alaska made on or after January 1, 2002 is exempt.
- (h) **Insurance.** The sale of insurance policies, guaranty bonds, and fidelity bonds are exempt.
- (i) **Loans.** The loaning of money and interest charged for loans is exempt.
- (j) **Medical and Veterinary Services.** Medical, dental, hospital, and veterinary services are exempt. The sale of hearing aids and medicinal preparations when prescribed by a licensed practitioner are exempt. Medical, dental, hospital, and veterinary services do not include services rendered by chiroprodists, barbers, cosmeticians, masseurs, nor do they include the clipping, grooming, or boarding of animals.
- (k) **Newspapers.** The sale of daily newspapers to a consumer is exempt.
- (l) **Nonprofit Charitable Organizations.** Sales made by nonprofit charitable organizations which do not have paid employees and which do not keep normal business hours are exempt.
- (m) **Outside City and Borough.** Sales of goods or services resulting from orders received from outside the City and Borough by mail, telephone, or other similar public

communication where delivery of the property ordered is made outside the City and Borough by mail or common carrier are exempt.

- (n) Over One Thousand Dollars (\$1,000) on Sales and Rents of Tangible Personal Property and on Sales of Services, and Over One Thousand Dollars (\$1,000) in Rent or Lease of Real Property on a Monthly Basis. That portion of a selling price for a single piece of equipment or tangible personal property or sale unit in excess of one thousand dollars (\$1,000) is exempt. A single sale unit is:
1. Any retail merchandise sale where the selling price is totaled on one invoice or any sales slip, although this exemption does not apply if any portion of the invoice or sales slip refers to more than one business day; or
 2. Any sale of services sold by an individual unit price.
- Notwithstanding any other provision of law, the exemption described in this subsection does not apply to any "running" invoice or sales slip representing the sale of items or commodities which are not services. The exemption described in this subsection applies to any sales of services in which services provided to more than one individual are packaged together or "bundled" for purposes of payment on one invoice or sales slip to the extent that such individuals are members of the immediate family of the person making the payment and the person making the payment provides to the seller a certification of such relationship on a form provided by the City and Borough. For purposes of this subsection, "members of the immediate family" are the individual's spouse, children, parents, parents-in-law, siblings, grandparents, and grandchildren. Notwithstanding any other provision of law, if a seller can provide an invoice prepared no later than March 31, 2004 and evidence of an accompanying deposit of money that was received by the seller no later than March 31, 2004 as a down payment on the selling price for a single piece of equipment or tangible personal property or a single sale unit, the changes enacted by Subsection 4.09.100(n) in Ordinance No. 03-1758 do not apply.
- (o) Public Food. The sale of food and beverages to the public in a school district or college cafeteria or lunchroom which are operated primarily for teachers and students and not for profit is exempt.
- (p) Resale. A sale for resale of a product, service or rental to a consumer where the resale is subject to tax is exempt.
- (q) Student Transportation. The service of transporting students to and from a school in vehicles is exempt.
- (r) Telephone and Telegraph. Telephone conversations and telegraph messages are exempt. Telephone service to subscribers residing within the City and Borough is taxable.
- (s) Service Performed by a Licensed Undertaker or Mortician. Fees charged by a licensed undertaker or mortician for services and goods supplied in the course of the undertaking business are exempt.
- (t) Long-Term Motor Vehicle and Equipment Rentals. The long-term lease or rental of motor vehicles and equipment is exempt. "Long-term" is defined as being a

period of at least thirty consecutive days.

(u) Exemption for Games of Skill and Chance. Sales of lottery tickets and other forms of games of skill and chance allowed under SGC 10.40.020 are exempt.

(v) Government-Funded Agencies. Agencies or organizations which derive eighty percent (80%) or more of their revenue from local, state, or federal government sources are exempt from paying sales tax if:

1. In order to qualify for this exemption an organization must file an annual report setting out its qualifications; and
2. Any initial application for exemption shall become effective thirty days after the date of its filing.

(w) Child Care. The sale of child care services is exempt.

(x) Public Transportation. Fees for public transportation are exempt if agency providing public transportation qualifies under (v) Government-Funded Agencies.

(y) Exemption for retired persons who have reached the age of sixty-five.

(A). Any retired person, sixty-five years of age or older, who is a resident of the State of Alaska, may apply for and be issued by the Finance Director a senior citizen sales tax exemption card which entitles the cardholder and the cardholder's spouse to be exempt from sale tax for the purchase of goods, services or rentals which are solely for the personal use or consumption of the cardholder or the cardholder's spouse. This exemption does not apply for purchases for the cardholder or the cardholder's spouse business venture(s), including but not limited to commercial fishing.

(B) Definitions.

1. To be considered "retired" under this section, both the applicant and spouse must be substantially out of the labor force or, if still working nearly full time, the pay received must be at a reduced rate from what the person earned previously.
2. As used in this section, "resident of the State of Alaska" means a person who is physically present in the state with the intent to remain in the State indefinitely and to make a home in the State.

(C) Verification.

1. The applicant, at the time of application for a senior citizen sales tax exemption card, will provide a minimum of two pieces of identification to prove Alaska residency. One of the identification documents must show birth date.
2. The applicant shall fill out a formal application which will include a verification of their "intent to reside in Alaska."

(D) No seller shall charge or collect a sales tax on such a sale from any person who displays to the seller at the time of sale such a valid registration card unless the seller knows or has reason to know that the card is being presented in violation of this section.

(E) A seller shall keep a record on any and all such exempt sales and shall submit

to the municipality quarterly totals of such sales. A seller shall pay the sales tax on any such sale otherwise exempt but for which such exemption record has not been thus kept and submitted.

- (F) No person who has duly applied for and received such a registration card may use it to obtain such tax exemption unless the purchased item is used or consumed by the person duly holding such registration card or his or her spouse.
- (G) Violation of this section is a misdemeanor punishable by a fine of not more than three hundred dollars(\$300) or by imprisonment for not more than thirty(30) days or by both, additionally, the court may order that a registration card which has been used in a violation shall be surrendered to the court, which, in turn, shall return the card to the Finance Director for cancellation and destruction. A person who has his or her tax exemption registration card thus canceled and destroyed shall not, for period of no less than one year after the court determination of violation, be eligible to apply for or receive a new tax exemption registration card.
- (H) A resident at least sixty(60) years old, who otherwise qualifies for the exemption, and is the widow or widower of a person who qualified for the exemption under subsection A of this section, may apply for and be issued a senior citizen sales tax exemption card.

4.09.110 Residence construction tax refund.

Upon proper application the City and Borough will refund sales tax paid on the construction of an owner-occupied single-family dwelling or duplex.

- (A) The dwelling must be a new dwelling unit, not merely an extension of an existing unit. Construction must have begun and a building permit secured after April 22, 1980.
- (B) At the time of refund application applicant must be residing in the dwelling, the dwelling must be certified ready for occupancy by the Building Official and less than one year shall have passed since the issuance of the building permit. No refund shall be made for items purchased prior to the issuance of the building permit. No sales tax paid to businesses outside of the City and Borough shall be refunded.
- (C) The refund shall be the amount of sales tax actually paid for materials and services used in the construction of the dwelling. This shall include lumber, building materials, electrical and plumbing supplies or services, furnace and other heating apparatus and permanent carpeting and major appliances, such as kitchen stove, refrigerator, washer, dryer and freezer. Items not included are throw rugs, televisions, furniture, drapery, pictures and minor appliances, not built into the building. Also not included are tools and machinery purchased to use in the construction of the dwelling, nor shall it include spare material(s) not used.

- (D) Upon application for a refund the applicant shall certify, under penalty of perjury:
1. The sales tax requested to be refunded has actually already been paid to the supplier;
 2. That all items for which a refund is requested were consumed in the construction of the dwelling or have actually been installed in the dwelling.
- (E) Applications for refund shall be made to the Finance Director and shall be supported by detailed invoices. The Finance Director will disallow unsupported application or portions thereof. Appeals may be made to the Assembly.

4.09.120 Exemption from Seasonal Sales Tax Increase.

The following retail sales are exempt from any increase in the sales tax imposed on a seasonal basis, including the one percentage point increase for the months of April, May, June, July, August, and September set out in Section 4.09.010(b):

- (A) Rentals of Real Property. Rent paid as consideration for the use of real property either for thirty or more consecutive days or an entire calendar month by a person or persons of a room, set of rooms, structure, or suite is exempt from the additional one percent increase for the months of April, May, June, July, August and September. This exemption does not apply to any transaction taxable under the hotel, motel, and bed and breakfast transient room tax set out in SGC 4.24.

4.09.210 Exempt sales.

All exempt sales under SGC 4.09.100(a) - 4.09.100(y) must be documented in an invoice. The City and Borough of Sitka shall prescribe on a form issued by the Finance Director the requirement for an invoice.

4.09.220 Exempt certificate; form.

- (a) The City and Borough of Sitka shall provide for a uniform exemption certificate. A purchaser shall use the certificate when purchasing goods, or services for resale or for other exempt transactions.
- (b) The certificate must include
- (1) the general character of property or service sold by the purchaser in the regular course of business;
 - (2) the name and address of the purchaser; and
 - (3) the signature or electronic signature of the purchaser.

4.09.230 Exemption certificate; requirements.

- (a) An exemption certificate executed by a purchaser or lessee must be in the possession

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of the purchaser or lessee at the time that an exempt transaction occurs.

- (b) An exemption certificate must contain the information and be in a format prescribed by the City and Borough of Sitka.
- (c) If the seller or lessor accepts an exemption certificate and believes in good faith that the purchaser or lessee will employ the property or service transferred in an exempt manner, the properly executed exemption certificate is considered conclusive evidence, as to the seller or lessor, that the sale is exempt.

4.09.240 Improper use of subject of purchase obtained with exemption certificate; penalty.

- (a) If a purchaser who uses an exemption certificate uses the subject of the purchase for a purpose other than one allowed as exempt under this chapter, the sale is considered a taxable sale as of the time of first use by the purchaser, and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.
- (b) A person who uses an exemption certificate for property that will be used for purposes other than the purpose claimed is subject to a penalty, payable to the City and Borough of Sitka, of \$100 or 100 percent of the tax due, whichever is greater, for each transaction in which an improper use of a certificate has occurred.

4.09.250 Liability for payment of tax; security for retailer without place of business; penalty.

- (a) Liability for the payment of the sales tax is not extinguished until the taxes have been paid to the department.
- (b) A retailer who does not maintain an office or other place of business in the City and Borough of Sitka is liable for the sales tax on all property sold or leased and services provided in the City and Borough of Sitka in accordance with this chapter and may be required to furnish adequate security to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the retailer is liable for the taxes on all property sold and services provided in the City and Borough of Sitka in the same manner as a retailer who maintains an office or other place of business in the City and Borough of Sitka.

4.09.260 Method of accounting.

A person shall report and pay the sales tax using the same method of accounting that the person uses for federal tax purposes.

4.09.270 Returns: payment; authority of City and Borough of Sitka.

- (a) A person who has a tax liability under SGC 4.09.010 shall file a return on a form or in

a format prescribed by the City and Borough of Sitka and pay the tax due quarterly. The return shall be filed and the tax paid on or before the last day following the end of the quarter for which the tax is due. Each person engaged in business in the City and Borough of Sitka is subject to taxation under SGC 4.09.010 shall file a return in accordance with the following:

- (1) Quarterly. Unless as otherwise provided for in this section, sellers shall on or before the last day of the month succeeding the end of each quarter year ending March 31st, June 30th, September 30th, and December 31st, prepare a return for the preceding quarter year. Returns shall be filed personally, with the Finance Department by 4:45 p.m. or postmarked on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a legal holiday, Saturday, or Sunday, then the return may be filed on the first business day following;
 - (2) Monthly. If a seller fails to file or is late in filing returns for two of the last four quarters, the Finance Director will require the seller to submit returns and payment each month;
 - (3) Yearly. If a seller submits within the dates required for the four quarterly returns for a calendar year and the total amount collected and remitted to the City and Borough of Sitka is \$200 or less, seller may request in writing to the Finance Director, to file a sales tax return once a year for the previous calendar year. The yearly sales tax return is due on January 31st of each year. If total sales tax collected and/or remitted to the City and Borough of Sitka exceeds \$200, seller will be required to file quarterly sales tax returns for future sales. If seller fails to file yearly sales tax return by due date, seller will be required to file and remit sales tax quarterly. If the seller fails to file yearly sales tax return and the amount of sales tax collected during the period of the return exceeds \$500, seller will be required to submit sales tax returns and remit sales tax to the City and Borough of Sitka monthly for a minimum of one year.
 - (4) Itinerant Seller. A person doing business within the City and Borough of Sitka and liable for an itinerant nonresident business license on less than an annual basis shall file a sales tax return and remit in full the tax shown as due within twenty-four hours following the expiration of his license, but in any event prior to leaving the City and Borough of Sitka.
 - (5) Filing to be Continuous. A person who has filed a sales tax return will be presumed to be making sales in successive quarters unless the person files a return showing termination or sale of their business.
- (b) For the purposes of the sales tax, a return must be filed by a retailer required to collect the tax.
- (c) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

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4.09.280 Form of return.

On forms furnished by the City and Borough of Sitka, the seller shall furnish the following information, sign the form and certify that it correctly states the information purportedly set forth:

- (a) Total sale divided into the following categories:
 - (1) Retail and Wholesale Sales,
 - (2) Services rendered, including materials,
 - (3) Rentals of property or equipment;
- (b) All exemptions listed in SGC 4.09.100 will be listed on the form separately by exemption category;
- (c) The amount of any refund which the seller wishes to claim for tax paid on purchases made for resale and attachment of "Application for Sales Tax Refund" forms indicating payment of the amount;
- (d) The amount of tax due;
- (e) Such other information as may be reasonably required;
- (f) Sales tax forms and their contents shall be confidential and shall not be disclosed by the Finance Department except:
 - (1) In connection with efforts by the City and Borough of Sitka to collect the tax; except that lists of delinquent sales tax payers shall not be made public until suit has been brought or the delinquency is over six months and the taxpayer has not controverted the claim;
 - (2) In response to a subpoena issued by a court of record, state agency or board;
 - (3) In connection with legislative inquiry specifically authorized by the Assembly;
 - (4) In connection with the City and Borough of Sitka audits for purposes of verifying City and Borough of Sitka accounting practices;
 - (5) In compilation of statistics and studies by the Finance Department for public distribution, so long as information from individual businesses is not identifiable as to source.

4.09.290 Substantiation of sales and exemptions.

The seller shall maintain records that will substantiate all amounts listed on the returns filed with the City and Borough in include the following information needed by line item:

- (a) Gross receipts should at a minimum provide documentation for the following sales:
 - (1) Retail and wholesale sales,
 - (2) Services rendered, including materials,
 - (3) Rentals of property or equipment;
- (b) A substantiation of sales exempt under SGC 4.09.100(m) "Outside City and Borough of Sitka" by a listing of:
 - (1) The amount of sales or group of similar sale,
 - (2) The means by which the order was received,
 - (3) The point to which the sale was delivered,
 - (4) The means of transportation used for delivery of the goods;

- (c) A substantiation of sales exempt under SGC 4.09.100(g) "Governmental Agencies;"
- (d) A substantiation of sales exempt under SGC 4.09.100(p) "Resale;"
- (e) A substantiation of the balance of all retail sales claimed exempt under SGC 4.09.100(n) "Over One Thousand Dollars (\$1,000) on Sales and Rents of Tangible Personal Property and on Sales of Services, and Over One thousand dollars (\$1,000) in Rent or Lease of Real Property on a Monthly Basis" by a listing of each sale and the amount of each which was not taxable;
- (f) A substantiation of sales exempt from the tax under SGC 4.09.100(y) "Special exemption for retired persons who have reached the age of sixty-five" that lists:
 - (1) Senior exemption number provided by the City and Borough of Sitka to the senior citizen,
 - (2) Name of senior citizen;
- (g) A substantiation of all other sales claimed exempt by documenting each exemption separately.

4.09.300 Methods.

- (a) The City and Borough of Sitka shall adopt regulations providing for payment of the sales tax based on a rounding method.
- (b) The City and Borough of Sitka may use sampling principles or methods in lieu of 100 percent examination of records in conducting a sales tax audit.

4.09.310 Deduction for bad debts.

- (a) A person filing a return under SGC 4.09.280 may deduct sales found to be worthless. The bad debt may be deducted when it
 - (1) is written off as uncollectible in the person's books and records; and
 - (2) qualifies as a deduction for federal income tax purposes under 26 U.S.C. (Internal Revenue Code).
- (b) If the amount of bad debt exceeds the amount of taxable sales during the period that the bad debt is written off, a person may file a refund claim with the City and Borough of Sitka.
- (c) If a bad debt deducted under (a) of this section is subsequently collected, the person who claimed the deduction shall pay the tax levied under SGC 4.09.010 on the amount collected. For purposes of this subsection, any payments made on a debt or account are applied
 - (1) first to the taxable price of the property or service and the tax levied under SGC 4.09.010 on the property or service, then
 - (2) to interest, service charges, and any other charges.
- (d) A person filing a return under SGC 4.09.280 may deduct any bad debt that occurred after January 1, 1999 through December 31, 2003 on any return due during the 2004 calendar year. Bad debts that occur during the 2004 calendar year may be deducted on the first quarter return in 2005 and there after each first quarter return will be used to declare the previous years bad debts.

4.09.320 Timely filing allowance.

- (a) A person filing a return under SGC 4.09.270 may claim an allowance in the amount of three percent of the tax determined to be payable to the City and Borough of Sitka or \$100 a quarter, whichever is less, if the return is timely filed and the tax is timely paid provided:
- (1) The person remits within the first fifteen days of the second month of the quarter the actual tax collected during the first month of the quarter or one-third of the total tax remitted during the previous quarter(or, if seasonal fluctuations in gross business receipts exist, not less than one-third of the total tax remitted during the same quarter of the previous year); and
 - (2) The person remits within the first fifteen days of the third month of the quarter the actual tax collected during the second month of the quarter or one-third of the total tax remitted during the previous quarter(or, if seasonal fluctuations in gross business receipts exist, not less than one-third of the total tax remitted during the same quarter of the previous year); and
 - (3) The person files a return and remits the balance of the tax due as required in SGC 4.09.270.
- (b) The allowance may be deducted on the return. The allowance may not be greater than the tax determined to be payable to the City and Borough of Sitka.

4.09.330 Security: limitations; sales of security deposit at auction; bond.

- (a) The City and Borough of Sitka may require a retailer to deposit with the City and Borough of Sitka security in a form and amount that the City and Borough of Sitka determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed or \$10,000, whichever is less. The amount of security may be increased or decreased by the City and Borough of Sitka, subject to the limitations provided in this section.
- (b) If necessary, the City and Borough of Sitka may sell at public auction property deposited as security to recover a sales tax or use tax amount required to be collected, including interest and penalties. Notice of the sale must be served personally on or sent by certified mail to the person who deposited the security. After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person who deposited the security.
- (c) In lieu of security, the City and Borough of Sitka will require a retailer to file a bond issued by a surety company authorized to transact business in the State of Alaska to guarantee solvency and responsibility if such retailer failed to remit sales tax on a previous business to the City and Borough of Sitka.
- (d) In addition to the other requirements of this section, the City and Borough of Sitka will require the corporate officers, directors, or shareholders of a corporation to

provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter.

- (e) Appeals made be made to the Assembly on the requirement to file a bond issued by a surety company.

4.09.340 Taxpayer quitting business; liability of successor.

- (a) All taxes payable under this chapter are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods. The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.
- (b) Except as provided in (d) of this section, a person who become a successor in the taxpayer's business or stock of goods is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the City and Borough of Sitka showing payment in full of any tax due or a statement from the City and Borough of Sitka that tax is not due.
- (c) If a tax is due but has not been paid as provided in (a) of this section, the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment on the sales price and , if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under (a) of this section.
- (d) A successor is not liable for any tax due from the person from who the successor acquired a business or stock of goods if
- (1) the successor gives written notice to the City and Borough of Sitka of the acquisition; and
 - (2) an assessment is not issued by the City and Borough of Sitka against the former operator of the business within three months after receipt of the notice from the successor. If an assessment is issued by the City and Borough of Sitka and a copy of the assessment is not mailed to the successor, the successor is not liable for the tax due.

4.09.350 Procedures on delinquencies.

- (a) Penalty and Interest will be assessed as follows:
- (1) If the seller does not file the proper forms and or remit the sales tax then due on the dates listed in SGC 4.09.270, a penalty equal to five percent of the delinquent tax, but in no event less than fifteen dollars, shall be added to the tax for the first month or any part thereof, and an additional five percent shall be added to the tax due for each month or fraction thereof for delinquency until a total penalty of twenty-five percent has accrued. It shall be assessed and collected in the same manner as the tax is assessed

and collected. The minimum penalty amount for the second month will be twenty-five dollars. The minimum penalty amount for the third month will be fifty dollars and the minimum penalty amount for the failure to file the proper forms and or remit the sales tax after ninety (90) days after due date will be one hundred dollars.

- (2) In addition to the penalty provided in subdivision (1) of this subsection, interest at the rate of twelve percent per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner as the delinquent tax is collected.
- (b) **Written Demand and Additional Procedures.** If a seller fails to file the return or make the remittance in accordance with SGC 4.09.270, the Finance Director shall make written demand upon the seller, mailed to his last known address, for submission of the return and/or remittance. In the event of noncompliance with the demand, the Finance Director may do any or all of the following actions:
- (1) **Criminal Action.** File a criminal complaint against the seller in the district court for violation of SGC 4.09.270;
 - (2) **Civil Action.** Make a sale tax assessment against the seller, with the assessment based upon an estimate of the gross revenue received by the seller during the period and institute civil action to recover the amount of the tax. The estimate of gross revenue shall be derived from past returns of the seller, the general economic level on the business community and, if available, returns of comparable businesses;
 - (3) **Hearing.** Notify the seller in writing by certified mail that a hearing will be held to determine the sales tax liability of the seller at a specified time and place not less than fifteen days after the date of the notice. The seller shall present himself at the hearing and make available for inspection his books, papers, records, and other memoranda pertaining to gross revenues derived from his commercial transactions sufficient to enable the City and Borough of Sitka to make a determination whether the return is required or tax due;
 - (4) **Publish.** Publish in a newspaper of general circulation within the City and Borough of Sitka the name and amount of sales tax due, if any, of a person convicted of the crime of violating this chapter or a person against whom the City and Borough of Sitka has recovered a judgment for unpaid sales tax.
- (c) **Waiver of Penalties.** The Administrator shall waive the penalties on failure to submit tax returns if:
- (1) The seller submits a written request to the Administrator;
 - (2) The submitted returns have no taxable sales and no taxable events under the bed tax set out in SGC 4.24; and
 - (3) The Finance Director verifies that the seller has never filed a tax return regarding sales tax or bed tax with the City and Borough of Sitka.

4.09.360 Tax as debt.

- (a) The tax imposed by this chapter and related interest and penalties become a personal debt of the person required to file a return from the time the liability arises, regardless of when the time for payment of the liability occurs.
- (b) If the personal representative of an estate has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the taxes, interest, and penalties, the personal representative is personally liable for any deficiency, to the extent permitted under AS 13.16.
- (c) This section applies to corporate officers, directors, or shareholders required by the City and Borough of Sitka to personally guarantee the payment of the taxes for their corporation. The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the City and Borough of Sitka the taxes imposed by this chapter and who fails to pay the taxes is liable to the City and Borough of Sitka for the taxes imposed by this chapter and the penalty and interest due on the taxes.

4.09.370 Refunds and credits.

The City and Borough of Sitka may credit or refund overpayments of taxes, taxes erroneously or illegally assessed or collected, penalties collected without authority, and taxes that are found unjustly assessed or excessive in amount, or otherwise wrongfully collected. The City and Borough of Sitka shall set limitations, specify the manner in which claims for credits or refunds are made, and give notice of allowance or disallowance. When a refund is allowed to a taxpayer, it shall be paid out of the general fund on a warrant issued under a voucher approved by the City and Borough of Sitka.

4.09.380 Period of limitation.

The amount of any tax imposed under this chapter may be determined and assessed at any time within a period of six years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no return has been filed, then the period does not begin to run until the discovery of the delinquency occurs. No suit or other proceeding for the collection of the tax shall be begun after the expiration of the period.

4.09.390 Taxes lien.

The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the City and Borough of Sitka upon all property of the person owing the tax. This lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. When recorded, the lien authorized under this section shall have priority over all other liens, except those for property taxes and special assessments.

4.09.400 Rules and regulations.

The Finance Director shall from time to time cause to be promulgated rules and

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regulations as are necessary and advisable to provide for the application and interpretation of this chapter and to submit them to the Assembly for its adoption or rejection, and to cause to be provided methods and forms for reporting and collecting the tax in accordance with this chapter and regulations.

4.09.410 Sales tax audits.

- (a) Any seller who has established a sales tax account with the City and Borough of Sitka, who is required to collect and remit sales tax, or who is required to submit a sales tax return under the provision of SGC 4.09.270 is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the seller in order to determine whether appropriate amounts of sales tax revenue have been collected by the seller and remitted to the City and Borough of Sitka.
- (b) The Finance Director shall be responsible for directing that sales tax audits take place and for selecting the particular sellers whose business records will be audited.
- (c) Sales tax audits of seller's business records may be accomplished by either an employee of the City and Borough of Sitka's Finance Department or by an individual or firm under contract with the City and Borough of Sitka.
- (d) Sellers selected for a sales tax audit will be notified by letter and will be required to meet with, and make available for inspection and copying all pertinent business records including income tax returns that may be requested for the prior six fiscal years for examination, to the Finance Department employee, or contractor conducting the audit, within thirty days of notification. Under extenuating circumstances, the Finance Director may grant an extension of time for compliance at the Director's discretion.
- (e) After completion of a sales tax audit, sellers subject to the audit will be notified of the results of the audit by letter. If the audit has resulted in an additional sales tax liability to the City and Borough of Sitka, the additional sales tax must be remitted to the City and Borough of Sitka within fourteen days after the receipt of the letter, or the additional sales tax will be considered delinquent and subject to the procedures on delinquencies outlined in SGC 4.09.350. If the audit has resulted in a refund due the seller, the refund will be sent to the seller within fourteen days, or applied to the seller's account, at the seller's option.
- (f) It shall be the seller's responsibility to maintain business records in sufficient detail to substantiate all information reported on sales tax returns, including sales qualifying as retail sales exempt from taxation under the provision of SGC 4.09.100. If insufficient detail exists within a seller's business records to substantiate retail sales exemptions, such sales will be reclassified as taxable sales and subject to sales tax collection and remittance.
- (g) Any seller notified of an additional sales tax liability as a result of a sales tax audit shall have the right to appeal the additional liability to the Assembly. Such an appeal must be filed with the Municipal Clerk within thirty days of notification by

letter of the liability. If an additional liability is appealed, the accumulation of penalties and interest under the provisions of SGC 4.09.350 will be suspended on the date the appeal is filed with the Municipal Clerk; if the appeal is subsequently denied by the Assembly, all such penalties and interest will be retroactive back to the original date of notification of additional liability by letter.

- (h) Any seller refusing to comply with the provisions of this section shall be subject to any or all of the procedures on delinquencies as outlined in SGC 4.09.350, including the filing of a criminal complaint against the seller in district court.

4.09.420 Definitions.

In this chapter,

- (1) "consideration" means a valuable inducement and includes, without limitation, money, property, and services;
- (2) "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;
- (3) "lease," "leasing," or "rental," regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, 26 U.S.C. (Internal Revenue Code), AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), or other provisions of federal, state, or local law,
 - (A) means a transfer of possession or control of tangible personal property of a fixed or indeterminate term for consideration; a lease or rental may include future options to purchase or extend;
 - (B) does not include
 - (i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 - (ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments if payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
 - (iii) providing tangible personal property along with an operator for a fixed or indeterminate period of time; a condition of this exclusion is that the operator is necessary for the equipment to perform as designed; for the purpose of this sub-subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property;
 - (C) includes agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701 (h)(1);
- (4) "maintaining an office or other place of business" means
 - (A) a person's having or maintaining in the City and Borough of Sitka, directly or

by an affiliate, an office, distribution house, sales house, warehouse, or place of business; or

(B) an agent's operating within the City and Borough of Sitka under the authority of the person or its affiliate, whether the place of business or agent is located in the City and Borough of Sitka permanently or temporarily or whether the person or affiliate is authorized to do business in the City and Borough of Sitka;

(5) "manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase the value of the components or materials for sale in the ordinary course of business; "manufacturing" does not include construction;

(6) "permit" or "seller's permit" means a seller's permit as described in SGC 4.09.550;

(7) "person" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including a gas, water, or electric utility owned or operated by a borough, municipality, or other political subdivision of the state;

(8) "purchase price" means "sales price" and applies to the measure subject to sales tax;

(9) "sale," "selling," or "purchasing" means the transfer of property for consideration or the performance of a service for consideration;

(10) "sales price"

(A) means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(vii) credit for a trade-in, as determined by state law;

(B) does not include

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately

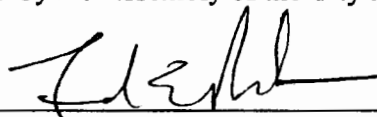
stated on the invoice, bill of sale, or similar document given to the purchaser;

- (11) "sales tax" means the applicable tax imposed by SGC 4.09.010;
- (12) "service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property; in determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant; "service" includes
 - (A) activities performed by a person for its members or shareholders;
 - (B) construction activities and all tangible personal property that will become an ingredient or component part of a construction project; and
 - (C) labor; professional services; transportation; telephone or other communications service; entertainment, including cable, subscription, or pay television or other telecommunications service; the supplying of food, lodging; or other accommodations in hotels, restaurants, or elsewhere; admission to exhibitions; the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network; and the supplying of equipment for use;
- (13) "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; "tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;
- (14) "tax" means the tax levied by SGC 4.09.010;

5. **EFFECTIVE DATE.** This ordinance shall become effective April 1, 2004.

6. **INTENT OF THE ASSEMBLY.** It is the intent of the Assembly that if the voters approve a Charter amendment at regular election in October of 2004 allowing the Assembly to raise the property tax levy to seven mills from the current limit of six mills, the Assembly will adopt an ordinance effective April 1, 2005 providing that that portion of the selling price for a single piece of equipment or tangible personal property or sale unit in excess of one thousand dollars (\$1,000) is exempt.

PASSED, APPROVED AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 23rd day of March, 2004.



Fred Reeder, Mayor

ATTEST:



Colleen Pellett, CMC
Municipal Clerk

Colleen Ingman

From: Mim McConnell
Sent: Saturday, February 08, 2014 12:27 PM
To: Robin Koutchak
Cc: Mark Gorman; Colleen Ingman; Phyllis Hackett
Subject: Fine Arts Camp and Sales Tax charges

Hi Robin,

I received a phone call from Sue Litman today in reference to a question/concern about campers other than Fine Arts Campers maybe having to pay the bed and sales tax. There seemed to be some question in the tax department about this and it sounds like maybe you have been approached by them for clarification. I believe the intent of the ordinance (#?) was to exempt all students for any camp. If this ordinance needs to be changed to reflect that intent I would be interested in co-sponsoring the ordinance. I've included Phyllis as she was on the assembly at that time and may remember this issue and may also want to co-sponsor this.

Thanks!

Mim

Mim McConnell, Mayor
City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835
907-747-2860 (p/f) 907-738-2888 (c)
www.cityofsitka.com
Coast Guard City, USA

-----NOTE: THIS EMAIL IS FOR INFORMATIONAL PURPOSES ONLY. IN ORDER TO AVOID ANY POSSIBLE OPEN MEETING ACT (OMA) VIOLATIONS, PLEASE DO NOT RESPOND TO THIS EMAIL, OR DISCUSS INFORMATION SUBJECT TO OMA WITH OTHER MEMBERS OF THE ASSEMBLY EXCEPT AS ALLOWED BY LAW. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR ANY OMA IMPACTS, PLEASE CONTACT THE MUNICIPAL ATTORNEY AT 747-1879 OR THE MUNICIPAL CLERK AT 747-1811.



Legislation Details

File #: ORD 14-03A Version: 1 Name:

Type: Ordinance Status: SECOND READING

File created: 1/22/2014 In control: City and Borough Assembly

On agenda: 2/11/2014 Final action:

Title: Amending Sitka General Code Sections 3.16.030 entitled "Open Market Procedures", 3.16.060 entitled "Exceptions to Competitive Bidding Requirements", and adding Section 3.16.080 entitled "Procurement Monitoring"

Sponsors:

Indexes:

Code sections:

Attachments: [Cover ORD 2014-03A Final Ordinance 2014-03A](#)

Date	Ver.	Action By	Action	Result
2/11/2014	1	City and Borough Assembly		
1/28/2014	1	City and Borough Assembly		
1/28/2014	1	City and Borough Assembly		
1/28/2014	1	City and Borough Assembly		

If this ordinance gets pulled from the Consent Agenda the following motion would be in order:

POSSIBLE MOTION

I MOVE TO approve Ordinance 2014-03A
on third and final reading.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-03A

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA
GENERAL CODE SECTIONS 3.16.030 ENTITLED “OPEN MARKET PROCEDURES”,
3.16.060 ENTITLED “EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS”,
AND ADDING SECTION 3.16.080 ENTITLED “PROCUREMENT MONITORING”

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Procurement Policies and Procedures. This ordinance is intended to become a part of the Sitka General Code (“SGC”).

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** It is the intent of the City and Borough of Sitka Assembly to promote local procurement of goods and services whenever practical and in the best interest of the municipality. This ordinance aims to allow that approach.

4. **ENACTMENT. NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC Sections 3.16.030 and 3.16.060 are amended and SGC Section 3.16.080 is added to read as follows (new language underlined; deleted language stricken):

CHAPTER 3.16
PROCUREMENT POLICY

Sections:

- 3.16.010 Contract and purchase procedure.
- 3.16.020 Limitation on administrator’s authority.
- 3.16.030 Open market procedures.
- 3.16.040 Advertising for bids and award to lowest bidder.
- 3.16.050 Processing of bids.
- 3.16.060 Exceptions to competitive bidding requirements.
- 3.16.070 Lowest responsive and responsible bidder.
- 3.16.080 Procurement Monitoring. [Reserved.]
- 3.16.090 [Reserved.]
- 3.16.100 Change orders—Administrator authority.
- 3.16.110 Competitive sealed proposals—Negotiated procurement.
- 3.16.120 Procurement policy procedure manual.

* * *

49 **3.16.030 Open market procedures.**

50
51 * * *
52 C. All purchases less than twenty-five thousand dollars shall be made on the open market
53 with such competition as is reasonable and practical in the circumstances as long as by doing
54 so, does not interfere with the ability of CBS to receive grants and other funding sources. It is
55 the City and Borough of Sitka's intent to promote local purchases whenever the availability,
56 quality, price and delivery is:

57
58 1. Within a 4% advantage to what is available outside the municipality for purchases
59 under \$2,500; and

60 2. Within a 2% advantage to what is available outside the municipality for purchases
61 \$2,500 and above.

62
63 Prior to making any purchases that fall within this section, the City and Borough of Sitka will
64 request bids from local vendors. Bids will be posted and received through an electronic
65 bidding system. The electronic bidding system shall establish a list of registered local
66 vendors and addresses. The registered vendors will be electronically notified and requested to
67 submit their electronic bid as specified.

68 * * *

69
70
71 **3.16.060 Exceptions to competitive bidding requirements.**

72 Unless otherwise authorized by law, all procurement actions shall be by competitive bidding.
73 The following is a list of authorized exceptions describing situations in which competitive
74 bidding is not ~~practicable~~ required:

75 * * *

76
77 B. Small procurement, below two hundred fifty ~~ten thousand~~ dollars.

78
79 C. Emergency Procurement: acquisitions approved by the department head.

80 * * *

81
82 J. Sole-Source Procurement.

83 1. Procurement resulting from competitive sealed proposals as defined in Section
84 3.16.110.

85 2. Placement of insurance coverage as defined in this chapter.

86 3. Contracts for electronic data processing and system control software and hardware
87 systems and other software systems shall be by professional services contract;
88 provided, however:

89 a. To be exempt from competitive bidding the service in question must be truly a
90 "system" which is professionally designed.

91 b. The purchase of hardware which is not an inextricable part of the system and
92 can be bid separately shall be competitively bid.

93 c. Software and systems readily available on the open market (i.e., Windows 95)
94 are not subject to this exception. Competition will be sought to the maximum
95 extent practicable.

96 4. Sole-source justified procurement.

97
98 * * *
99

100 **3.16.080 Procurement Monitoring.**

101 CBS purchases covered under this chapter will be tracked by zip code and a local purchase
102 report included in quarterly financial reports to the Assembly.

103
104 * * *
105

106 5. **EFFECTIVE DATE.** This ordinance shall become effective the day after the
107 date of its passage.

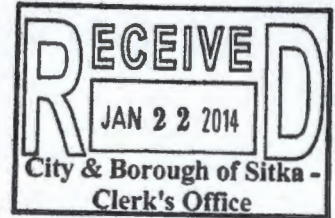
108
109 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
110 Sitka, Alaska this 28th day of February, 2014.

111
112
113 _____
Mim McConnell, Mayor

114 ATTEST:

115 _____
116 Colleen Ingman, MMC
117 Municipal Clerk

118
119



GREATER SITKA CHAMBER OF COMMERCE BOARD OF DIRECTORS

RESOLUTION 2014-01

IN SUPPORT OF THE CITY AND BOROUGH OF SITKA PURCHASING GOODS AND SERVICES LOCALLY

WHEREAS, the Board of Directors ("Board") of the Greater Sitka Chamber of Commerce has a responsibility to its members; and

WHEREAS, the Greater Sitka Chamber of Commerce's mission is to promote, support, and facilitate commerce and economic growth in the community; and

WHEREAS, the Greater Sitka Chamber of Commerce recognizes the substantial benefit of shopping local to Sitka's economy; and

WHEREAS, the City and Borough of Sitka has a need to make purchases to operate; and

WHEREAS, the City and Borough of Sitka should support local businesses by shopping locally when possible.

NOW THEREFORE BE IT RESOLVED that the Greater Sitka Chamber of Commerce does hereby request the City and Borough of Sitka determine a policy for all purchases that allow local businesses the opportunity to provide the products and/or services needed; and

BE IT FURTHER RESOLVED that the Greater Sitka Chamber of Commerce does hereby request all businesses to stand behind the proposed ordinance requiring the City and Borough of Sitka to purchase goods and services locally, when possible; and

BE IT FURTHER RESOLVED that this resolution shall be effective immediately; and

BE IT FINALLY RESOLVED that the officers and agents of the Greater Sitka Chamber of Commerce be and are hereby authorized to take all action necessary to effect the foregoing resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by the Greater Sitka Chamber of Commerce in accordance with its organic documents at a Meeting of the Sitka Chamber of Commerce held on MONTH XX, XXXX and said resolution appears in the record of said Meeting as set forth above. Dated this XX day of MONTH, XXXX.

Ptarmica McConnell, President

Jennifer Robinson, Executive Director

Addendum to Proposed Ordinance 2014-03

Efficacy Measurement:

In order to assess the effectiveness of this ordinance, the city administrator or his/her designee shall provide to the City Assembly an accounting of the rate of procurement expenditures in area code 99835 by city departments upon the adoption of the ordinance and subsequently on a semiannual basis. This accounting will therefore establish an on-going baseline of actual financial data as a simple and direct means to determine any future amendments or modifications that may be necessary to assure the success of the intent and purpose of this ordinance.



Legislation Details

File #: ORD 14-04 Version: 1 Name:

Type: Ordinance Status: SECOND READING

File created: 2/4/2014 In control: City and Borough Assembly

On agenda: 2/11/2014 Final action:

Title: Authorizing renewal of sublease of space by Nugget Restaurant at the Sitka Rocky Gutierrez Airport Terminal Building

Sponsors:

Indexes:

Code sections:

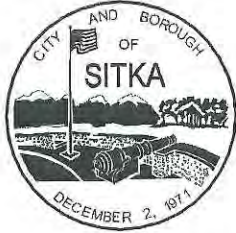
Attachments: [Cover ORD 2014-04 2nd Ordinance 2014-04](#)

Date	Ver.	Action By	Action	Result
2/11/2014	1	City and Borough Assembly		

If this ordinance gets pulled from the Consent Agenda the following motion would be in order:

POSSIBLE MOTION

I MOVE TO approve Ordinance 2014-04
on second and final reading.



City and Borough of Sitka

PUBLIC WORKS

100 LINCOLN STREET • SITKA, ALASKA 99835
PHONE (907) 747-1804 • FAX (907) 747-3158

To: Mayor McConnell and Assembly Members
Mark Gorman, Municipal Administrator *MG 5 Feb 14*

From: Michael Harmon, Public Works Director *MH*
Gary E. Baugher Jr., Maintenance and Operations Superintendent *GEB*

cc: Jay Sweeney, Finance Director *JS 5 Feb 14*

Date: 2 February 2014

Subject: Nugget Restaurant Airport Lease

Background

City and Borough of Sitka owns the Airport Terminal Building ("Terminal Building"), which is built on land leased from the State of Alaska. The Nugget is a restaurant that operates in one of the leased spaces at the terminal building, based on a tenant lease with the City and Borough of Sitka. The owner of the Nugget wishes to renew their lease. The terms of the tenant lease requires Assembly written approval for any assignment, with approval not to be arbitrarily withheld. The State of Alaska "Sublease Guidelines for Tenants" also requires approval by the State of Alaska, Department of Transportation and Public Facilities, of any assignment of the terminal tenant leases. Further, the assignee must obtain and provide proof of the required Insurance coverage in accordance with the tenant Lease Agreement.

Analysis

The new sublease term is for five (5) years and commences on April 1, 2014 to March 31, 2019, unless terminated or extended as herein provided. Tenant shall have the right to exercise options to renew for two successive terms of three (3) years each upon the same terms and conditions as this sublease agreement.

Fiscal Note:

The Nugget Restaurant has been paying at a rate of \$1.57 per square foot for over 10 years without an adjustment. That was sent to the assessor's office for evaluation to come up with a new rate per square foot costing. A cost inflator was added into the equation to come up with the new calculated amount below. Also, a CPI was added to the contract as it did not exist in the old contract. A CPI adjustment is made on annually basis each year.

The terminal building sublease rate for the Nugget Restaurant Lease shall be \$4,515.20 per month computed at the rate of \$1.70 per square foot per month, plus the City and Borough of Sitka Sales Tax.

The sublease rate will be adjusted based on the percentage difference between "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers", (CPI). The adjustment shall occur annually on March 1, and the tenant is required to make such adjustments on its own each year.

Recommendation:

Approve tenant lease agreement with the owner of the Nugget Restaurant contingent on receipt of proof of the required insurance coverage, a reinstated business license, and approval from the State of Alaska, Department of Public Facilities of the assignment.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING RENEWAL OF SUBLEASE OF SPACE BY NUGGET RESTAURANT AT THE SITKA ROCKY GUTIERREZ AIRPORT TERMINAL BUILDING

1. CLASSIFICATION. This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code ("SGC").

2. SEVERABILITY. If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. PURPOSE. State of Alaska owns the Sitka Rocky Gutierrez Airport Terminal Building ("Terminal Building") in Sitka, Alaska. City and Borough of Sitka ("CBS") has a 30-year lease agreement with the State of Alaska, Lease No. ADA-50103, which began on July 1, 1994 and expires on June 30, 2024.

On August 1, 1974, a 10-year lease was entered into between CBS and Nugget Saloon (now known as Nugget Restaurant) ("Nugget") for purposes of operating a restaurant and cocktail lounge at the Terminal Building. After numerous assignments, this Lease was amended on April 9, 1982 and was extended to terminate on June 30, 1994.

On April 7, 1993, the parties entered into a 10-year lease extension beginning July 1, 1994. The lease was in holdover status until March 11, 1996 where a lease was entered into between the parties to expire on March 31, 2014.

Nugget Restaurant wishes to remain in its current location at the Terminal Building. It is willing to pay fair market value for the sublease space, estimated to be \$4,515.20 per month by the Municipal Assessor, as well as sign the new standardized Terminal Building Sublease Agreement.

For consistency and efficiency, this sublease will have the same provisions such as termination dates and options to renew as the other airport terminal subleases currently in effect.

43 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly
44 of the City and Borough of Sitka that:

- 45
46 A. The Assembly finds that competitive bidding is inappropriate under
47 SGC 18.12.010E for Terminal Building space currently subleased by
48 Nugget Restaurant, that has been subleasing space in the Terminal
49 Building since 1974, is willing to pay fair market value for the space
50 as determined by the Municipal Assessor, and will execute the new
51 standardized Terminal Building Sublease Agreement;
52
53 B. Execution of the attached sublease is authorized; and
54
55 C. Approval of this sublease agreement is contingent on the State of
56 Alaska DOT&PF approval and consent to the Sublease Agreement.
57

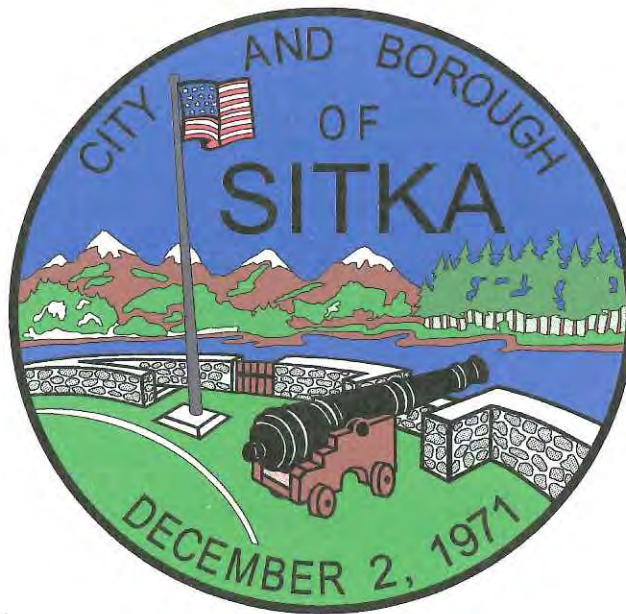
58 5. **EFFECTIVE DATE.** This ordinance shall become effective on the day
59 after the date of its passage, with the date of the sublease agreement effective April 1,
60 2014.

61
62 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and
63 Borough of Sitka, Alaska this 25th day of February, 2014.
64
65
66

67 _____
Mim McConnell, Mayor

68 ATTEST:

69
70 _____
71 Colleen Ingman, MMC
72 Municipal Clerk



SUBLEASE AGREEMENT

BETWEEN

**THE
CITY AND BOROUGH OF SITKA**

AND

NUGGET RESTAURANT

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Exhibits

- Exhibit A – Diagram of Sublease Area
- Exhibit B - Lease between the State of Alaska Department of Transportation and Public Facilities and City and Borough of Sitka
- Exhibit C – State of Alaska Department of Transportation Consent to Sublease
- Exhibit D – State of Alaska Department of Transportation Sublease Guidelines

SUBLEASE AGREEMENT

PREAMBLE

City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("CBS") and Nugget Restaurant, ("Tenant"), P.O. Box 797, Sitka, Alaska 99835, enter into this Sublease Agreement ("Sublease"). This Sublease is subject to all requirements and conditions of CBS's prime lease ADA-50103 with the State of Alaska, Department of Transportation and Public Facilities ("DOT&PF") and consists of the Special Provisions, the General Provisions, and the following attached Exhibits:

- Exhibit A - Pictorial representation of the areas subleased in the Sitka Rocky Gutierrez Airport terminal building, ("Terminal Building"), including sublease area consisting of 2,656 square feet, at 600 Airport Road, Sitka, Alaska 99835 ("Subject Property").
- Exhibit B - Lease between CBS and DOT&PF of the Terminal Building at Lot 3, Block 600.
- Exhibit C - DOT&PF document authorizing CBS to sublease any Terminal Building area.
- Exhibit D - Sublease Guidelines For Tenants, required by DOT&PF.

SPECIAL PROVISIONS

ARTICLE I: SUBLEASE, TERM OF SUBLEASE, AND TERMINATION OF SUBLEASE

Section 1.1 Conveyance of Estate in Sublease.

CBS, for and in consideration of the Rents received and of the covenants and agreements made by Tenant, does sublease to Tenant, and Tenant subleases from CBS, the Subject Property as shown on Exhibit A. Exhibit A shows an approximately 2,656 square feet of Terminal Building space for purposes of a restaurant and cocktail lounge.

Section 1.2 Sublease Term.

The Sublease commences on April 1, 2014, and ends on February 28, 2018, unless sooner terminated or extended as hereinafter provided. The Sublease Term may be extended, based on the Options to Renew in Section 1.3.

Section 1.3 Options to Renew.

Provided there does not then exist a continuing material default by Tenant under this Sublease at the time of exercise of this right or at commencement of any extended term, Tenant shall have the right to exercise options for two successive terms of three (3) years each upon the same terms and conditions as this Sublease (except Section 1.2), with the Sublease payments during the extension terms as described in Article II. Each of these options is effective only if (a) Tenant makes a written request to exercise such option not more than one year or less than six months from the end of the immediately preceding term; and (b) Tenant is in compliance with law and

this Sublease and is not in default under this Sublease. Options to renew must be approved by the CBS Assembly and DOT&PF.

Section 1.4 Disposition of Improvements and Tenant's Personal Property Following Term of Sublease.

With the exception of such improvements described in the next sentence, Tenant shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property at the termination of this Sublease or any extension unless Tenant makes a separate written agreement with CBS to do otherwise. Subject to the provisions of the next sentence, Tenant shall leave behind at no cost to CBS improvements including: bollards, ladders, drains and drain lines; toilets; bathroom sinks; building systems and their components such as plumbing, piping, and fixtures; building structural components; non-structural improvements such as walls and ceilings; devices not used for processing or manufacturing such as but not limited to electrical service entrance equipment, electrical distribution panels, electrical cables, feeders, branch circuit wiring, and appurtenances such as light fixtures, switches, and other devices; portable fire extinguishers, smoke detectors, and fire and life safety equipment attached or fastened in ways integral to the building in which Subject Property is located. Any improvements or personal property not removed after thirty (30) days have passed after termination of this Sublease shall be deemed abandoned and at CBS's option shall become the property of CBS, and Tenant shall repay to CBS any costs of removing such improvements or personal property from the Subject Property if CBS does not exercise such option. Any holes that may be left in walls, ceilings, or floors as a result of removal of improvements shall be repaired by Tenant in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Subject to CBS's obligations under Subsection 3.1 below, Tenant agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the term of the Sublease.

Section 1.5 Covenants to Perform.

This Sublease is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II RENT

Section 2.1 Calculation & Method of Payment of Rent During the Initial Term of the Sublease.

The first year of the Sublease begins on the commencement date of this Sublease set out in Article I. Each successive year of the Sublease begins on the corresponding anniversary commencement date of the Sublease. Subject to the provision in the previous sentence, Tenant shall pay the Sublease payments for subsequent years each month in advance on the first day of each and every month for which Rent is due throughout the term of the Sublease without the necessity of any billing by CBS. Tenant will sublease the space as shown in Exhibit A for \$54,182.40/year payable at a rate of \$4,515.20/month plus applicable cost of living adjustments referred to in Section 2.2 and extension option adjustments in Section 2.3.

Section 2.2 Cost of Living Adjustment to Sublease Rate.

The Sublease rate will be adjusted annually based on the percentage difference between the "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers," beginning with the edition published the soonest after January 1. The adjustment shall occur annually on March 1, and shall apply to all subsequent month's sublease payments. The adjustment shall be determined by dividing the most recent CPI by the preceding year CPI, and multiplying the result times the monthly sublease payment and add the result to current sublease payments. Tenant is required to make such adjustments on its own each year.

Section 2.3 Calculation and Method of Payment of Rent During Successive Optional Three-Year Renewal Periods of the Sublease.

If Tenant decides to exercise the option to renew for successive three-year terms under Section 1.3, Tenant must notify CBS of their intent no less than six (6) months before the end of the current term of the Sublease. CBS may commission a professional market appraisal of the Subject Property in its "as is" condition. The appraisal will not take into consideration improvements made to the property by Tenant but may take into consideration improvements made by CBS.

Section 2.4 Property Tax Responsibility.

Beginning with the term of this Sublease and each calendar year after, Tenant will be responsible to pay CBS property taxes for its possessory interest in the building, land, and equipment to the extent taxable as determined by the Municipal Assessor.

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

Section 3.1 Tenant's Obligations as to Construction, Maintenance, Repair and Safety.

(a) Except as provided in this Section, Tenant acknowledges the Subleasehold is in an "as is" condition and includes the building, fixtures, appurtenances and municipal-provided equipment. At the sole cost and expense of Tenant and in compliance with all legal requirements, Tenant may purchase, construct, develop, repair, and/or maintain any improvements, personal property, fixtures, and other items on the interior Subject Property in a first-class manner using materials of good quality. Any protrusions, extensions, doors, drains through the roof, walls or floor of the building for the purpose of drains, access, venting equipment or space within Tenant Subleasehold shall be the responsibility of Tenant including any water leaks or blockages caused by those protrusions, extensions or drains.

(b) CBS shall repair and maintain the subject property and CBS-provided equipment. Tenant shall repair and maintain its areas of use at its sole expense including interior improvements, fixtures appendages and facilities constructed by the Tenant in its use area. This shall include but is not limited to such items as counters, painting, floor coverings and decorations. CBS reserves the right to expand or modify the facility. In that event, the CBS and Tenant will work together to complete such expansion or modification in a manner that minimizes disruption to Tenant's use of the facility. Some anticipated disruptions could be the use of space for construction activities, the interruption in facility utilities (i.e., power, water and sewer and operational disturbances from noise, dust and other construction activities).

(c) Tenant acknowledges that CBS has made no representation or warranty with respect to Tenant's ability to obtain any permit, license, or approval.

(d) Tenant shall also use the Subject Property and any improvements placed thereon only for lawful uses.

(e) Tenant shall confine its equipment, storage and operation to the Subleasehold area. An exception to this is the use of common spaces. Tenant will cooperate with other Subleaseholders in the facility with regards to use of common spaces in the building and grounds. CBS Facilities Manager will act as arbitrator between Subleaseholders on questions on cooperative use.

(f) Tenant shall not permit the accumulation of waste or refuse matter on the Subject Property, and Tenant shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Subject Property except as may be permitted by CBS or other municipal authorities having jurisdiction. Tenant shall do all things necessary during the term of this Sublease to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Tenant.

(g) Tenant may erect outdoor signage at its expense with the permission of the CBS Public Works Director and which is in compliance with applicable zoning laws. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

Section 3.2 CBS's Approval of Certain Alterations or Improvements.

Tenant shall not make or permit to be made any alteration of, addition to, or change in, structures and improvements, nor demolish all or any part of the structures or improvements without the prior written consent of CBS, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes water and wastewater systems and electrical systems. In requesting consent Tenant shall comply with all applicable laws and ordinances, and shall submit to the CBS Public Works Director or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. CBS shall notify Tenant of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting CBS shall be acting in its proprietary function and not its regulatory function. Any such approval in this proprietary function does not relieve Tenant of any obligation to obey the law, including obtaining any required building permits. Nothing in this Section shall be interpreted to prevent Tenant from removing at the termination of this Sublease any improvements or personal property as described in Section 1.4.

Section 3.3 Rights of Access to Subject Property.

(a) CBS reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. CBS also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of

regulation and enforcement of this Sublease. CBS also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or subleasing Subject Property in a matter that will not unreasonably interfere with Tenant's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Tenant shall not charge for any of the access allowed in the situations described in this subsection.

(b) Tenant shall not construct any permanent improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of CBS and any applicable utility company.

(c) Tenant acknowledges that the Subject Property is or shall be subject to agreements for ingress and egress, utilities, parking, and maintenance of common areas as described on attached Exhibit A. Tenant agrees that it shall comply with the terms of such cooperative agreements, in accordance with the terms of such agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth in this Agreement and its exhibits.

Section 3.4 Additional Conditions of Subleasing.

Tenant recognizes and shall cause all beneficiaries of Tenant and all permitted successors in interest in or to any part of the Subject Property to recognize that:

(a) Tenant will cooperate with CBS equipment and building maintenance contractor and will notify CBS of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Tenant will be provided a 24 hour telephone number to notify CBS of any event that requires immediate response by CBS.

(b) Sublease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.

(c) Sublease payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of \$25 and interest accrued from the due date at 12% annum.

(d) The charges and fees paid by Tenant to CBS must be separated according to the CBS accounting standards.

(e) CBS at their option can terminate the Sublease for Tenant's failure to make payment, and in accordance with this Sublease.

(f) Tenant covenants and agrees that as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, sex, religion, age, physical handicap, marital status, pregnancy or parenthood, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws and Tenant further grants CBS the

right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(g) CBS may sell the Terminal Building in the future and all agreements regarding the Subject Property, including this Sublease between CBS and Tenant, shall be completely transferable to the new owner. A transfer of the Terminal Building to any such entity shall not create any restrictions upon use of the Subject Property in addition to those stated in this Sublease.

(h) CBS may, upon at least 10 days prior written notice to Tenant, temporarily suspend the supply of water, wastewater service, the supply of electric power, the use of pipelines, or the use of the Improvements in order to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.2. Such interruptions shall be of as short duration as necessary to perform such maintenance, and CBS shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(i) Tenant shall pay the CBS Fire Marshal or Building Inspector fees and other building permit fees, and shall also pay all applicable property taxes and assessments when due. These include any Local Improvement District costs that may be assessed.

(j) Tenant shall be responsible for taking any measures that Tenant deems necessary to provide security for their property. CBS is not responsible for theft or vandalism.

(k) CBS sales tax applies to Sublease payments. Sales tax rates, limits, exemptions, and exclusions are subject to change by the CBS Assembly.

(l) CBS shall have the authority to allow vending machines to be placed in the Terminal Building. All commissions from vending machines shall be deposited by CBS in the Terminal Building account. Any vending machines proposed to be placed in an area under sublease to the Tenant shall be with the concurrence of the Tenant.

(m) CBS acknowledges that the Nugget Restaurant shall have a right of first refusal with regard to any other limited food or drink sales operations proposed within the Terminal Building and that no other restaurant or lounge business shall be allowed in the Terminal Building. This provision is based on the current sublease with Nugget Restaurant, which expires on March 31, 2014, unless terminated or extended sooner.

(n) Tenant agrees not to install any radio transmitting equipment without the written approval of CBS Facilities Manager and to discontinue upon request of CBS Facilities Manager use of any machinery or installation causing interference to City, State, or Federal government radio receiving or transmitting equipment until the cause of such interference has been eliminated.

(o) Tenant agrees that CBS may modify this Sublease to meet revised requirements for Federal or State grants, regulations or laws, or to conform to the requirements of any CBS revenue bond requirements. However, this agreement to modify the Sublease to conform to the requirements of any revenue bond requirements shall not reduce the rights or privileges granted the Tenant by this Sublease, nor cause the Tenant financial loss in its Sublease options.

(p) FAA requires CBS to file an annual concessionaires' report with the FAA, including a list of individual concessionaires' gross revenues. Tenant grants permission to CBS Finance Director to release this information from sales tax returns in order to comply with FAA reporting requirements.

(q) Tenant agrees that the first priority use of the Terminal Building is to accommodate aircraft for passenger use. Tenant agrees to relocate to comparable space within the Terminal Building or expanded Terminal Building, if required to accommodate this priority at no cost to CBS.

(r) Tenant shall submit a non-refundable \$55 processing fee payable to the State of Alaska upon execution of this Sublease.

Section 3.5 Control of Rodents and Other Creatures on Subject Property.

Tenant shall take reasonable affirmative measures to ensure that its operations do not attract to Subject Property or any portion of the Terminal Building any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, mink, otters, or bears.

ARTICLE IV UTILITY SERVICES & RATES.

Section 4.1 Provision of Utility Services.

Tenant is responsible to pay utility bills which Tenant may become liable to pay. Water and sewer services will be provided by CBS in other sections of the Terminal Building.

Section 4.2 CBS Not Liable for Failure of Utilities or Building.

Except to the extent that any such failure, injury, or other casualty is due to CBS's negligence or breach of any obligation under this Sublease, CBS shall not be liable for any failure of building roof, water supply, sewer, or electric current, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the Terminal Building or the Subject Property, or leakage of gasoline or gas from pipes, appliances, sewer, or plumbing works therein, or from any other place, or for sewer or plumbing works therein, or from any other place. CBS shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond CBS's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

Section 4.3 Janitorial

Janitorial for common areas in the Terminal Building is provided by CBS. Tenant will provide janitorial for its Subject Property.

ARTICLE V INDEMNIFICATION

Section 5.1 Liability of and Indemnification by Tenant.

Tenant agrees to indemnify, defend, and save harmless CBS against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of CBS, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and improvements, including liability arising from products produced on the property. Tenant also agrees to indemnify, defend, and save CBS harmless against and from any and all claims and damages arising, other than due to acts or omissions of CBS, during the term of this Sublease from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of Tenant regarding any act or duty to be performed by Tenant pursuant to the terms of this Sublease; (c) any act or negligence of Tenant or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Sublease in or on the Subject Property. Tenant agrees to indemnify, defend, and save harmless CBS from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of CBS, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Sublease to indemnify CBS. The agreements of indemnity by Tenant do not apply to any claims of damage arising out of the failure of CBS to perform acts or render services in its municipal capacity.

Section 5.2 Liability of and Indemnification by CBS.

Except to the extent of liabilities arising from Contractor's acts or omissions, CBS indemnifies, defends, and holds Tenant harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Sublease or by reasons of CBS's acts or omissions. CBS also agrees to indemnify, defend, and save Tenant harmless against and from any and all claims and damages arising, other than due to acts or omissions of Tenant, during the Sublease Term from (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the CBS regarding any act or duty to be performed by CBS pursuant to the terms of the Sublease; (c) any act or negligence of CBS or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Sublease Term in or on the Subject Property. CBS agrees to indemnify, defend, and save harmless Tenant from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Tenant, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Sublease to indemnify the Tenant.

Section 5.3 Reimbursement of Costs of Obtaining Possession.

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Sublease against all costs and charges, including full reasonable counsel and legal fees lawfully

and reasonably incurred in enforcing any provision of this Sublease including obtaining possession of the Subject Property and establishing CBS's title free and clear of this Sublease upon expiration or earlier termination of this Sublease.

GENERAL PROVISIONS

ARTICLE VI DEFINITIONS

Section 6.1 Defined Terms.

For the purposes of this Sublease, the following words shall have the meanings attributed to them in this Section:

- (a) "Event of Default" means the occurrence of any action specified in Section 14.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property or on any part of the Subject Property, any right or interest regarding the Subject Property, or any Rent and income received from the Subject Property, including sales taxes on Rent.
- (c) "Improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Subject Property by Tenant, as well as all of the Tenant's apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including fittings, appliances, machinery, garage equipment, heating equipment, lighting equipment, cooling equipment, air conditioning and ventilating equipment, wiring, controls, communications equipment, plumbing, switchboards, antennae, floor coverings, refrigerating equipment, hot water heating and all other appliances and equipment; excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Tenant, sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the Subject Property, from the property with the portion of the property from which such items are removed being returned to a condition at least as good as that existing on the date of this Sublease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.
- (d) "Personal Property" means tangible personal property owned or leased and used by Tenant or any subtenant, in connection with and located upon the Subject Property.
- (e) "Premises" means the "Subject Property."
- (f) "Rent" means the Sublease rate, which is the amount Tenant periodically owes and is obligated to pay CBS as Sublease payments under this Sublease for the use of the Subject Property.
- (g) "Subject Property" is the area Subleased as shown on Exhibit A.
- (h) "Subtenant" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through Tenant.

(i) "Term" means the period of time Tenant Rents or Subleases the Subject Property from CBS.

ARTICLE VII INSURANCE

Section 7.1 Insurance.

Tenant shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including for Subleasehold improvements. CBS shall be named as an additional insured. Tenant shall maintain Workmen's Compensation insurance as required by state and federal regulations. CBS shall maintain for the Terminal Building a policy of standard fire and extended coverage insurance.

Section 7.2 Notification of Claim, Loss, or Adjustment.

Tenant shall advise CBS of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 7.1.

Section 7.3 Waiver of Subrogation.

Whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Sublease, or anyone claiming under it in connection with the Subject Property or Improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Sublease to be so insured, then the Party so insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost (provided that, in the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE VIII RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

Section 8.1 Tenant Without Power to Assign Sublease or Transfer or Encumber Subject Property.

Tenant has no power under this Sublease to assign the Sublease, except with approval of the CBS Assembly and DOT&PF. Tenant has no power under this Sublease to transfer the Subject Property, except with approval of the CBS Assembly and DOT&PF. Tenant has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan or mortgage.

Section 8.2 Limitations on Subleases.

Tenant shall not sublease the Subject Property or any portion of it without the prior written approval of the CBS Assembly and DOT&PF. All subleases entered into demising all or any part of the Improvements or the Subject Property shall expressly state that it is subject to and subordinate to this Sublease. CBS's and DOT&PF's consent to a sublease of the Subject

Property shall not release Tenant from its obligations under this Sublease. CBS's and DOT&PF's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE IX USE AND PROTECTION OF THE SUBJECT PROPERTY

Section 9.1 Subject Property As Is - Repairs.

Tenant acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in the present condition and without any representations or warranties of any kind or nature whatsoever by CBS as to their condition or as to the use or occupancy which may be made of them. Tenant assumes the sole responsibility for the condition of the improvements located on the Subject Property. The foregoing shall not be deemed to relieve CBS of its general municipal obligations, or of its obligations under Section 3.1 above.

Section 9.2 Compliance with Laws.

Tenant shall throughout any term of this Sublease, at Tenant's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve CBS of its general obligations required in its municipal capacity.

Section 9.3 Notification of CBS Public Works Director of Discovery of Contamination.

Tenant shall promptly notify the CBS Public Works Director within 24 hours if any contaminated soils or other media that require special handling are encountered during construction activities or at any other time.

Tenant shall be responsible for all clean-up costs associated with contamination of soils of subject property, adjoining property, and/or buildings. In the event of Tenant's failure to clean-up to applicable regulatory standards or to the satisfaction of the CBS Public Works Director, CBS may perform clean-up or contract for clean-up, and all charges for such work shall be payable by Tenant.

Section 9.4 Use of Utility Lines.

Tenant shall connect or otherwise discharge to such utility lines as are approved by the CBS Directors of Public Works and/or Electric Department, and shall obtain any permits and comply with any conditions specified by the Directors of Public Works and/or Electric Department for such connections.

Section 9.5 Permits and Approvals for Activities.

Tenant shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by CBS. Not less than ten (10) days in advance of applying for permits to any public entity other than the CBS, Tenant shall provide copies of all permit applications and associated plans and specifications to the CBS Public Works Director to

facilitate review by departments of the CBS. CBS is not obligated to comment on the permit applications and plans, and the result of any review by the CBS does not affect Tenant's obligation to comply with any applicable laws.

ARTICLE X CBS'S RIGHT TO PERFORM TENANT'S COVENANTS; REIMBURSEMENT OF CBS FOR AMOUNTS SO EXPENDED

Section 10.1 Performance of Tenant's Covenants To Pay Money.

Tenant covenants that if it shall at any time default or shall fail to make any other payment (other than Rent) due and the failure shall continue for ten (10) days after written notice to Tenant, then CBS may, but shall not be obligated so to do, and without further notice to or demand upon Tenant and without releasing Tenant from any obligations of Tenant under this Sublease, make any other payment in a manner and extent that CBS may deem desirable.

Section 10.2 CBS's Right To Cure Tenant's Default.

If there is a default involving the failure of Tenant to keep the Subject Property in good condition and repair in accordance with the provisions of this Sublease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Sublease or to take any other action required by the terms of this Sublease, then CBS shall have the right, but shall not be required, to make good any default of Tenant. CBS shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to Tenant by reason of bringing materials, supplies and equipment into or through the Terminal Building during the course of the work required to be done to make good such default, and the obligations of Tenant under this Sublease shall remain unaffected by such work, provided that CBS uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to Tenant.

Section 10.3 Reimbursement of CBS and Tenant.

All sums advanced by CBS pursuant to this Article and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the highest rate of interest allowed by law from the date of the making of advancements, shall be promptly payable by Tenant, in the respective amounts so advanced, to CBS. This reimbursement shall be made on demand, or, at the option of CBS, may be added to any Rent then due or becoming due under this Sublease and Tenant covenants to pay the sum or sums with interest, and CBS shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by Tenant as in the case of default by Tenant in the payment of any installment of Rent. Conversely, Tenant shall be entitled to receive from CBS prompt payment or reimbursement on any sums due and owing from CBS to Tenant, together with interest at the highest rate allowed by law. However, nothing contained in this Sublease shall entitle Tenant to withhold any Rent due to CBS or to offset or credit any sums against Rent, except with respect to unpaid Rental due from CBS to Tenant under any Sublease of Terminal Building space to CBS.

ARTICLE XI DAMAGE OR DESTRUCTION

Section 11.1 Repair and Replacement of Structures and Improvements Following Damage.

(a) If the Subject Property shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy and such destruction or injury could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Tenant shall not be entitled to surrender possession of the Subject Property, nor shall Tenant's liability to pay Rent under this Sublease cease, without the mutual consent of the Parties. In case of any such destruction or injury, CBS shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Tenant shall be unable to use all or any portion of the Subject Property, a proportionate allowance shall be made to Tenant from the Rent corresponding to the time during which and to the portion of the Subject Property of which Tenant shall be so deprived of its use.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, CBS shall notify Tenant within fifteen (15) days after the determination that restoration cannot be made in ninety (90) days. If CBS elects not to repair or rebuild, this Sublease shall be terminated. If CBS elects to repair or rebuild, CBS shall specify the time within which such repairs or reconstruction will be complete, and Tenant shall have the option, to be exercised within thirty (30) days after the receipt of such written notice, to elect either to terminate the Sublease and further liability, or to extend the Sublease Term by a period of time equivalent to the time from the happening of such destruction or injury until the Subject Property is restored to its former condition. In the event Tenant elects to extend the Sublease Term, CBS shall restore the Subject Property to its former condition within the time specified in the written notice, and Tenant shall not be liable to pay Rent for the period from the time of such destruction or injury until the Subject Property is so restored to its former condition.

(c) In addition to all rights to cancel or terminate this Sublease set forth in Subsections 11.1(a) and 11.1(b), if the Subject Property or a part are destroyed or damaged during the last two (2) years of the Sublease Term or any extension(s) to the extent of fifty per cent (50%) or more of the value of the Subject Property, then CBS shall have the right to cancel and terminate this Sublease as of the date of such damage or destruction by giving Tenant written notice within ninety (90) days after the date of such damage or destruction.

(d) The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII LIENS

Section 12.1 Discharge of Mechanics' and Other Liens.

Tenant shall not permit any mechanics' liens or other liens to be filed against the title to the Subject Property against Tenant's interest in the property, or against the improvements by reason of work, labor, services or materials supplied to Tenant or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with Tenant. If any mechanics' lien or other liens are filed against the Subject Property, including the Improvements, Tenant shall discharge lien within 30 days after the date that Tenant has knowledge of its filing, or take action sufficient to the satisfaction of the CBS.

ARTICLE XIII LIEN FOR RENT AND OTHER CHARGES

Section 13.1 Lien for Rent.

The contents of this entire leasehold contract shall be declared to constitute a valid and prior lien upon the Subject Property and the Improvements, and upon Tenant's Subleasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV DEFAULT PROVISIONS

Section 14.1 Events of Default.

Each of the following events is defined as an "Event of Default":

- (a) The failure of Tenant to pay any Rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from CBS to Tenant.
- (b) The failure of Tenant to perform any of the other covenants, conditions and agreements of this Sublease including payment of taxes on the part of Tenant to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which CBS contends that Tenant has failed to perform any of the covenants, conditions and agreements) from CBS to Tenant unless, with respect to any default which cannot be cured within thirty (30) days, Tenant, or any person holding by, through or under Tenant, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional 60 days.
- (c) The filing of an application by Tenant (the term, for this purpose, to include any approved transferee other than a CBS of Tenant's interest in this Sublease): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.
- (d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating Tenant a bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of 60 consecutive days, or if this Sublease is taken under a writ of execution.

Section 14.2 Assumption or Assignment of Sublease to Bankruptcy Trustee.

In the event that this Sublease is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), and the trustee shall cure any default under this Sublease and shall provide adequate assurances of future performance of this Sublease as are required by the Bankruptcy Code (including the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does

not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Sublease shall be deemed rejected automatically and CBS shall have the right to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Sublease.

Section 14.3 Remedies in Event of Default.

CBS may treat any one or more of the Events of Default as a breach of this Sublease and at its option, by serving written notice on Tenant and each Secured Party and Subleasehold Mortgagee of whom CBS has notice (such notice not to be effective unless served on each such person) of the Event of Default of which CBS shall have received notice in writing, CBS shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) CBS may terminate this Sublease and the Term created, in which event CBS may repossess the entire Subject Property and Improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Sublease, of the Rent provided to be paid by Tenant for the balance of the stated term of this Sublease less the fair rental value as of the date of termination of this Sublease of the fee interest in the Subject Property and Improvements for the period, and any other sum of money and damages due under the terms of this Sublease to CBS and Tenant. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) CBS may terminate Tenant's right of possession and may repossess the entire Subject Property and Improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to Tenant (except as above expressly provided for) and without terminating this Sublease, in which event CBS may, but shall be under no obligation to do so, relet all or any part of the Subject Property for Rent and upon terms as shall be satisfactory in the judgment reasonably exercised by CBS (including the right to relet the Subject Property and Terminal Building for a term greater or lesser than that remaining under the stated term of this Sublease and the right to relet the Subject Property and Terminal Building as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, CBS may make any repairs, changes, alterations or additions in or to the Subject Property and improvements that may be reasonably necessary or convenient in CBS's judgment reasonably exercised; and if CBS shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property and Terminal Building are relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the Rent accruing from it, to satisfy the Rent above provided to be paid, then Tenant shall pay to CBS as damages a sum equal to the amount of the Rent reserved in this Sublease for the period or periods as and when payable pursuant to this Sublease, or, if the Subject Property or any part of it has been relet, Tenant shall satisfy and pay any deficiency upon demand from time to time; and Tenant acknowledges that CBS may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due Tenant shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of CBS. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by Tenant of any of the terms, covenants, agreements, provisions or conditions in this Sublease, CBS shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Sublease.

(d) Upon the termination of this Sublease and the Term created, or upon the termination of Tenant's right of possession, whether by lapse of time or at the option of CBS, Tenant will at once surrender possession of the Subject Property and dispose of personal property and improvements as described in Section 1.4. If possession is not immediately surrendered, CBS may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. CBS may at its option seek expedited consideration to obtain possession if CBS determines that the Sublease has terminated as described in the first sentence of this paragraph, and Tenant agrees not to oppose such expedited consideration.

(e) In the event that Tenant shall fail to make any payment required to be made provided for in this Sublease or defaults in the performance of any other covenant or agreement which Tenant is required to perform under this Sublease during the period when work provided for in this Sublease shall be in process or shall be required by the terms of this Sublease to commence, CBS may treat the default as a breach of this Sublease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Sublease, CBS shall have the right to carry out or complete the work on behalf of Tenant without terminating this Sublease.

Section 14.4 Waivers and Surrenders To Be In Writing.

No covenant or condition of this Sublease shall be deemed to have been waived by CBS unless the waiver be in writing, signed by CBS or CBS's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve Tenant from the obligation, wherever required under this Sublease, to obtain the consent of CBS to any other act or matter.

ARTICLE XV CBS'S TITLE AND LIEN

Section 15.1 CBS's Title and Lien Paramount.

CBS has title to the Terminal Building, and CBS's lien for Rent of the Terminal Building and other CBS charges shall be paramount to all other liens on the Subject Property.

Section 15.2 Tenant Not To Encumber CBS's Interest.

Tenant shall have no right or power to and shall not in any way encumber the title of CBS in and to the land and building of the Subject Property. The leasehold estate of CBS in the Land and its ownership of the Terminal Building in which the Subject Property is sublet shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by Tenant, and any claim to the lien or otherwise upon the Land arising from any act or omission of Tenant shall

accrue only against the Subleasehold estate of Tenant in the Subject Property and Tenant's interest in the Improvements, and shall in all respects be subject to the paramount rights of CBS in the Land.

ARTICLE XVI REMEDIES CUMULATIVE

Section 16.1 Remedies Cumulative.

No remedy conferred upon or reserved to CBS shall be considered exclusive of any other remedy, but shall be cumulative to every other remedy given under this Sublease, existing law, equity or by statute. Every power and remedy given by this Sublease to CBS may be exercised as may be deemed necessary by CBS. No delay or omission of CBS to exercise any right or power shall be construed to be a waiver of any default or any agreement in it.

Section 16.2 Waiver of Remedies Not To Be Inferred.

No waiver of any breach of any of the covenants or conditions of this Sublease shall be construed to be a waiver of any other breach or to be a waiver of, agreement in, or consent to any further or succeeding breach of it or similar covenant or condition.

Section 16.3 Right to Terminate Not Waived.

Neither the rights given to receive, sue for or distrain from any Rent, moneys or other payments, or to enforce any of the terms of this Sublease, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of CBS to declare ended the term granted and to terminate this Sublease because of any event of default.

ARTICLE XVII SURRENDER AND HOLDING OVER

Section 17.1 Surrender at End of Term.

On the last day of the last Sublease year of the original term, or on the earlier termination of the Sublease term, Tenant shall peaceably and quietly leave, surrender and deliver the entire Subject Property to CBS, subject to the provisions of Section 1.4, in good repair, order, and condition, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, Tenant shall also surrender any and all security deposits and Rent advances of sublessees to the extent of any amounts owing from Tenant to CBS. If the Subject Property is not so surrendered, Tenant shall repay CBS for all expenses which CBS shall incur by reason of it, and in addition, Tenant shall indemnify, defend and hold harmless CBS from and against all claims made by any succeeding Tenant against CBS, founded upon delay occasioned by the failure of Tenant to surrender the Subject Property.

Section 17.2 Rights Upon Holding Over.

At the termination of this Sublease, by lapse of time or otherwise, Tenant shall yield up immediately possession of the Subject Property to CBS and, failing to do so, agrees, at the option of CBS, to pay to CBS for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or payable to CBS during the last month of the term of the Sublease the day before the termination of the Sublease. The provisions of this Article shall not be held to be a waiver by CBS of any

right or reentry as set forth in this Sublease, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Sublease and the Term granted for the period still unexpired for any breach of Tenant under this Sublease.

ARTICLE XVIII MODIFICATION

Section 18.1 Modification.

None of the covenants, terms or conditions of this Sublease to be kept and performed by either Party to this Sublease shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both CBS and Tenant.

ARTICLE XIX INVALIDITY OF PARTICULAR PROVISIONS

Section 19.1 Invalidity of Provisions.

If any provision of this Sublease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XX APPLICABLE LAW AND VENUE

Section 20.1 Applicable Law.

This Sublease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Sublease shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

ARTICLE XXI NOTICES

Section 21.1 Manner of Mailing Notices.

In every case where it shall or may become necessary to give notice of any kind to CBS or Tenant, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed:

Mark Gorman, Municipal Administrator
City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835
Phone: (907) 747-1808
Fax: (907) 747-7403
Email: markgorman@cityofsitka.com

Nugget Restaurant
P.O. Box 797
Sitka, Alaska 99835
Phone: (907) 966-2480
Fax: (907) _____
Email: _____

with a copy to: Municipal Clerk at address listed above. Each Party shall give timely notice of change of address.

Section 21.2 Notice to Subleasehold Mortgagee and Secured Parties.

CBS shall provide each Subleasehold Mortgagee and Secured Party, who has so requested, copies of all notices from CBS to Tenant relating to existing or potential default under, or other noncompliance with the terms of, this Sublease. All notices, demands or requests which may be required to be given by CBS or Tenant to any Subleasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Subleasehold Mortgagee at a place as the Subleasehold Mortgagee may from time to time designate in a written notice to CBS and Tenant. Copies of all notices shall simultaneously be sent to the other of CBS or Tenant, as the case may be.

Section 21.3 Sufficiency of Service.

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 21.4 When Notice Deemed Given or Received.

Whenever a notice is required by this Sublease to be given by any Party to the other Party or by any Party to a Subleasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is mailed and shall be deemed received on the third business day after proof of mailing.

ARTICLE XXII MISCELLANEOUS PROVISIONS

Section 22.1 Captions.

The captions of this Sublease and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Sublease, nor in any way affect this Sublease.

Section 22.2 Conditions and Covenants.

All the provisions of this Sublease shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 22.3 Entire Agreement.

This Sublease contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

Section 22.4 Time of Essence as to Covenants of Sublease.

Time is of the essence as to the covenants in this Sublease.

ARTICLE XXIII COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY

Section 23.1 Covenants to Run with the Subject Property.

All covenants, agreements, conditions and undertakings in this Sublease shall be binding upon the successors and assigns of each of the Parties and they shall be construed as covenants running with the Subject Property. Wherever in this Sublease reference is made to any of the

Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

Section 23.2 Interest in Deposits Automatically Transferred.

The sale, conveyance or assignment of the interest of Tenant (pursuant to the terms of this Sublease) or of CBS in and to this Sublease shall act automatically as a transfer to the assignee of CBS or of Tenant, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and CBS, and every subsequent sale, conveyance or assignment by any assignee of CBS or of Tenant also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and CBS to the subsequent assignee.

ARTICLE XXIV ADDITIONAL GENERAL PROVISIONS

Section 24.1 Absence of Personal Liability.

No member, official, or employee of CBS shall be personally liable to Tenant, its successors and assigns, or anyone claiming by, through or under Tenant or any successor in interest to the Subject Property, in the event of any default or breach by CBS or for any amount which may become due to Tenant, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Sublease. No member, official, or employee of Tenant shall be personally liable to CBS, its successors and assigns, or anyone claiming by, through, or under CBS or any successor in interest to the Subject Property, in the event of any default or breach by Tenant or for any amount which become due to CBS, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Sublease.

Section 24.2 Sublease Only Effective As Against CBS Upon Approval of Assembly and DOT&PF.

This Sublease and any renewals are effective against CBS only upon the approval of such Sublease and any renewals by the CBS Assembly and DOT&PF.

Section 24.3 Binding Effects and Attorneys Fees.

This Sublease shall be binding to the respective successors and assigns of the Parties. In the event of litigation over this Sublease, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

Section 24.4 Duplicate Originals.

Three signed and notarized originals of this Sublease shall be executed. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

Section 24.5 Declaration of Termination.

With respect to CBS's rights to obtain possession of the Subject Property or to revest title in itself with respect to the Subleasehold estate of Tenant in the Subject Property, CBS shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka

Recording District, a written declaration of the termination of all rights and title of Tenant in the Subject Property, and the reversioning of any title in CBS as specifically provided in this Sublease.

Section 24.6 Authority.

CBS and Tenant represent to each other that each have exercised the required corporate power and authority and have complied with all applicable legal requirements necessary to adopt, execute and deliver this Sublease and perform its obligations. Both Parties also represent that this Sublease has been duly executed and delivered by each, and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

NUGGET RESTAURANT

Print Name _____
Its _____ (Title)

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2014, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by signing this agreement, swears or affirms that he/she is the _____ of Nugget Restaurant and is authorized to sign this document on behalf of the Tenant, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

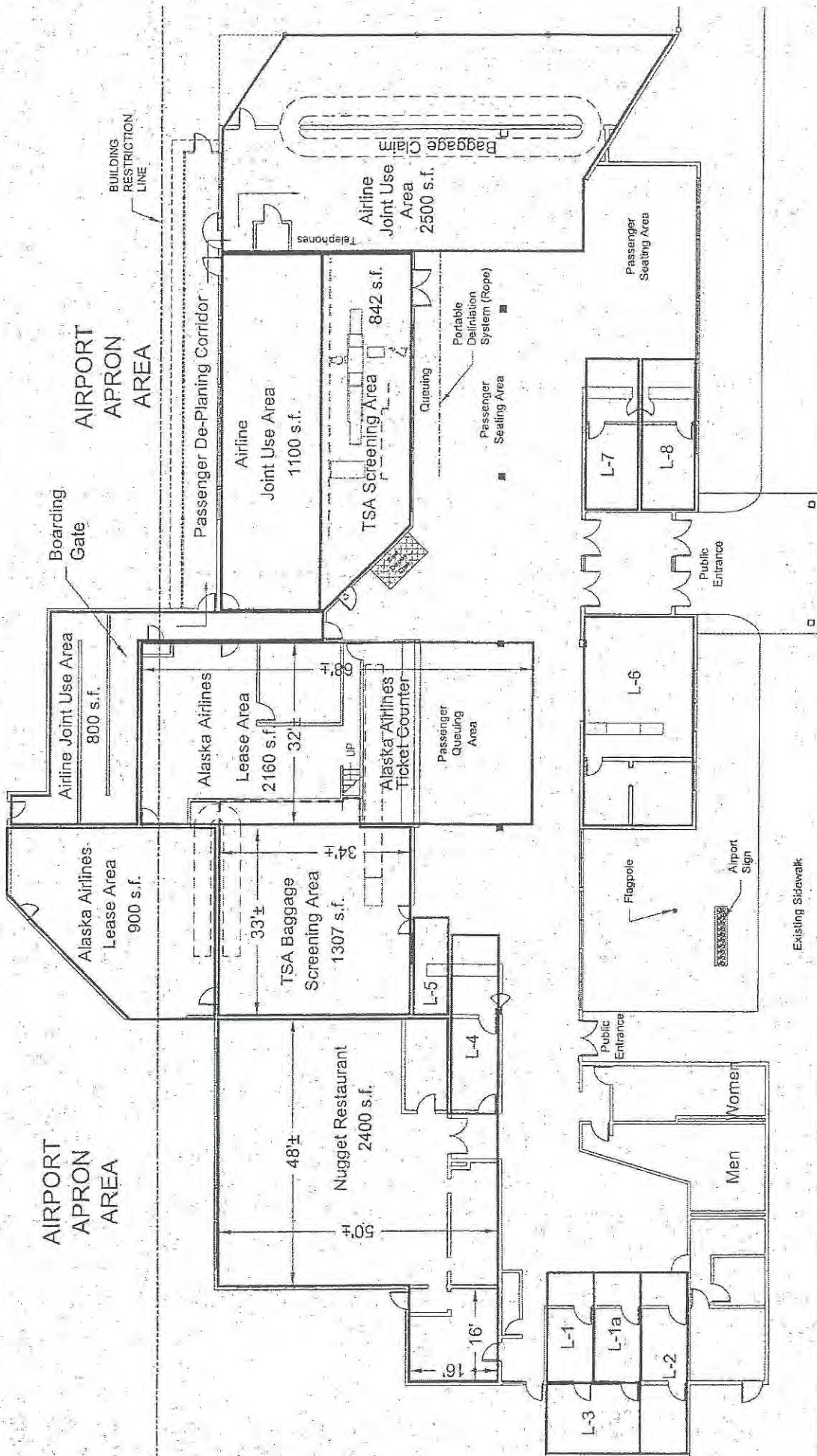
CITY AND BOROUGH OF SITKA

Mark Gorman, Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this ____ day of _____, 2014, before me, a Notary Public in and for the State of Alaska, personally appeared Mark Gorman, who is the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized by to execute the foregoing document, and does so freely and voluntarily.


Notary Public for Alaska
My Commission Expires: _____



- L-1 Counter & Office Space 214 s.f.
- L-1a Counter & Office Space 214 s.f.
- L-2 Counter, Office & Outside Storage Space 260 s.f.
- L-3 Outside Storage Space 194 s.f.
- L-4 Counter & Office Space 255 s.f.
- L-5 Counter Space 114 s.f.
- L-6 Counter, Office & Storage Space 798 s.f.
- L-7 Counter & Office Space 243 s.f.
- L-8 Counter & Office Space 249 s.f.

DRAWN: PAR/TAD
 CHECKED: RAR
 SCALE: N.T.S.
 DATE: 10Feb05
 DRAWING NAME: Leases Feb 05
 SHEET NO. 1/1

SITKA-R.G. AIRPORT SUBLESSEE USE AREAS


City and Borough of Sitka
 DEPARTMENT OF PUBLIC WORKS
 100 LINCOLN STREET • SITKA, ALASKA 99835
 TEL (907) 747-1804 FAX (907) 747-3158

EXH. A

Airport

Exhibit E

Yours

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

SITKA AIRPORT

LEASE NO. ADA-50103

LEASE AGREEMENT

THIS lease is made and entered into this 1st day of June, 1997, between the STATE OF ALASKA, acting through the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, whose address is 6860 Glacier Highway, Juneau, Alaska 99801-7999, ("LESSOR"), and the CITY AND BOROUGH OF SITKA, ALASKA, whose address is 100 Lincoln Street, Sitka, Alaska 99835 ("LESSEE").

7461 2005

RECITALS

- (1) LESSOR owns the Sitka Airport ("Airport") at Sitka, Alaska;
- (2) LESSOR has constructed the runway and related facilities for the airport at Sitka, Alaska;
- (3) Lessor and Lessee entered into Lease Agreement ADA-01571, dated July 1, 1967, under which Lessee operated the Airport;
- (4) Under Lease Agreement ADA-01571, LESSEE constructed, expanded, and operated an airport terminal ("Terminal") building on the Airport;
- (5) July 1, 1994 Lessee terminated Lease Agreement ADA-01571. On October 11, 1995, Lessor and Lessee executed a Settlement Agreement setting out the conditions for resolution of financial disputes and other matters that resulted from Lessee's termination of Lease ADA-01571. Under the terms of the Settlement Agreement, the Lessor and Lessee agreed to enter into a lease of the Terminal site to permit the Lessee to continue operating the Terminal; and
- (6) LESSEE has operated the Terminal continuously since July 1, 1994;

THEREFORE, for and in consideration of the terms and conditions, set forth below, the parties agree as follows:

1. Leased Premises

LESSOR hereby leases to LESSEE, and LESSEE hereby leases from the LESSOR, the following real property located on Japonski Island, Sitka Recording District, First Judicial District, Alaska, described as follows ("Premises"):

Lot 3A, Block 600, Sitka Airport consisting of 65,445 square feet as described on attached Exhibit A.

2. Term

In consideration of Lessee's construction, maintenance, operation, and ownership of the Terminal, the term of this lease is 30 years beginning on July 1, 1994, and expiring on June 30, 2024.

EXH. B

3. Authorized Uses

Lessee is authorized to use the premises for operation of a public airline terminal building and for purposes commonly associated with a public airline terminal at airports in the United States, including aircraft parking, loading, servicing, and unloading; baggage and cargo processing; passenger ticketing, screening, and waiting; and concession services.

4. Rent

- (a) Beginning on July 1, 1995, the annual rental for the Premises is \$6,806.28 (65,445 square feet @ \$.104 per square foot). Rent for the period of July 1, 1995 to June 30, 1997 (\$13,612.56) is due upon execution of this lease by the Lessor and Lessee. After June 30, 1997, the rent shall be payable in advance of the first day of each year of the term specified in Covenant No. 3. The rent shall be prorated for any partial year in the term. All payments required by this lease must be made in U.S. currency.
- (b) Checks, bank drafts, or postal money orders are to be made payable to the State of Alaska and delivered to Accounting Section, Department of Transportation and Public Facilities, 6860 Glacier Highway, Juneau, Alaska 99801-7999, or any other address which the Lessor may designate in writing.
- (c) Any payment due from the Lessee and not received by the Lessor accrues interest from the due date until paid in full at the highest allowable lawful contract rate in Alaska, as defined AS 45.45.010 or as amended. Interest on disputed amounts will not be charged to the Lessee if the dispute is resolved in the Lessee's favor.
- (d) Any rent, charge, fee or other consideration which is due and unpaid at the expiration, termination, or cancellation of this lease will be a charge against Lessee and Lessee's property, real or personal.
- (e) Lessor may increase or decrease the rents or fees payable under this lease. During the first five years of the term stated in Covenant No. 2 of this lease, Lessor may neither increase nor decrease the rent fees payable under this lease. At any time after the end of the fifth year of the lease term, Lessor may, in its sole discretion, increase or decrease the rents or fees, provided that Lessor may neither increase nor decrease the rents or fees more than once in any 12 months period. Any change in rent is effective upon written notice to the Lessee.

Any rent increase or decrease must be consistent with applicable statutes or regulations, including AS 02.15.090 and 17 AAC 40.340(a), and any amendments. It is Lessor's intent that any rent established under this basic provision not exceed fair market rental as determined by a qualified real estate appraiser in an appraisal approved by Lessor. However, Lessor is under no obligation to appraise the Premises under any circumstances.

- (f) If Lessee believes that a change under (e) of this Covenant No. 4 rent exceeds the fair market rent for the Premises, Lessee may appeal to Lessor according to the following procedures:
 - (i) Lessee must pay the changed rent beginning on the effective date stated in Lessor's rent change notice and continue paying the changed rent throughout the appeal process.

- (ii) Within 30 days after the date of Lessor's written notice of the rent increase or decrease, Lessee must submit a written appeal to Lessor. The appeal must include the name, address, telephone number and professional qualifications of the real estate appraiser Lessee intends to retain to perform a fair market rent appraisal of the Premises.
- (iii) Lessor will review the appraiser's qualifications and approve or disapprove the appraiser in writing to Lessee. If Lessor disapproves the appraiser, Lessee will have 30 days from the date of Lessor's written disapproval to continue the appeal by submitting the name, address, phone number, and professional qualifications of another appraiser.
- (iv) If Lessor approves Lessee's appraiser, Lessee shall, at Lessee's sole expense, cause the Premises to be appraised according to appraisal instructions furnished by Lessor. The written appraisal must be received by Lessor within 90 days following the date of Lessor's written approval of Lessee's appraiser.
- (v) Lessor will review the appraisal for conformance with the appraisal instructions and issue a written approval or rejection to Lessee. Upon approval of the appraisal, the fair market rent determined by the appraisal will be the rent for the Premises, retroactive to the effective date of Lessor's rent change notice issued under (e) of this Covenant No. 4. Rejection of the appraisal by Lessor will constitute a denial of Lessee's appeal.

5. Operation As A Public Air Terminal

LESSEE agrees to operate the Terminal for the use and benefit of the public. Lessee shall make available, the Terminal and related facilities and services to the public, subject to reasonable fees and needs, on fair and reasonable terms and conditions and without discrimination. Lessee agrees to provide space in the terminal, to all qualified persons, firms, and corporations desiring to conduct airline operations in the Terminal. Nothing in this lease grants or authorizes the Lessee to grant any exclusive right prohibited by AS 02.15.210 or Section 308 of the Federal Aviation Act.

6. Economic Non-Discrimination

Each air carrier using the Terminal (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and charges with respect to facilities directly or substantially relating to providing air transportation and other nondiscriminatory and substantially comparable rules, regulations and conditions as are applicable to all such air carriers which make similar use of the Terminal.

7. Inspection of Lessee Records

During Lessee's normal business hours, Lessor shall have the right to inspect and copy the Lessee's files, books, and records related to this lease, the Premises, or the Terminal.

8. Continuous Operations

Except as provided in Covenant No. 13 of this lease, Lessee agrees to continuously operate an airline terminal building on the premises for use by the public throughout the term of this lease.

9. Existing Improvements

- (a) Lessor and Lessee acknowledge the presence on the Premises of the Terminal, sidewalks, and landscaped areas owned by Lessee, and security fencing and paved surface aircraft parking apron owned by Lessor. As of the date on which this lease is executed, Lessor and Lessee find the condition of these improvements to be acceptable for the purposes contemplated in this lease.
- (b) By no later than September 1, 1997, Lessee shall furnish to Lessor one complete set of as-built drawings showing the dimensions and construction of the Terminal.

10. Survey

Lessee agrees to cause the Premises to be surveyed by a land surveyor registered in the State of Alaska. The survey must be conducted at no expense to the Lessor and must establish the boundaries of the Premises, placing permanent markers at the corners. Lessee agrees to submit a plat of the survey, signed and stamped by the surveyor, to the Lessor on or before September 1, 1997. The survey plat must conform to the Lessor's reasonable requirements, must use the centerline of the airport runway as the basis of bearings and must show survey monuments recovered, survey monuments set, and bearings and distances between monuments. Following approval of the plat by the Lessor, the Lessor and Lessee will execute a supplement to this lease which will modify the Premises description as necessary to conform to the survey.

11. Construction

- (a) Before placing fill material or beginning construction of any improvements or additions on the Premises, Lessee must first obtain the written approval of Lessor in the form of an approved building permit. Detailed drawings of the proposed improvements or additions on the Premises must be submitted to Lessor. If a building or building addition is contemplated, Lessee must also submit comprehensive structural drawings showing front and side elevation views and floor plan, materials to be used, dimensions, elevations, the location of all proposed utility lines, and any additional data requested by Lessor. Lessor will review and approve or disapprove the proposed construction. Approval will not be withheld except where proposed construction does not comply with valid engineering principles, fire or building codes, generally recognized principles of sound airport development, or the proposed construction is inconsistent with the purposes of this lease. Lessee shall submit to Lessor evidence of Lessee's compliance with the Federal Aviation Regulations, 14 CFR Part 77, and all other municipal, state, or federal regulations governing construction of improvements on the airport.
- (b) Lessee, within thirty (30) days after completion of construction or placement of improvements upon the Premises, shall deliver to Lessor an as-built drawing showing the location and dimensions of the location and

dimensions of the improvements, giving bearings and distances to an established survey point. Furthermore, if Lessee constructs underground improvements, Lessee shall appropriately mark the surface of the land with adequate surface markers.

12. Maintenance

- (a) Lessee shall keep the Premises and all improvements neat and presentable at Lessee's own expense. Lessee shall not strip, waste, or remove any material from the Premises without the prior written permission of Lessor.
- (b) At no cost to Lessor, Lessee shall provide for all utilities, services, and maintenance, including snow removal, as is necessary to facilitate Lessee's use of the Premises.
- (c) The disposal on the airport of waste materials generated by Lessee, including slash, overburden, and construction waste, is prohibited, unless authorized in writing by Lessor.
- (d) Lessee agrees to coordinate the Lessee's snow removal and maintenance activities on the Airport with Lessor's Airport personnel. Lessee further agrees to comply with all reasonable decisions and directions of Lessor's airport management personnel regarding snow removal, maintenance, and general use of the airport by Lessee.

13. Damage or Destruction of the Terminal

- (a) Except as provided in (b) of this Covenant No. 13, if the Terminal is damaged or destroyed by fire, explosion, wind, or other events, Lessee shall cause the Terminal to be repaired or rebuilt, and restored to normal function as promptly as possible.
- (b) If the Terminal is damaged to the extent that more than 50% of the space in the Terminal is unusable and the damage occurs within five years of the expiration of the term of this lease, Lessee may terminate this lease, remove the damaged Terminal, and restore the Premises.

14. Lessor Obligations

- (a) Subject to the appropriation of sufficient funds, Lessor agrees to operate and maintain the Airport for the use and benefit of the public. Lessor's operation and maintenance of the Airport include:
 - (i) Maintenance of the runway and taxiway systems;
 - (ii) Maintenance of the road systems within the airport boundaries;
 - (iii) Maintenance of the public parking lot on the Airport; and
 - (iv) Comply with Federal Aviation Administration requirements for an airport served by commercial air carriers.
- (b) Lessor is responsible for the maintenance, operation, and management of the security lock system controlling points of access from the Terminal to the aircraft parking apron on the Premises. Lessee shall obtain Lessor's prior approval for any proposed change in the points of access. If Lessee installs additional points of access in the Terminal, the devices securing

the access shall be compatible with Lessor's system, installed at the Lessee's sole expense, and maintained and operated by Lessor.

15. Hazardous Substances

- (a) If fuel or any other hazardous substances are handled by Lessee on the Premises, Lessee agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling fuel or hazardous substances in accordance with 13 AAC 50 and other applicable federal, state, and local laws.
- (b) In the event of a hazardous substance spill on the Premises, Lessee shall immediately notify Lessor and act promptly to contain the spill, repair any damage, absorb and clean up the spill area, and restore the Premises to a condition satisfactory to Lessor and otherwise comply with the applicable portions of Title 17 and Title 18 of the Alaska Administrative Code.
- (c) Unless otherwise stipulated by this lease or amendment thereto, all bulk fuel on the Premises must be stored in fuel storage tanks installed and plumbed in accordance with 13 AAC 50 and other applicable federal, state, and local laws.

16. Environmental Indemnification by Lessee.

- (a) Except for environmental contamination demonstrated to have been caused by Lessor, or by third party prior to July 1, 1994, or to have originated before July 1, 1967, Lessee will be liable for any contamination on the Premises or for the presence of any hazardous substance on the Premises. To that extent only, Lessee shall defend and save harmless Lessor from all suits, claims, damages, judgments, penalties, fines, costs, and liabilities, including sums paid in settlement of claims, attorney's fees, and consultant fees, which arise as a result of contamination of the Premises by a hazardous substance, or of adjacent property if the contamination is demonstrated to have migrated from the Premises.
- (b) Nothing in this Covenant No. 16 shall bar or prevent Lessor or Lessee from seeking and obtaining cleanup efforts, costs, or damages from potentially responsible parties for contamination of the Premises or of adjacent properties.
- (c) Upon the cancellation, termination or expiration of this lease, Lessor will, in its discretion, require Lessee to perform an Environmental Site Assessment of the Premises. Lessee assumes financial responsibility to Lessor for any contamination or presence of hazardous substance in, on, and under the surface of the Premises, or adjacent property if the contamination migrated from the Premises, except for contamination or present of hazardous substance that is determined to have been caused by Lessor, or by third party prior to July 1, 1994, or to have originated before July 1, 1967. This is without prejudice to Lessee's right to seek contribution or indemnity either from prior occupant's properties adjacent to the Premises or other potentially responsible parties except Lessor.

17. Environmental Definition

- (a) For the purposes of this lease the following terms are defined:

- (i) Environmental Site Assessment - An assessment of property, consistent with generally accepted professional practices, that determines the environmental condition and is supported by reports and tests which determine the environmental condition and the present, type, concentration, and extent of hazardous substances in, on, and under the surface of the property.
- (ii) Hazardous Substance - Any substance designated pursuant to section 311(b) (2) (A) of the Clean Water Act; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; and hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Clean Water Act; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substance Control Act.

18. Fuel Sales Prohibited

Unless specifically authorized by this lease or amendment thereto, the sale of aviation fuel or lubricating oil by Lessee or a sublessee on the Premises is prohibited.

19. Liability

Except for Lessor's own negligence, the Lessee shall indemnify, defend, and hold the Lessor harmless from any liability, action, claim, suit, loss property damage or personal injury of whatever kind resulting from or arising out of any act of commission or omission by the Lessee, or Lessee's agents, employees, sublessees or customers, or arising from or connected with the Lessee's use and occupation of the Premises, or the exercise of the rights and privileges granted by this lease.

20. Insurance

- (a) At no expense to Lessor, Lessee shall secure and keep in force during the term of this lease adequate insurance to protect both Lessor and Lessee against comprehensive public liability and property damage in no less than the following amounts:
 - (i) property damage arising from one occurrence in the amount of not less than \$1,000,000; and
 - (ii) personal injury or death in an amount of not less than \$1,000,000.
- (b) Lessee shall provide Lessor with proof of insurance coverage in the form of an insurance policy or a certificate of insurance. All insurance required by this covenant must:
 - (i) name Lessor as an additional assured;
 - (ii) provide that Lessor be notified at least thirty (30) days prior to any termination, cancellation, or material change in the insurance coverage; and

- (iii) include a waiver of subrogation by which the insurer waives all rights of subrogation against Lessor for payments made under the policy.
- (c) The requirement of insurance coverage does not relieve Lessee of any other obligations under this agreement.
- (d) With thirty (30) days advance written notice to Lessee, Lessor may increase or decrease the coverage limits for the insurance required by this Covenant No. 20 when Lessor reasonably determines that the increase or decrease is justified by changes in the potential risks involved in the use of the Premises by Lessee or the users of the Terminal.

21. Cancellation

- (a) Lessor may cancel this lease and recover possession of the Premises by giving Lessee 30 days prior written notice upon the happening of any of the events listed below, unless the breach is cured within the 30-day notice period:
 - (i) Lessee's failure to pay when due the rents or fees specified in this lease, including any increases made pursuant to this lease;
 - (ii) the return for insufficient funds of checks for payment of rents or fees;
 - (iii) the use of the Premises by Lessee for any purpose not authorized by this lease;
 - (iv) the filing of a petition in bankruptcy by or against Lessee;
 - (v) the entry by any court of a judgment of insolvency against Lessee;
 - (vi) the appointment of a trustee or receiver for Lessee's assets in a proceeding brought by or against Lessee;
 - (vii) the failure of Lessee to perform any provision or covenant in this lease.
- (b) If Lessee disputes Lessor's stated reasons for a cancellation, Lessee may appeal to Lessor for reconsideration if Lessee submits a written appeal to Lessor before the end of the 30-day notice period in (a) of this Covenant No. 21. Upon Lessor's timely receipt of an appeal, Lessor will suspend action on the cancellation until a decision is made on Lessee's appeal. If the appeal is successful, Lessor's notice of cancellation will be void. If the appeal is denied, the cancellation will be effective 30 days after the date of Lessor's written denial issued to Lessee.

22. Survival of Lessee Obligations

If this lease is terminated or cancelled by Lessor pursuant to this lease, or if Lessor reenters, regains or resumes possession of the Premises pursuant to this Lease, all of Lessee's obligations under this Lease except those obligations involving liability which evolves to an occupant based upon maintenance, hazardous conditions and hazardous waste occurring during the Lessor's possession of the premises, shall survive and shall remain in full force and effect for the full term of this Lease. Subject to the Lessor's obligation to mitigate

damages, the amount of the rents, fees, and charges shall become due and payable to Lessor to the same extent, at the same time, and in the same manner as if no termination, cancellation, reentry, regaining, or resumption of possession had taken place. Without limiting the foregoing, Lessee's duties, obligations, and responsibilities under this Lease shall survive the cancellation, termination, or expiration of this lease.

23. Disposition of Improvements and Personal Property

- (a) Within sixty (60) days following the effective date of the expiration, termination, or cancellation of this lease, improvements or personal property or other property, real or personal, owned by Lessee on the Premises must either:
 - (i) be removed by Lessee if required by Lessor or desired by Lessee and if Lessor determines that removal will not cause injury or damage to the Premises; or
 - (ii) with Lessor's consent, be sold to the succeeding Lessee.
- (b) Lessor may grant additional time for the removal of improvements if hardship is established by Lessee.
- (c) If Lessee fails to timely remove or sell the improvements or personal property under (a) or (b) of this covenant, title to the improvements or personal property vests in Lessor, and Lessor will, in its discretion, sell, lease, demolish, dispose, remove, or retain for its own use the improvements or personal property. Lessee shall reimburse Lessor for all costs incurred by the department, including legal costs, in the selling, leasing, demolishing, disposing, removing, or retaining of unremoved improvements or personal property.

24. Holding Over

If Lessee holds over and remains in possession of the Premises after the expiration of this agreement without a written renewal, the holding over will not operate as a renewal or extension of the term of this agreement but only creates a tenancy from month to month, regardless of any rent payments accepted by Lessor. Lessee's obligations for performance under this lease will continue until the month-to-month tenancy is terminated by Lessor. Lessor may terminate the tenancy at any time by giving the Lessee at least ten (10) days prior written notice.

25. Assignment or Sublease by Lessee

- (a) Except as provided in (b) of this Covenant No. 25, Lessee may not assign or sublet, either by grant or implication, the whole or any part of the Premises or the whole or any part of the Terminal without the written consent of Lessor. Any proposed assignment, lease, or sublease must be submitted to Lessor for approval in five (5), each bearing the original notarized signature of all parties.
- (b) Lessee may sublet portions of the Premises or space in the Terminal without Lessor's written consent, if the sublease term, including options, renewals, or extensions, does not exceed one year and the purpose of the sublease is consistent with the authorized uses in Covenant No. 3 of

this lease. Lessee shall deliver to Lessor a copy of the sublease within 30 days of the date on which the sublease is signed by Lessee.

- (c) Except as provided in (b) of this Covenant No. 24, an assignment or sublease is void without Lessor's written consent.
- (d) All covenants and provisions in this agreement extend to and bind the legal representatives, successors, and assigns of the parties in any assignment or sublease.
- (e) By no later than September 1, 1996, Lessee shall deliver to Lessor one copy of each sublease of space on the Premises that is in force on July 1, 1996.

26. Assignment By Lessor

Without the consent of Lessee, the Lessor may assign the Lessor's interest in this lease to any government agency, company, or person to whom the Lessor conveys, leases, or sells the Airport. No such assignment will operate to increase Lessee's obligations, or reduce Lessee's rights, under this lease.

27. Condemnation

If the Premises are condemned by any proper authority, the term of this lease will end on the date Lessee is required to surrender possession of the Premises. Lessor is entitled to all the condemnation proceeds except Lessee will be paid the portion of the proceeds attributable to the fair market value of any improvements placed on the Premises by Lessee according to the provisions of 17 AAC 40.330, amended. Rent will also be adjusted according to the provisions of 17 AAC 40.330, as amended.

28. Vacation

At the expiration, cancellation or termination of this lease, Lessee must peaceably and quietly vacate the Premises and return possession to Lessor. The Premises must be left in a clean, neat, and presentable condition to the satisfaction of Lessor.

29. Easements

Lessor reserves the right to make grants to third parties or reserve to Lessor easements or rights-of-way through, on, or above the Premises, provided that no such easements or rights-of-way may be granted or reserved which unreasonably interferes with Lessee's use of the Premises.

30. Quiet Enjoyment

Lessor covenants that upon Lessee's payment of the rent and performing and observing all of Lessee's other obligations under this lease, Lessee may peaceably and quietly have, hold, and enjoy the Premises for the lease term, subject and subordinate to all provisions of this lease.

31. Warranties and Title Representations

The interests transferred or conveyed by this lease are subject to any and all of the covenants, terms, and conditions that are contained in the instruments conveying title or other interests or improvements to Lessor or contained in the public records recorded in the District Recorder's Office, Sitka, Alaska.

The Lessor makes no specific warranties, express or implied, concerning the title or condition of the property, including survey, access, or suitability for any use, including those uses authorized by this lease.

32. Reservation of Rights

Rights and privileges granted to Lessee in this lease are the only rights and privileges granted to Lessee by this lease. Lessee has no easements, rights or privileges, express or implied, other than those specifically granted by this lease.

33. Discrimination

Lessee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. Lessee recognizes the right of Lessor to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

34. Affirmative Action

Lessee agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person will be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E on the grounds of race, creed, color, national origin, or sex. Lessee hereby agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E.

35. Radio Interference

At Lessor's request, Lessee shall discontinue the use of any transmitter, machine, or device which may interfere with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

36. Laws and Taxes

- (a) This lease is issued subject to all requirements of the laws and regulations of the State of Alaska relating to the leasing of lands and facilities and the granting of privileges at State airports.
- (b) At no expense to Lessor, Lessee will conduct all activities or business authorized by this lease in compliance with all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force which apply to the activities or business authorized by this lease or to the use, care, operation, maintenance, and protection of the Airport, including but not limited to matters of health, safety, sanitation, and pollution. Lessee

must obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises, and pay any other fees and charges assessed under applicable public statutes or ordinances.

- (c) Lessee shall abide by the rules and procedures, applicable to the operation and use of the Terminal, in the Federal Aviation Administration approved airport security program and airport certification manual adopted for the Airport by Lessor to comply with 14 C.F.R. Parts 107 and 139. If the Federal Aviation Administration assesses a fine against Lessor for a breach by Lessee of the airport security program or the airport certification manual, Lessee shall reimburse Lessor for the amount of the fine and legal costs upon receipt of a written demand for reimbursement issued by Lessor.
- (d) In any dispute between the parties, the laws of the State of Alaska will govern and any lawsuit must be brought in the courts of the State of Alaska. The Lessee agrees to notify Lessor of any claim, demand, or lawsuit arising out of Lessee's occupation or use of the Premises. Upon the Lessor's request Lessee will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

37. Liens

Lessee shall keep the Premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by Lessee on the Premises, and hold Lessor harmless from liability for any liens, including costs and attorney fees. By this provision, Lessor does not recognize that it is in any way liable for any liens on the Premises.

38. No Waiver

Failure of Lessor to insist in any one or more instances upon the strict performance by Lessee of any provision or covenant in this lease may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. A waiver by Lessor of any provision or covenant in this lease cannot be enforced or relied upon unless the waiver is in writing signed on behalf of Lessor.

39. Modification

Lessor may modify this lease to meet the revised requirements of federal or state grants or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party, provided that a modification may not act to reduce the rights or privileges granted Lessee by this lease nor act to cause Lessee financial loss.

40. Validity of Parts

If any provision or covenant of this lease is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

41. Interrelationship Of Provisions

The provisions, amendments, supplements, and exhibits are essential parts of this lease and are intended to be co-operative, to provide for the use of the Premises, and to describe the respective rights and obligations of the parties to this agreement. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect.

42. Natural Disasters

In the event any cause which is not due to the fault or negligence of either Lessee or Lessor renders the Airport or the Premises unusable and makes the performance of this lease impossible, this agreement may be terminated by either party upon written notice to the other party. Causes include acts of God, acts of public enemy, acts of the United States, fires, floods, epidemics, quarantine restrictions.

43. Notices

Any written notice required by this agreement must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this lease or to any other address which the parties subsequently designate in writing.

44. Integration and Merger

This agreement sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Premises whether oral or written. No modification or amendment of this lease is effective unless in writing and signed by both the parties.

45. National Emergency

In case of any national emergency declared by the federal government, Lessee may not hold Lessor liable for any inability to perform any part of this agreement as a result of the national emergency.

46. Approval By Lessor

Any approvals required of Lessor by this lease will not be unreasonably withheld.

47. Lessor Ingress and Egress for Inspection, Repair, and Construction

- (a) Lessor reserves the right of ingress to and egress from the Premises and the right to enter any part of the Premises, including the Terminal, for the purpose of inspection at any reasonable time. Lessor shall also have the right to enter the Premises, including the terminal, for the purpose of posting public notices required by 14 C.F.R. Parts 107 and 139.
- (b) Lessor reserves the right of ingress to and egress from the aircraft parking apron on the Premises for the purpose of inspecting, repairing,

constructing, or reconstructing the apron surface and related improvements.

- (c) Except in the case of an emergency, Lessor will coordinate all repairs, construction, inspections, and notice posting with Lessee in order to minimize interference with Lessee's activities on the Premises.

48. Execution by Lessor

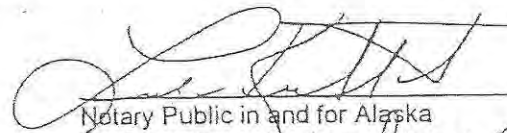
This lease is of no effect until it has been signed by the Commissioner of the Department of Transportation and Public Facilities or his designated representative.

STATE OF ALASKA)
(SEAL)

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 8 day of September, ¹⁹⁹⁷~~1995~~, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared JAMES H. Merrill, known to me and to me know to be the Acting Regional Director Department of Transportation and Public Facilities, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and that he is authorized by said State of Alaska so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first written above.



Notary Public in and for Alaska
My Commission Expires: June 24, 2001

WHEREFORE, the parties have entered into this lease the date and year first above written at the City of Sitka, Alaska.

LESSEE:

CITY AND BOROUGH OF SITKA
ALASKA

By: *Mary L. [Signature]*

ATTEST:

Kathy Hope Erickson
Borough Clerk

APPROVED AS TO FORM:

[Signature]
Municipal Attorney

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

On this 27th day of August, 1997, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Cathy L. Paxton, Borough Manager, and Kathy Hope Erickson, Borough Clerk, to me known to be the persons whose names are subscribed to the foregoing Lease as officers of the CITY AND BOROUGH OF SITKA, and acknowledged that they and each of them executed said instrument as their knowing and voluntary act and deed; as the voluntary act and deed of the CITY AND BOROUGH OF SITKA; and that they and each of them were duly authorized to sign said Lease by authority of the Assembly of the CITY AND BOROUGH OF SITKA.

WITNESS my hand and official seal the day and year in this certificate above written.

STATE OF ALASKA
NOTARY PUBLIC
TAMARA J. O'NEILL
My Commission Expires Nov. 18, 1997

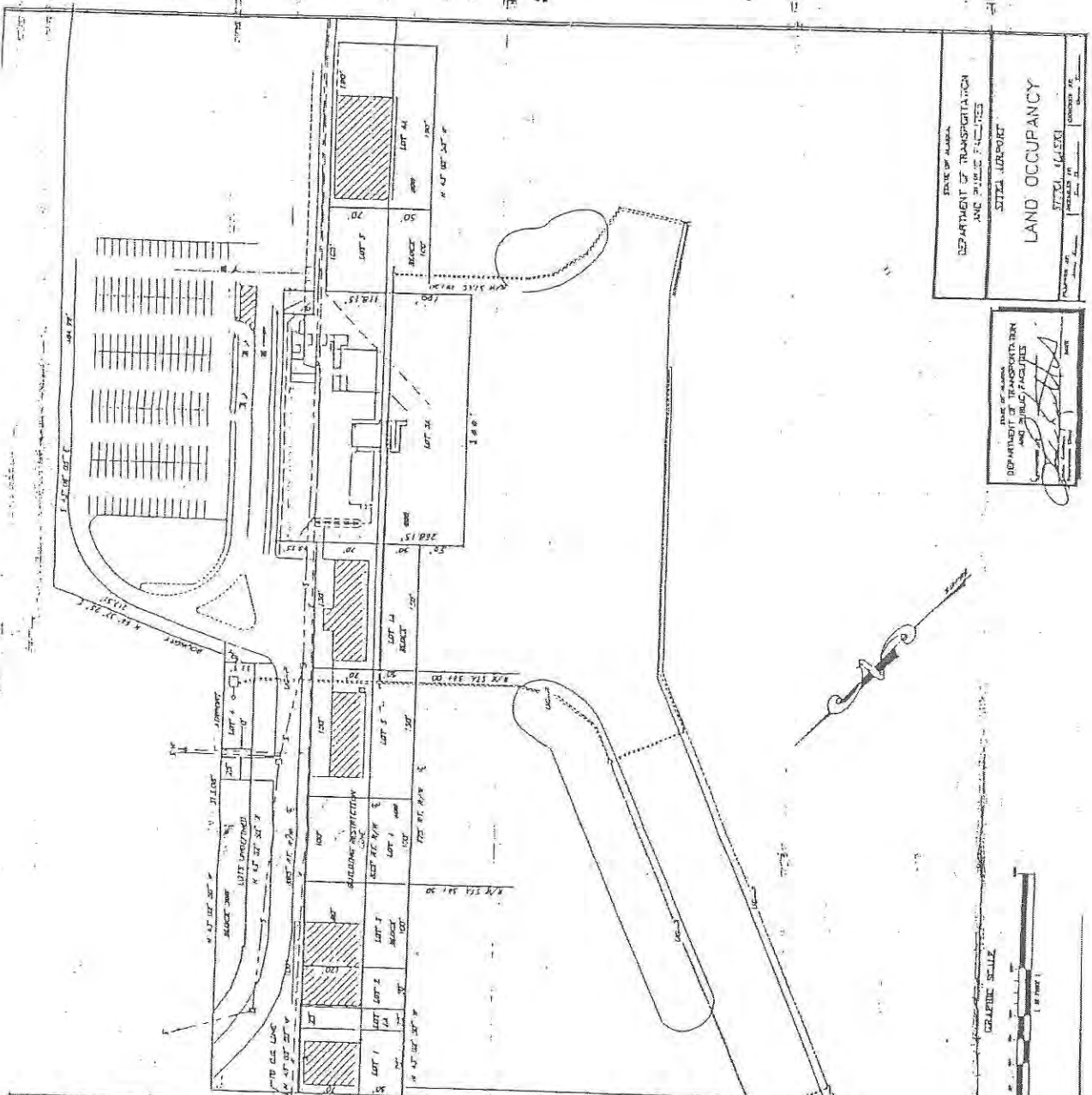
Tamara J. O'Neill
NOTARY PUBLIC FOR ALASKA
My Commission Expires: 11/18/97

LESSOR:

STATE OF ALASKA, by and through the
DEPARTMENT OF TRANSPORTATION AND
PUBLIC FACILITIES

BY: *[Signature]*
[Signature]
9/8/97

BLOCK	LOT	ACR. NO.	AREA	OCCUPANT	EXP. DATE
200	4			ADM. SEC. FACIL. B. 7/24/78 ALBERT	INDEFINITE
400	1824	50155	12,000	MOUNTAIN AVIATION	10/01/2002
400	2		8,000	DOT/FP	INDEFINITE
400	3		12,000	DOT/FP	INDEFINITE
400	4	50263	12,000	ALERT SERVICES, INC.	4/15/2001
400	5		18,000	DOT/FP	INDEFINITE
600	1A	03025	18,000	ALASKA AIRLINES, INC.	3/24/1997
600	2A	50103	4,544	CITY OF SITKA	6/30/2024
800	5		12,000	VACANT	
800	6A	50275	22,800	MOUNTAIN AVIATION	3/15/1997
300	30189	1,750		K AND R ENTERPRISES	8/1/1985
ITEM	2	03147	10,507	U.S. COAST GUARD	INDEFINITE



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC UTILITIES
SITKA AIRPORT
LAND OCCUPANCY

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC UTILITIES
SITKA AIRPORT
LAND OCCUPANCY



CONSENT TO SUBLEASE

The State of Alaska, Department of Transportation and Public Facilities, Southeast Region Airport Leasing/Property Management, Lessor in Lease Agreement ADA-50103 (Prime Lease), acknowledges a sublease dated _____, between the City and Borough of Sitka, the lessee under said prime lease, and _____, the Sublessee for the use of operating _____, at the Sitka Airport. The term of the sublease begins _____ and ends _____.

The Lessor consents to the lessee entering into said sublease provided that the Lessee shall remain responsible to the Lessor for compliance with all the terms of said Prime Lease.

This consent is given subject to the following conditions:

- 1. If there is a conflict between the above referenced Prime State Lease Agreement and the sublease or its underlying documents, the terms of the Prime State Lease govern.
2. The Sublessee is prohibited from subleasing without the prior written consent of both the Lessee and the Lessor. Further a Sublessee may not assign or hypothecate a subleasehold.

Dated this _____ day of _____, 20__.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND
PUBLIC FACILITIES

Chief, Juneau Office, Aviation Leasing and Airport
Land Development

STATE OF ALASKA)
) ss.
First Judicial District)

THIS IS TO CERTIFY that on the _____ day of _____, 20__ before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared _____, known to me and to me known to be the Chief, Leasing and Property Management, Southeast Region, Department of Transportation and Public Facilities, and s/he acknowledged to me that s/he executed the foregoing instrument freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and that s/he is authorized by said State of Alaska to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the date and year first written above.

Notary Public in and for Alaska
My Commission Expires: _____

EXH.C

SUBLEASE GUIDELINES FOR TENANTS

17 AAC 45.990(80): "sublease' means a transaction or agreement under which a lessee, permittee or concessionaire leases, rents or otherwise grants occupancy rights to all or a portion of a premises or improvements on a premises to another person; 'sublease' does not include the assignment of a lease, permit or concession"

17 AAC 45.270(a): "...a lessee, permittee, or concessionaire may not sublease all or a portion of a lease, permit or concession premises without the prior written consent of the department under 17 AAC 17.275. A sublease made contrary to the requirements of this section and 17 AAC 45.275 is void."

17 AAC 45.270(d): "A sublessee of a lease, permit or concession may not occupy the premises before the department consents to the sublease in writing."

A request for a consent to a sublease must be submitted in writing and must include:

A. SUBLEASE. The following items must be included in all subleases. Failure to provide these items may result in the State/Lessor withholding its consent to a sublease.

17 AAC 45.270(B)

1. The name, address, and telephone contact number (including a fax number) of the proposed sublessee and the existing lessee. The sublease should name DOT&PF as the Lessor, DOT&PF's tenant as the Lessee, and Lessee's tenant as the Sublessee. Appropriate e-mail addresses should be provided.
2. Emergency contact names and telephone numbers (including fax numbers) for both parties; one of these needs to be for a person located at or near the airport where the sublease is located. Also please include e-mail addresses, if available.
3. A description of property to be subleased (e.g.: "portion of Lot 1, Block 1, as shown on Exhibit A attached"). Attach exhibit showing the specific area being subleased (whether a portion of a building, land, or any combination thereof). If areas of the land or in the building are used in common with the Lessee or other Sublessees, the sublease must so state, and the exhibit must clearly show the common use areas.
4. A description of the proposed sublessee's intended use of the premises. Authorized uses must be specific and cannot authorize more than the original lease. If food, beverage, liquor or hotel/lodging sales will occur, the lease must contain related concession fee language or a sublease for these purposes will not receive DOT&PF's consent.
5. The expiration date of the sublease. The term of a sublease cannot extend past the original (prime) lease expiration date. The beginning date of a sublease must also be included. All renewals or extensions of subleases must be submitted for review and approval, and shall be treated the same as new sublease approvals.
6. A statement of the proposed sublease rent to be paid per month of occupancy.
7. A guarantee of indemnification by the Sublessee under which the Sublessee provides to the State the same level of indemnity that the Sublessee would provide to the State if the Sublessee were a direct Lessee under the lease.

8. A statement identifying the party/ies (Lessee or Sublessee) responsible for providing the State with proof of premises liability and/or products insurance coverage (as applicable per the lease requirements). Depending upon the subleased area, all parties (State, Lessee and Sublessee) may be required to be named as co-insured. Unless a sublease is for the entire premises, including all facilities maintenance, both the Lessee and the Sublessee will be required to maintain the insurance required by the lease, with both naming the State of Alaska as additional insured.

9. A statement acknowledging that the prime State lease governs over the sublease and that the Sublessee agrees to abide by all provisions and covenants of the State lease.

*Example: Mars Airlines, Inc., Lessee, and John Doe, dba Jupiter Air, Sublessee, enter into this sublease dated _____. This sublease is subject to all requirements and conditions of the Lessee's prime lease ADA-_____ with the State of Alaska, DOT&PF, Lessor. The Sublessee agrees to abide by all provisions and covenants of the prime lease.

10. A statement acknowledging that Sublessees are prohibited from subleasing without the prior written consent of both the Lessee and the Lessor. Further, a Sublessee may not assign or hypothecate a subleasehold.

11. A provision that no improvements, grading, fill, construction, etc. may take place until the Sublessee and Lessee have obtained the Lessor's approval.

12. Three originals of the executed sublease documents with notarized signatures of the Sublessee and the Sublessor.

13. If either party is a corporation, the corporate seal must be applied to the sublease, or a corporate resolution submitted; also a copy of the Certificate of Incorporation must be submitted. If an LLC, copies of the Certificate of Organization, Articles of Organization and Operating Agreement (if applicable) must be submitted.

B. INSURANCE. A binder for, or certificate of, insurance covering the operations and activities of the Sublessee to the same extent that the Sublessee would be required to maintain insurance if the Sublessee were a direct Lessee under the lease.

C. FEE. A non-refundable \$55 sublease processing fee, made payable to the State of Alaska.

17 AAC 45.275:

(c) The department will approve or deny a request under this section in writing. If the department denies the request, the department will state the reasons for the denial in writing. The department will make a determination on a request for consent to assignment, assignment for security purposes, or sublease within 60 days after the assignor or sublessor has submitted a complete request.

(d) An applicant may protest a denial of an assignment, assignment for security purposes, or sublease in accordance with 17 AAC 45.910.



Legislation Details

File #: ORD 14-02 Version: 1 Name:

Type: Ordinance Status: AGENDA READY

File created: 1/7/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Amending Sitka General Code at Chapter 9.20 entitled "Smoking in Public Places and Places of Employment" to modify Section 9.20.035 regarding prohibition of children in places where smoking is permitted

Sponsors:

Indexes:

Code sections:

Attachments: [Cover ORD-02](#)
[Ord 14-02](#)
[Third hand smoke studies-2](#)
[TobaccoFree Tribal Resolution FINAL SAMPLE](#)

Date	Ver.	Action By	Action	Result
1/28/2014	1	City and Borough Assembly		
1/14/2014	1	City and Borough Assembly	PASSED ON FIRST READING	Pass

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-02

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA
GENERAL CODE AT CHAPTER 9.20 ENTITLED "SMOKING IN PUBLIC PLACES AND
PLACES OF EMPLOYMENT" TO MODIFY SECTION 9.20.035 REGARDING
PROHIBITION OF CHILDREN IN PLACES WHERE SMOKING IS PERMITTED

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. **PURPOSE.** This ordinance is to modify SGC 9.20.035 entitled "Declaration of establishment as nonsmoking – Prohibition of children in places of employment where smoking is permitted" by prohibiting children under the age of 18 to be permitted in any place where smoking is permitted. This ordinance also clarifies presence of children in a club or bar where smoking is allowed.

4. **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC 9.20.035 is amended as follows (new language underlined; deleted language stricken):

9.20.035 Declaration of establishment as nonsmoking—Prohibition of children in places of employment where smoking is permitted.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9.20.040 is posted. Children under the age of eighteen shall not be permitted in any place of employment under 9.20.020, or club or bar where smoking is allowed under Section 9.20.030G. and H. Furthermore, no cessation of smoking within the smoking facility shall render this section inapplicable unless such facility permanently deems and declares themselves to be a non-smoking facility. Once the declaration of an establishment, facility, or outdoor area as smoking has been made under this section, it shall not be changed for temporary or special functions.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 28th day of January, 2014.

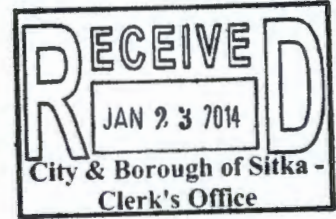
Mim McConnell, Mayor

ATTEST:

Sara Peterson, CMC
Acting Municipal Clerk

Colleen Ingman

Subject: FW: To whom it may concern



-----Original Message-----

From: Margaret Peterson [<mailto:margaretp66@yahoo.com>]

Sent: Wednesday, January 22, 2014 9:21 PM

To: Mim McConnell; Matthew Hunter; Phyllis Hackett; Pete Esquiro; Mike Reif; Benjamin Miyasato; Aaron Swanson; Mark Gorman

Subject: To whom it may concern

Assembly members,

It has come to my attention that someone has put a request to revise the smoking ordinance. The American Legion, Sons of the Legion and American Legion Auxiliary ask that you vote against this amendment or put it up for a vote with the public.

The reason we ask this, is because we are a smoking private club and over the christmas holiday, we apparently made someone mad. The person doing this request called us up Friday, 2 days before our party; called at 4pm threatening to call the police and have us shut down if we had the party. She gave a fake name, misrepresented herself, said she was a city official and if we had the party, than she was changing the ordinance. We do not appreciate her being rude to our bartender, whom she yelled at and threatened.

It is not our intention to make anyone mad or to hurt anyone. That is why; when we have any occasions here, we take time to completely air the place out along with spraying air fresheners to smoke eaters running all night. We DID NOT let anyone smoke in there at all, we announced that the bar was closed and had signs of no smoking. We even had a curtain over the bar area, to cover the liquor bottle. The children could not see the bottles or pull tab bins. By the time of the party, you could not tell we smoked in there. We had a grandma that has asthma that it did not even bother her. We had another grandma that uses an oxygen tank. Did not bother her.

We had 80 children signed up for our party and 74 came with their family. We fed them turkey and ham with all the works for a wonderful christmas dinner with plenty for people to take home. The children got to see santa and get a present with a candy bag. The children all got a brand new jacket and decorated their pictures with santa and decorated cookies.

We also have memorials for families that have lost a loved one who has served for our country. We are available for funerals as well. The bar is closed and aired out completely when we have these occasions.

It is not our intentions to put anyone in danger of any kind. Therefore, we believe the smoking ordinance is fine the way it. So we are asking you to vote against this. Thank you.

Respectfully yours,

The American Legion, Sons of the Legion and American Legion Auxiliary

Resolution # _____

Title: Resolution for the Control and Elimination of Tobacco in the Work Place and Enclosed Public Places.

WHEREAS, The _____ (name of tribe), is an Indian tribe as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 25 U.S.C. 450b;

WHEREAS, Alaska Native people have the highest rate of tobacco use in the state of Alaska;

WHEREAS, Tobacco use is the leading cause of preventable death and disease and Alaska Native people suffer serious health consequences including heart disease and cancer;

WHEREAS, Secondhand tobacco smoke exposure is another leading cause of preventable death, and causes disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and cancer;

WHEREAS, It has been determined by the U.S. Surgeon General that there is no safe level of exposure to secondhand smoke, air ventilation systems do not work, and that only completely smokefree environments can protect health;

WHEREAS, A significant amount of secondhand smoke exposure for Alaska Native adults and children occurs in the workplace and even short exposures may result in serious adverse health effects and even death;

WHEREAS, Tobacco-free workplaces protect people from secondhand smoke, reduce tobacco use overall, support healthy lifestyles, model healthy behavior, and support quit attempts;

WHEREAS, The health of our people is of utmost importance and Alaska Native people have taken a lead in addressing health issues throughout the years; and

WHEREAS, Tobacco-free tribal workplaces will protect the health of our children, grandchildren, families, and community members.

THEREFORE, BE IT RESOLVED that tobacco use shall be prohibited within the facilities owned, operated, or leased by the _____ (name of tribe) including:

- a) all areas within enclosed places that are open to and frequented by the public;
- b) all areas within places of employment; and
- c) all outdoor areas within 20 feet of entrances, exits, and windows that open to enclosed public places and places of employment.

BE IT FURTHER RESOLVED, that signs prohibiting tobacco use shall be posted and a no tobacco use distance no less than 20 feet from any entrances be enforced.

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the _____ (name of tribe) on this __ day of _____ 2012 at which a quorum was present, with a vote of __ for, __ against, __ abstentions, __ absent.

(Name), President

Date _____

ATTEST: _____
(name), Tribal Administrator

Date _____



Legislation Details

File #: RES 14-02 Version: 1 Name:

Type: Resolution Status: AGENDA READY

File created: 2/18/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Approving CBS to apply for an Alaska Department of Environmental Conservation Loan to finance the construction of a temporary Water Filtration Plant at Indian River - up to \$4.32 M

Sponsors:

Indexes:

Code sections:

Attachments: [RES 14-02](#)

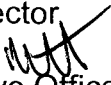
Date	Ver.	Action By	Action	Result
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POSSIBLE MOTION

I MOVE TO approve Resolution
2014-02 on first and final reading.

MEMORANDUM

To: Mayor McConnell and Members of the Assembly
Mark Gorman, Municipal Administrator

From: Christopher Brewton, Electric Department Director
Michael Harmon, P.E., Public Works Director 
Jay Sweeney, Chief Finance and Administrative Officer

Date: February 18, 2014

Subject: Application for ADEC loan to fund Temporary Filtration Project

Background:

The City and Borough of Sitka (CBS) Electric Department is completing improvements to the Blue Lake Dam, a project that will have a substantial and long-lasting positive impact on the utility's ability to generate electricity. Besides providing a source of hydroelectric power, Blue Lake is the potable water source for CBS. The construction project will require a two- to four-month shutdown of the dam's penstock, requiring CBS to utilize an alternative source of potable water.

The Public Works Department has identified a low-interest loan from the Alaska Department of Environmental Conservation (ADEC) to provide a water-treatment system that would allow CBS to use water from Indian River while the Blue Lake water is unavailable. Public Works needs Assembly approval to submit an application for the ADEC loan, which would be managed and paid back by the Electric Department.

Analysis:

Engineering consultant CH2M Hill has designed a microfiltration and disinfection system that will satisfy the drinking water regulations. They have estimated the cost of the system at \$4.32 million, including investigations, design and construction. Based on an earlier cost estimate, CBS submitted a loan questionnaire to ADEC estimating project costs at \$3.13 million. ADEC has indicated that if we pursue this loan, we'd have to initially request the \$3.13 million per the loan questionnaire, but could later request an increase to the loan amount.

A resolution of support from the Assembly is required to be submitted with the ADEC loan application. The proposed resolution includes the total cost of the project, not including operations. The resolution will allow staff to increase the amount of the loan request after ADEC accepts the initial \$3.13 million request.

Fiscal Note:

Funding this project with the ADEC loan (at an interest rate of 1.5 percent) rather than a bond (at an interest rate of at least 4.75 percent) would save CBS in excess of \$1.2 million in interest payments for a \$3.13 million loan, or over \$1.7 million for a \$4.32 million loan. Staff would request the maximum amount eligible for ADEC loan funding to maximize our savings.

Recommendation:

Approve the attached resolution expressing Assembly support for CBS's application for an ADEC loan to finance the temporary water filtration plant at Indian River for an amount up to \$4.32 million.

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 2014-02

A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA, ALASKA, APPROVING CBS TO APPLY FOR AN ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION LOAN TO FINANCE CONSTRUCTION OF THE TEMPORARY WATER FILTRATION PLANT AT INDIAN RIVER

WHEREAS, potable water from Blue Lake will not be available to CBS during a two- to four-month period in Summer/Fall 2014; and

WHEREAS, CBS's alternative water source – Indian River – requires a more robust water treatment train than the Blue Lake water; and

WHEREAS, the State of Alaska Department of Environmental Conservation (ADEC) is offering favorable terms on a 20-year loan to finance the required treatment of the temporary water source;

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the City and Borough of Sitka, Alaska, by this resolution, affirms and supports the request to submit a loan application to ADEC for up to \$4.32 million to fund the construction of the treatment plant.

FURTHER BE IT RESOLVED, the Municipal Administrator or his designee is authorized to execute the loan application and the loan agreement with ADEC on behalf of the City and Borough of Sitka.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska on this 25th day of February 2014.

Mim McConnell, Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 2014-02

A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF SITKA, ALASKA, APPROVING CBS TO APPLY FOR AN ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION LOAN TO FINANCE CONSTRUCTION OF THE TEMPORARY WATER FILTRATION PLANT AT INDIAN RIVER

WHEREAS, potable water from Blue Lake will not be available to CBS during a two- to four-month period in Summer/Fall 2014; and

WHEREAS, CBS's alternative water source – Indian River – requires a more robust water treatment train than the Blue Lake water; and

WHEREAS, the State of Alaska Department of Environmental Conservation (ADEC) is offering favorable terms on a 20-year loan to finance the required treatment of the temporary water source;

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the City and Borough of Sitka, Alaska, by this resolution, affirms and supports the request to submit a loan application to ADEC for up to \$4.32 million to fund the construction of the treatment plant.

FURTHER BE IT RESOLVED, the Municipal Administrator or his designee is authorized to execute the loan application and the loan agreement with ADEC on behalf of the City and Borough of Sitka.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska on this 25th day of February 2014.

Mim McConnell, Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk



Legislation Details

File #: 14-041 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 2/19/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Authorize a Change Item 68 to Barnard Construction \$1,880,050 and approve additional funding for the Blue Lake Expansion Project - \$2,758,214

Sponsors:

Indexes:

Code sections:

Attachments: [Change Item 68](#)

Date	Ver.	Action By	Action	Result
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POSSIBLE MOTION

I MOVE TO approve executing a Change Item 68 to Barnard Construction LLC in the amount of \$1,880,050.00 and approve additional funding for the Blue Lake Expansion project in the amount of \$2,758,214.



Memorandum

February 19, 2014

To: Mark Gorman, Municipal Administrator
 From: Christopher Brewton, Utility Director
 Subject: **Blue Lake Hydroelectric Expansion Project- Award of Change Item 68 Phase II Alternate Water Supply**

Request:

I request Assembly approval authorizing the City Administrator to issue Barnard Construction LLC., Change Item 68 for Phase II of the Alternate Water Supply. The change item amount is \$1,880,050.00. In addition, I request the Assembly approve a 10% contingency in the amount of \$188,005.00. This brings the total request for Change Item 68 to \$2,068,055.00.

Background:

The City and Borough of Sitka is required to install temporary filtration at the Indian River Water Treatment Plant for use during the Blue lake Expansion generation outage. City Staff decided to engage the Blue Lake Expansion General Contractor Barnard Construction to perform this work so they would retain responsibility for installing the plant prior to the generation outage. Change Item 61 Phase I the rental of the filter units in the amount of \$1,226,740.01 was approved in Change order 7. Change Item 68 Phase II will complete Barnard's requirement to install the plant.

Analysis:

The Change Item price for Phase 2 is 9.7% less than the engineer's estimate of \$2,081,000. See attached review prepared by CH2MHILL.

Funding:

The Blue Lake Expansion currently has a \$2,000,000 placeholder for this work. The additional funding needed for construction and operations totals \$2,758,214. The costs and projected costs are listed below.

Costs to date

Groundwater investigation	\$275,893.64
Engineering and project management	\$98,755.53
Phase I filter unit rental Change Item 61	\$1,226,740.01
Phase II filter unit installation Change Item 68	\$2,068,055
Engineering Design and Const. Services (CH2MHILL)	\$319,000
River Intake Mods (CBS)	\$25,000
Electrical (CBS)	\$50,000

Misc. (CBS)	\$50,000
Control Panel design (CH2MHILL)	\$116,270
Startup & Testing (CH2MHILL/PALL)	\$66,000
Permitting	\$25,000
Operating Costs	
Power	\$165,000
Chemicals and consumables	\$55,000
Operations by contract personnel	\$150,000
Operation contingency	\$67,500
Total cost of Alternative Water Supply	\$4,758,214.18

Possible funding sources may include an ADEC loan or bonding. We are also asking for authorization to apply for an ADEC loan up to \$4.32 million to cover the eligible installation costs. The ADEC loan should be maximized given it is at a much lower interest rate versus bonding.

The Electric Department programmed \$2,000,000 prior to knowing any information on how or where we would supply the community with alternative water. It quickly became evident that the solution was going to exceed \$2,000,000 once CH2MHILL was hired to analyze possible solutions. By the end of 2012, CH2MHILL started identifying a cost of \$3.2 million for basic installation and noted that the cost estimating was relatively unpredictable given that we had to break new ground in developing a system to meet our specific needs and timeline. After performing water testing on the Indian River and addressing additional comments from ADEC, the final engineers estimate (including operations) was set at \$4,660,000 million with a note that this could see a 30% potential increase due to accuracy.

Given the unpredictability of the cost estimating, it was determined not to increase the budget until costs were received by the contractors performing the work and providing the filtration plants.

The Finance Department has planned for contingent funding for the project, if needed. If the overall cost of the project at its completion exceeds overall estimated costs, these contingent funding sources can be utilized.

Recommendation:

I recommend the Assembly authorize the Municipal Administrator to issue Change Item 68 to Barnard Construction in the amount of \$1,880,050.00 and approve additional funding for the Blue Lake Expansion Project in the amount of \$2,758,214.

Cc: Robin Koutchak, Municipal Attorney
Jay Sweeney, CFAO
Mike Middleton, Finance Director
Dean Orbison, Blue Lake Project Manager



Legislation Details

File #: 14-042 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 2/19/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Authorize issuance of a Notice of Award to ASRC McGraw Constructors LLC, clarify and confirm final price and enter into an Agreement for Contract No. 8 the Reservoir Debris Management for Blue Lake Expansion Project and obligate project funds - \$2,383,714

Sponsors:

Indexes:

Code sections:

Attachments: [Contract No. 8 Reservoir Debris](#)

Date	Ver.	Action By	Action	Result
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POSSIBLE MOTION

I MOVE TO approve issuing ASRC MCGraw Constructors LLC a Notice of Award, clarify and confirm a final price and enter into agreement for Contract No. 8 – the Reservoir Debris Management for the Blue Lake Expansion Project Capital Project No. 90594.0018 and obligate project funds in the amount of \$2,383,714.

Note: The maximum amount of this contract would be the base bid amount of \$2,258,714.



Memorandum

February 19, 2014

To: Mark Gorman, Municipal Administrator
 From: Christopher Brewton, Utility Director
 Subject: **Blue Lake Hydroelectric Expansion Project – Award of Contract No. 8 – Reservoir Debris Management**

Request:

I request Assembly approval authorizing the City Administrator to issue ASRC McGraw Constructors LLC. a Notice of Award, clarify and confirm a final price, and to enter into an agreement for Contract No. 8, Reservoir Debris Management for the Blue Lake Expansion Project. The maximum amount of this contract would be the amount of \$2,258,714. In addition, I request the Assembly approve an additional amount of \$125,000.00, as contingency funds in the case that hours exceed the number specified on the bid form bringing the total requested amount to \$2,383,714.00.

Background:

Managing the debris from the inundation of Blue Lake after the dam raise is required under our Federal Energy Regulatory Commission (FERC) License Article 413. The original budget of \$1,530,000 was estimated before the project began using the best information available at the time. Over time the scope of the project and estimate has changed. Based on these bids the cost was underestimated. The City and Borough of Sitka advertised Reservoir Debris Management for the Blue Lake Expansion Project, on December 18-30, 2013. Bids were received from two bidders. The bids were opened on January 28, 2014. The base bid results are as follows:

<u>Company</u>	<u>Total Bid</u>
S&S General Contractors	\$2,961,598.00
ASRC McGraw Constructors LLC.	\$2,258,714.00

Analysis:

The bids were evaluated using a predefined best value procedure by the Construction Managers and the Blue Lake Project Manager. Out of 10 points possible ASRC scored 9.39 points and S&S scored 8.29 points. The best value is therefore ASRC.

The Electric Department believes that this is a fair and equitable bid and respectfully requests that the Assembly provide authorization for the City Administrator to issue ASRC McGraw Constructors LLC. a Notice of Award, clarify and confirm the final contract price and enter into an agreement for Contract No. 8 Reservoir Debris Management for the Blue Lake Expansion

Project based on the Bidding Documents, the ASRC McGraw bid, our requests for clarification, and ASRC McGraw Constructors LLC. subsequent responses.

The anticipated contract amount will be \$2,258,714. The Electric Department requests that the City Administrator be given authorization to exercise a contingency of \$125,000 to address possible change orders to this contract. **This will bring the total request for authorization to \$2,383,714.**

Funding:

The Blue Lake Expansion has \$1,530,000 budgeted for Contract 8. This request for authorization to issue Notice of Award will exceed the budgeted amount by \$853,714.00. Additional funding is being requested at this time because there is adequate time to secure the funding prior to making payments on the contract. If we choose to spend down the remaining project contingency of \$2,730,868 instead of approving additional funding now we will jeopardize our ability process pay requests as the change items are identified that require immediate approval.

The Finance Department has planned for contingent funding for the project, if needed. If the overall cost of the project at its completion exceeds overall estimated costs, these contingent funding sources can be utilized.

Recommendation:

I recommend the Assembly authorize the Municipal Administrator to issue ASRC McGraw Constructors LLC. a Notice of Award, clarify and confirm a final price, and enter into an agreement for Contract No. 8 the Reservoir Debris Management for the Blue Lake Expansion Project Capital Project No. 90594.0018 and obligate project funds in the amount of \$2,383,714. The maximum amount of this contract would be the base bid amount of \$2,258,714.

Cc: Robin Koutchak, Municipal Attorney
Jay Sweeney, CFAO
Mike Middleton, Deputy Finance Director
Dean Orbison, Blue Lake Project Manager



Legislation Details

File #: 14-039 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 2/14/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Authorize advertising for a Request for Qualifications by the City and Borough of Sitka for a General Fund Comprehensive Management Plan

Sponsors:

Indexes:

Code sections:

Attachments: [RFQ GF Comprehensive Management Plan](#)

Date	Ver.	Action By	Action	Result
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POSSIBLE MOTION

I MOVE TO authorize advertising for a Request for Qualifications (RFQ) by the City and Borough of Sitka for a General Fund Comprehensive Management Plan

REQUEST FOR QUALIFICATIONS (RFQ)
by
THE CITY AND BOROUGH OF SITKA, ALASKA
for
GENERAL FUND COMPREHENSIVE MANAGEMENT PLAN

A. Overview

The City and Borough of Sitka (CBS) wishes to hire a qualified consultant to develop a General Government Comprehensive Management Plan (CMP). This CMP will be used as a guideline to help prioritize and budget the operations and capital expenditures in the general governmental operations for the Municipality. The CMP will include a comprehensive assessment of all functions of the general governmental operations including funding and support services for external funds. The CMP will also include budgetary cost estimates for capital improvements and recommend a sustainable financial plan to provide the necessary maintenance and capital funding. The CMP will be used as a basis for securing local, state, and federal funding. Furthermore, the CMP will explore the fiscal capability of our community's financial demographic as it relates to a sustainable level of fees and taxation.

B. Background

CBS operates under an assembly/manager form of government. A total annual general governmental budget of approximately \$25 million. The City provides general governmental functions including police, fire, EMT, public works, library, parks and recreation, and a variety of buildings (hospital, convention center, school district, etc.). In addition, the CBS operates eight utilities and services, including electric, water, wastewater, and solid waste utilities; an airport terminal; a cold storage facility; 5 municipal harbors; and, an industrial park. These utilities and services are operated separately from general governmental operations but share common management and administrative services with general government. Approximately 150 full-time equivalents are employed by the City and the General Fund supports funding to the School and Hospital bring the total employment above 500 total governmental employees. The CBS is maintaining a consistent population that has hovered around 9,000 over the last 30 plus years.

Like most local governments, CBS continues to experience demands for services despite significant financial constraints and a declining economy. Citizen demands for the expansion of services that already exist and requests for new services is a growing challenge for elected officials and CBS staff. There is additional financial pressure resulting from significant increases to address deferred maintenance and capital investment. Accordingly, there is an imperative to develop and implement a comprehensive plan that can provide CBS strategic direction.

The CBS wishes to conduct a high-level examination of infrastructure, policies, practices, and procedures. Specifically, the CBS is looking for a consultant team with the qualification to perform analysis on the following elements:

- Providing a high level report identifying the greatest needs and areas of greatest potential with emphasis on addressing sustainability, personnel, organizational structure, procurement, support services, privatization, and customer service.
- Determining departmental operation efficiencies, analysis of expenditures, and revenue generation.

- Evaluating of organizational structure to determine whether it is optimal towards fulfilling departmental and city goals, objectives, and priorities including determining whether the current resources are being used efficiently.
- Determining the most effective means for reducing the cost of operations while improving quality service.
- Establishing the basis for internal assessments, controls, monitoring, and reporting.
- Prioritizing future maintenance requirements for general governmental infrastructure (i.e., roads, parking lots, parks, and general government buildings) in order to determine what infrastructure can be maintained and whether any infrastructure should be abandoned due to funding constraints.
- Determining specific general governmental functions which are good candidates for privatization through contracting to the private sector.

The CBS does not have a General Fund CMP to address the current or future needs and sustainability. The CBS has completed master plans for the utility and enterprise funds such as Harbors, Water, Wastewater, Electric, Storm Water, and currently working on Solid Waste. The timing is ideal to incorporate the existing master plans into an overall CMP given that much of the staffing and support services are all tied together. The utility and enterprise funds simply cannot be sustainable without the General Fund's success, as general governmental operations provide management and administrative services to all of the utilities and ancillary services.

D. Requirements for Statement of Qualifications

RFQ submissions will need to demonstrate an understanding of the organizational structure, budget, and overall operations of the CBS as a whole, and, its general governmental operations. Submissions will need to demonstrate how their qualifications meet the objectives of analyzing and advising the CBS on a fiscally responsible and sustainable path. CBS will look for independent thinking and research and will not engage in dialogue with, or provide additional information to applicants. Applicant Qualification and performance history will be an important element of the evaluation.. Submissions must include:

1. A letter of interest signed by an authorized representative of the Firm.
2. Narrative Statement of Qualifications for the Firm. Provide address of Firm where the actual work will be performed.
3. List of municipal comprehensive plans previously completed with date completed.
4. A description of the Firm's successful experience with similar Master Plans. Include references that can be used by the Selection Committee. Highlight relevant experience with evaluation of municipal master planning.
5. An example Master Plan including scope, contract, and budget from another comparable project.
6. Organizational chart showing a designated project manager and staff.
7. Resume of proposed project staff to include: name, expertise, availability, education, experience, certifications, and registrations of each team member.
8. A proposed project schedule. Include a list of the Firm's major commitments to include current project schedules. List proposed project staff commitments on other projects in relation to their availability for this project.

Responses to this request for qualifications will be evaluated and ranked based on the following criteria (100 points total):

1. Firm's overall qualifications and experience (30 points)
2. Firm's past experience with municipal master planning (similar projects) (15 points)
3. Team key personnel experience: education, years of experience, certifications, registrations (25 points)
4. Demonstrate ability to present material well and work with various groups and stakeholders (25 points)
5. Firm's experience working in Alaska (5 points).

Selection will be made based on the overall qualifications of the candidates. The CBS reserves the right to perform interviews as necessary. A contract scope, schedule, and budget will be developed with the selected contractor.

E. Submissions and Inquiries

Sitka encourages disadvantaged, minority, and women-owned consultant firms to respond.

Submit four (4) copies of your Statement of Qualifications to:

The Municipal Clerk, City Hall, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 until Submittals received after the time fixed receipt will not be considered. Any questions regarding this project should be directed to Colleen Ingman, Municipal Clerk, at colleen@cityofsitka.com , (907) 747-1811.

The City and Borough of Sitka reserves the right to accept or reject any and all proposals that may result from a selected professional service consultant, waive irregularities or information in the submittals, and award the contract to the respondent that best meets the selection criteria. If deemed necessary, the selection process may expand to include interviews.

NOTICE GIVEN by the Municipal Administrator, City and Borough of Sitka, the 25th February 2014.

CITY AND BOROUGH OF SITKA

Mark Gorman
Municipal Administrator

Dates of Publication:

Sitka Sentinel:	February 16, 18, 20, 23, 2014
Juneau Empire:	February 16, 18, 20, 23, 2014
Anchorage Daily News:	February 16, 18, 20, 23, 2014
Seattle Daily Journal of Commerce:	February 16, 18, 20, 23, 2014



Legislation Details

File #: 14-043 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 2/19/2014 In control: City and Borough Assembly

On agenda: 2/25/2014 Final action:

Title: Discussion on Long Range Budgeting

Sponsors:

Indexes:

Code sections:

Attachments: [Cover sheet Long Range Budgeting](#)
[Long Range Budgeting](#)

Date	Ver.	Action By	Action	Result
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Discussion
Finance Director Jay Sweeney

Long Range Budgeting for City and Borough of Sitka

Ten Year Extended Financial Projection

MEMORANDUM

To: Mayor McConnell and Members of the Assembly
Mark Gorman, Municipal Administrator

From: Jay Sweeney Finance Director

Date: February 19, 2014

Subject: Long Range Budgeting

Issue:

Administration is seeking Assembly guidance as to whether or not to proceed with development of an ordinance to implement long range budgeting.

Background:

Over the past 6 months, the Municipal Administrator and myself have engaged in several discussions with Assembly member Reif in regards to the concept of long range budgeting.

In the discussions, we talked about the recent General Fund annual budget surpluses and how they were not really true surpluses, as they were only achieved by deferring critical infrastructure maintenance and repair. Such surpluses were reported in the media and led to public perception that the financial condition of the Municipality was better than it really was.

We also discussed how the Municipality did not have a long range plan for forecasting estimated future amounts of deferred infrastructure maintenance, future General Fund working capital, and future operating costs, as the annual budget, as specified by the Charter, is for one year only. We felt that this short range focus was short-sighted, as it did not provide for transparent identification of the true cost of prudently operating the Municipality.

As an example, deferred maintenance costs of maintaining municipal roads, parking lots, parks, and general governmental buildings such as City Hall are estimated to be in excess of five million dollars and are rising by millions of dollars each year. Thus, reporting a budget surplus of a million dollars is misleading, as it does not take into account these rising deferred maintenance costs.

As a result of the discussions, I agreed to prepare a proposed model of a 10 year long range budget which would reflect growing deferred maintenance costs, project operating costs, annual budget surpluses and/or deficits, and forecast what the General

fund Balance would be each year. The idea was to show that if the General Fund balance was rising each year due to moderate budget surpluses, but deferred maintenance costs were rapidly growing, then the ability to sustain the current level of municipal services was unsustainable. This, in turn, would spark further discussions between the Assembly and Administration as to how to respond.

After completion of the model, Assembly Members Hackett and Swanson also examined the model and/or discussed the philosophy with me and agreed that the concept should be brought forward to the full Assembly for discussion.

Discussion

Given the background above, Administration seeks Assembly discussion and, possibly, further direction on this issue.

I have advised that, as the current requirements for preparation of the annual Municipal budget or contained in the Charter, requirements for long range budgeting should also be codified in either the Sitka General Code or the Charter. Otherwise, long range budgeting could be discontinued in the future.

I envision that, if adopted, a long range budget be a companion document to both the annual budget and future strategic plans for general government. My vision is that, as the long range budget would be for ten years, it would encompass the period from one year beyond the budget year to 11 years beyond the budget year. For example, if we were preparing the FY16 budget, the long range budget would forecast FY17 – FY26. In future years, another year would be added to the end of the 10-year period and the starting year of the previous long range budget would become the base line annual budget for the next year. Using the example above, for FY17, the FY17 portion of the long range budget (prepared in conjunction with the FY16 budget) would become the base line FY17 budget, and FY27 would be added to the end of the long range budget, so that the long range budget was for the period FY18 – FY27. The process would then be repeated each year.

As preparation of a 10 year long range budget would be a large undertaking, especially in conjunction with the preparation of the FY15 annual budget, so staff recommends that the initial long range budget, if so directed by the Assembly, be produced in conjunction with the FY16 budget, a year hence.

Finally, I have included the conceptual model I prepared and discussed, on separate occasions, with Assembly Members Reif, Hackett and Swanson as an attachment.

Recommendation

The Assembly direct staff to either (1) prepare an ordinance to place a provision for long range budgeting in the Sitka General code, or (2) prepare a ballot proposition for an upcoming election to amend the Charter to add a provision for long range budgeting.

**CITY AND BOROUGH OF SITKA
10 YEAR EXTENDED FINANCIAL PROJECTION
SUMMARY PROJECTION**

FUND: 100 - GENERAL FUND

REVENUE PROJECTIONS:

REVENUE	GROWTH FACTOR	2014 PROJECTION	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Sales Tax	2.03%	9,168,000	9,353,640	9,543,084	9,736,411	9,933,702	10,135,044	10,340,520	10,550,216	10,764,221	10,982,626	11,205,524
Property Tax	0.93%	6,159,000	6,216,400	6,274,291	6,332,675	6,391,555	6,450,936	6,510,820	6,571,209	6,632,107	6,693,518	6,755,446
Total Revenue:		<u>15,327,000</u>	<u>15,570,040</u>	<u>15,817,375</u>	<u>16,069,086</u>	<u>16,325,257</u>	<u>16,585,980</u>	<u>16,851,340</u>	<u>17,121,425</u>	<u>17,396,328</u>	<u>17,676,144</u>	<u>17,960,970</u>

EXPENSE PROJECTIONS:	INFLATION RATE	2014 PROJECTION	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Personnel Expenses:	4.63%	1,238,520	1,292,550	1,349,677	1,410,114	1,474,091	1,541,855	1,613,670	1,689,823	1,770,621	1,856,395	1,947,503
Travel	3.51%	31,000	32,085	33,209	34,373	35,578	36,826	38,119	39,458	40,846	42,283	43,772
Insurance	3.00%	3,200	3,296	3,394	3,496	3,600	3,708	3,820	3,934	4,052	4,174	4,300
Vehicle Charges	4.00%	213,100	221,624	230,488	239,708	249,296	259,268	269,638	280,424	291,640	303,306	315,438
All Other Operating Expenses:	2.00%	114,480	116,770	119,106	121,488	123,918	126,396	128,924	131,502	134,132	136,814	139,550
	4.35%	<u>1,600,300</u>	<u>1,666,325</u>	<u>1,735,874</u>	<u>1,809,179</u>	<u>1,886,483</u>	<u>1,968,053</u>	<u>2,054,171</u>	<u>2,145,141</u>	<u>2,241,291</u>	<u>2,342,972</u>	<u>2,450,563</u>
SURPLUS/SHORTFALL:	1.23%	<u>13,726,700</u>	<u>13,903,715</u>	<u>14,081,501</u>	<u>14,259,907</u>	<u>14,438,774</u>	<u>14,617,927</u>	<u>14,797,169</u>	<u>14,976,284</u>	<u>15,155,037</u>	<u>15,333,172</u>	<u>15,510,407</u>

DEFERRED MAINJTENANCE

Roads	0.1	10,000,000	11,000,000	12,100,000	13,310,000	14,641,000	16,105,100	17,715,610	19,487,171	21,435,888	23,579,477	25,937,425
Sidewalks	0.02	1,000,000	1,020,000	1,122,000	1,234,200	1,357,620	1,493,382	1,642,720	1,806,992	1,987,691	2,186,460	2,405,106
Parking Lots	0.02	500,000	510,000	561,000	617,100	678,810	746,691	821,360	903,496	993,846	1,093,231	1,202,554
Parks	0.01	50,000	50,500	55,550	61,105	67,216	73,938	81,332	89,465	98,412	108,253	119,078
Buildings:	0.01	1,000,000	1,010,000	1,111,000	1,222,100	1,344,310	1,478,741	1,626,615	1,789,277	1,968,205	2,165,026	2,381,529
		<u>12,550,000</u>	<u>13,590,500</u>	<u>14,949,550</u>	<u>16,444,505</u>	<u>18,088,956</u>	<u>19,897,852</u>	<u>21,887,637</u>	<u>24,076,401</u>	<u>26,484,042</u>	<u>29,132,447</u>	<u>32,045,692</u>

DESIGNATED GENERAL FUND BALANCE 7,600,000

UNDESIGNATED GENERAL FUND BALANCE 3,000,000

**CITY AND BOROUGH OF SITKA
10 YEAR EXTENDED FINANCIAL PROJECTION**

FUND: 100 - GENERAL FUND
DIVISION: 300 - REVENUE
DEPARTMENT: 301 - PROPERTY TAX

REVENUE PROJECTION ASSUMPTIONS:

REVENUE GROWTH RATES:

A: 1.00%
 B: 2.00%

EXPENSE	GROWTH FACTOR	2014 PROJECTION	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Property Tax	1.00%	6,288,000	6,350,880	6,414,389	6,478,533	6,543,318	6,608,751	6,674,839	6,741,587	6,809,003	6,877,093	6,945,864
Auto Tax	1.00%	88,000	88,880	89,769	90,667	91,574	92,490	93,415	94,349	95,292	96,245	97,207
Boat Tax	1.00%	117,000	118,170	119,352	120,546	121,751	122,969	124,199	125,441	126,695	127,962	129,242
Senior Citizen Exemptions	2.00%	(419,000)	(427,380)	(435,928)	(444,647)	(453,540)	(462,611)	(471,863)	(481,300)	(490,926)	(500,745)	(510,760)
Other Property Tax	1.00%	85,000	85,850	86,709	87,576	88,452	89,337	90,230	91,132	92,043	92,963	93,893
Total Revenue:		<u>6,159,000</u>	<u>6,216,400</u>	<u>6,274,291</u>	<u>6,332,675</u>	<u>6,391,555</u>	<u>6,450,936</u>	<u>6,510,820</u>	<u>6,571,209</u>	<u>6,632,107</u>	<u>6,693,518</u>	<u>6,755,446</u>
Composite Revenue Growth Rate:												0.93%

**CITY AND BOROUGH OF SITKA
10 YEAR EXTENDED FINANCIAL PROJECTION**

**FUND: 100 - GENERAL FUND
DIVISION: 300 - REVENUE
DEPARTMENT: 302 - SALES TAX**

REVENUE PROJECTION ASSUMPTIONS:

REVENUE GROWTH RATES:

A: 2.00%
B: 4.00%

EXPENSE	GROWTH FACTOR	2014 PROJECTION	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1st Quarter Sales Tax	2.00%	1,599,000	1,630,980	1,663,600	1,696,872	1,730,809	1,765,425	1,800,734	1,836,749	1,873,484	1,910,954	1,949,173
2nd Quarter Sales Tax	2.00%	2,692,000	2,745,840	2,800,757	2,856,772	2,913,907	2,972,185	3,031,629	3,092,262	3,154,107	3,217,189	3,281,533
3rd Quarter Sales Tax	2.00%	3,029,000	3,089,580	3,151,372	3,214,399	3,278,687	3,344,261	3,411,146	3,479,369	3,548,956	3,619,935	3,692,334
4th Quarter Sales Tax	2.00%	1,648,000	1,680,960	1,714,579	1,748,871	1,783,848	1,819,525	1,855,916	1,893,034	1,930,895	1,969,513	2,008,903
Fish Box Tax	4.00%	114,000	118,560	123,302	128,234	133,363	138,698	144,246	150,016	156,017	162,258	168,748
Other Sales Tax Revenue	2.00%	86,000	87,720	89,474	91,263	93,088	94,950	96,849	98,786	100,762	102,777	104,833
Total Revenue:		<u>9,168,000</u>	<u>9,353,640</u>	<u>9,543,084</u>	<u>9,736,411</u>	<u>9,933,702</u>	<u>10,135,044</u>	<u>10,340,520</u>	<u>10,550,216</u>	<u>10,764,221</u>	<u>10,982,626</u>	<u>11,205,524</u>

Composite Revenue Growth Rate: 2.03%

**CITY AND BOROUGH OF SITKA
10 YEAR EXTENDED FINANCIAL PROJECTION**

**FUND: 100 - GENERAL FUND
DIVISION: 520 - PUBLIC SAFETY
DEPARTMENT: 022 - FIRE**

COST PROJECTION ASSUMPTIONS:

WAGE INFLATION: 2.50% *Note: No increase in 2015*
BENEFIT INFLATION: 7.00%
COST INFLATION:
 A: 2.00%
 B: 3.00%
 C: 4.00%

<u>EXPENSE</u>	<u>INFLATION FACTOR</u>	<u>2014 PROJECTION</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Wages:	2.50%	694,830	712,201	730,006	748,256	766,962	786,136	805,789	825,934	846,582	867,747	889,441
Benefits:	7.00%	<u>414,590</u>	<u>443,611</u>	<u>474,664</u>	<u>507,890</u>	<u>543,442</u>	<u>581,483</u>	<u>622,187</u>	<u>665,740</u>	<u>712,342</u>	<u>762,206</u>	<u>815,560</u>
Total Personnel Expenses:		1,109,420	1,155,812	1,204,670	1,256,146	1,310,404	1,367,619	1,427,976	1,491,674	1,558,924	1,629,953	1,705,001
Travel	4.00%	15,500	16,120	16,765	17,436	18,133	18,858	19,612	20,396	21,212	22,060	22,942
Insurance	3.00%	1,600	1,648	1,697	1,748	1,800	1,854	1,910	1,967	2,026	2,087	2,150
Vehicle Charges	4.00%	106,550	110,812	115,244	119,854	124,648	129,634	134,819	140,212	145,820	151,653	157,719
All Other Operating E	2.00%	<u>57,240</u>	<u>58,385</u>	<u>59,553</u>	<u>60,744</u>	<u>61,959</u>	<u>63,198</u>	<u>64,462</u>	<u>65,751</u>	<u>67,066</u>	<u>68,407</u>	<u>69,775</u>
Total Non Personnel Expenses:		<u>180,890</u>	<u>186,965</u>	<u>193,259</u>	<u>199,782</u>	<u>206,540</u>	<u>213,544</u>	<u>220,803</u>	<u>228,326</u>	<u>236,124</u>	<u>244,207</u>	<u>252,586</u>
Total Expenses:		<u>1,290,310</u>	<u>1,342,777</u>	<u>1,397,929</u>	<u>1,455,928</u>	<u>1,516,944</u>	<u>1,581,163</u>	<u>1,648,779</u>	<u>1,720,000</u>	<u>1,795,048</u>	<u>1,874,160</u>	<u>1,957,587</u>

**CITY AND BOROUGH OF SITKA
10 YEAR EXTENDED FINANCIAL PROJECTION**

FUND: 100 - GENERAL FUND
DIVISION: 620 - PUBLIC SAFETY
DEPARTMENT: 023 - AMBULANCE

COST PROJECTION ASSUMPTIONS:

WAGE INFLATION: 2.50% *Note: No increase in 2015*
BENEFIT INFLATION: 10.00%
COST INFLATION:
 A: 2.00%
 B: 3.00%
 C: 4.00%

<u>EXPENSE</u>	<u>INFLATION FACTOR</u>	<u>2014 PROJECTION</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Wages:	2.50%	70,300	72,058	73,859	75,705	77,598	79,538	81,526	83,564	85,653	87,794	89,989
Benefits:	10.00%	<u>58,800</u>	<u>64,680</u>	<u>71,148</u>	<u>78,263</u>	<u>86,089</u>	<u>94,698</u>	<u>104,168</u>	<u>114,585</u>	<u>126,044</u>	<u>138,648</u>	<u>152,513</u>
Total Personnel Expenses:		129,100	136,738	145,007	153,968	163,687	174,236	185,694	198,149	211,697	226,442	242,502
Travel	3.00%	15,500	15,965	16,444	16,937	17,445	17,968	18,507	19,062	19,634	20,223	20,830
Insurance	3.00%	1,600	1,648	1,697	1,748	1,800	1,854	1,910	1,967	2,026	2,087	2,150
Vehicle Charges	4.00%	106,550	110,812	115,244	119,854	124,648	129,634	134,819	140,212	145,820	151,653	157,719
All Other Operating Expenses:	2.00%	<u>57,240</u>	<u>58,385</u>	<u>59,553</u>	<u>60,744</u>	<u>61,959</u>	<u>63,198</u>	<u>64,462</u>	<u>65,751</u>	<u>67,066</u>	<u>68,407</u>	<u>69,775</u>
Total Non Personnel Expenses:		<u>180,890</u>	<u>186,810</u>	<u>192,938</u>	<u>199,283</u>	<u>205,852</u>	<u>212,654</u>	<u>219,698</u>	<u>226,992</u>	<u>234,546</u>	<u>242,370</u>	<u>250,474</u>
Total Expenses:		<u>309,990</u>	<u>323,548</u>	<u>337,945</u>	<u>353,251</u>	<u>369,539</u>	<u>386,890</u>	<u>405,392</u>	<u>425,141</u>	<u>446,243</u>	<u>468,812</u>	<u>492,976</u>