



# CITY AND BOROUGH OF SITKA

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

## Meeting Agenda

### City and Borough Assembly

*Mayor Matthew Hunter  
Deputy Mayor Steven Eisenbeisz,  
Vice Deputy Mayor Bob Potrzuski,  
Aaron Bean, Kevin Knox, Dr. Richard Wein,  
Benjamin Miyasato*

*Municipal Administrator: Keith Brady  
Municipal Attorney: Brian Hanson  
Municipal Clerk: Sara Peterson*

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Tuesday, August 14, 2018

6:00 PM

Assembly Chambers

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#### REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

[18-151](#) Reminders, Calendars and General Correspondence

Attachments: [Reminders and Calendars.pdf](#)  
[Jones Certificate.pdf](#)

V. CEREMONIAL MATTERS

*None anticipated.*

VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Sitka Community Hospital, Municipal Departments, School District, Students and Guests (five minute time limit)

[18-150](#) Special Reports: 1) Sitka Community Hospital - Rob Allen 2) Hospital RFP Consultants - Sarah Cave and Steve Huebner

Attachments: [Special Reports.pdf](#)

**VII. PERSONS TO BE HEARD**

*Public participation on any item off the agenda. All public testimony is not to exceed 3 minutes for any individual, unless the mayor imposes other time constraints at the beginning of the agenda item.*

**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**     [18-148](#)     Approve the minutes of the July 24 and July 31 Assembly meetings

**Attachments:** [Consent and Minutes.pdf](#)

**X. BOARD, COMMISSION, COMMITTEE APPOINTMENTS**

*None.*

**XI. UNFINISHED BUSINESS:**

- B**     [18-138](#)     Approve the Extension of and Amendment to Agreement between the City and Borough of Sitka and Seafood Producers Cooperative regarding the Sitka Marine Service Center

**Attachments:** [Motion and memo Marine Service Center.pdf](#)  
[Extension and Amendment MSC Lease 2018.pdf](#)  
[Certificate of Liability Insurance.pdf](#)  
[Minutes July 10 and July 24.pdf](#)  
[SMSC Lease.pdf](#)  
[SPC Extension and Lease Agreement reduced file size.pdf](#)

- C**     [ORD 18-34A](#)     Amending Title 4 "Revenue and Finance" of the Sitka General Code, by modifying Chapter 4.24 "Transient Lodging Tax", Section 4.24.020 "Imposition of Transient Lodging Tax"; and, submitting the question of such an amendment to the qualified voters at a regular election on October 2, 2018 (ballot proposition)

**Attachments:** [Motion and Ord 2018-34A.pdf](#)

- D      [ORD 18-36](#)      Adding a ballot question on the next municipal regular election to be held on October 2, 2018, on whether to exempt the municipality from the provisions of AS 18.35.301 - 18.35.350, an act prohibiting smoking in certain places (effective October 1, 2018), and, if exempted, Sitka General Code, Chapter 9.20 "Smoking in Public Places and Places of Employment", would continue to be the law for the municipality as to banning smoking in certain public places (ballot proposition)

**Attachments:** [Motion Ord 2018-36.pdf](#)

[BALLOT PROP Ord 2018-36 smoking exemption.pdf](#)

[Ord 2005-29.pdf](#)

[Senate Bill 63.pdf](#)

## XII.      NEW BUSINESS:

### **New Business First Reading**

- E      [ORD 18-37](#)      Making Supplemental Appropriations for Fiscal Year 2019 (reappropriation of Fiscal Year 2018 unexpended appropriations)
- F      [ORD 18-39](#)      Amending Title 15 "Public Utilities" of the Sitka General Code by repealing Chapter 15.01 "Electric Utility Policies" Section 15.01.020 "Electrical Rates" (Plug-In Electric Vehicle Incentive Credit)

**Attachments:** [Motion Memo Ord 2018-39.pdf](#)

- G      [ORD 18-40](#)      Authorizing a property tax exemption through December 31, 2020 for the Sitka Historical Society, Inc. in the lease premises at Harrigan Centennial Hall

**Attachments:** [Motion and Ord 2018-40.pdf](#)

[July 10 minutes.pdf](#)

[Revised Sitka Historical Society Lease.pdf](#)

- H      [ORD 18-41](#)      Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.020 "Collection of Tax" (products not authorized for sales tax exemptions on sales tax free days)

**Attachments:** [Motion and Ord 2018-41.pdf](#)

### **Additional New Business Items**

- I      [18-149](#)      Award a professional services contract to Arcticom LLC for the E911 system replacement with a not to exceed amount of \$285,000  
**Attachments:** [Motion Memo and Contract.pdf](#)  
[Minutes July 10 and July 24.pdf](#)  
[2018-30.pdf](#)
- J      [18-152](#)      Discussion / Direction on the administrative policy for the Stortz Gallery at City Hall  
**Attachments:** [Stortz Gallery.pdf](#)
- K      [18-153](#)      Discussion / Direction of a request from SEDA for an economic impact analysis of Sitka Community Hospital on the local economy and the effect if current operations were to cease or be sold  
**Attachments:** [SEDA request.pdf](#)

**XIII.      PERSONS TO BE HEARD:**

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

**XIV.      EXECUTIVE SESSION**

**XV.      ADJOURNMENT**

*Note: Detailed information on these agenda items can be found on the City website at <https://sitka.legistar.com/Calendar.aspx> or by contacting the Municipal Clerk's Office at City Hall, 100 Lincoln Street or 747-1811. A hard copy of the Assembly packet is available at the Sitka Public Library. Assembly meetings are aired live on KCAW FM 104.7 and via video streaming from the City's website. To receive Assembly agenda notifications, sign up with GovDelivery on the City website.*

*Sara Peterson, MMC, Municipal Clerk  
Publish: August 10*





# CITY AND BOROUGH OF SITKA

## Legislation Details

**File #:** 18-151      **Version:** 1      **Name:**  
**Type:** Item      **Status:** AGENDA READY  
**File created:** 8/8/2018      **In control:** City and Borough Assembly  
**On agenda:** 8/14/2018      **Final action:**  
**Title:** Reminders, Calendars and General Correspondence  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** [Reminders and Calendars.pdf](#)  
[Jones Certificate.pdf](#)

Date	Ver.	Action By	Action	Result
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# REMINDERS

<u>DATE</u>	<u>EVENT</u>	<u>TIME</u>
Monday, August 13	<b>Work Session</b> <i>Sitka Community Hospital RFP</i>	6:00 PM
Tuesday, August 14	<b>Regular Meeting</b>	6:00 PM
Monday, August 20	<b>Town Hall</b> <i>Sitka Community Hospital RFP</i>	6:00 PM
Tuesday, August 28	<b>Regular Meeting</b> <i>Sitka Community Hospital RFP</i>	6:00 PM
Thursday, August 30	<b>Special Meeting</b> <i>Regular Agenda Items</i>	6:00 PM



## *Municipal Election Reminders*

Monday, July 16	First day to file candidate petitions
Tuesday, July 24	Last scheduled meeting to <u>introduce</u> ordinance charter changes and ballot measures
Friday, August 3	5:00 p.m. deadline for filing candidate petitions
Tuesday, August 14	Last scheduled meeting to <u>adopt</u> ordinances for charter changes and ballot measures
Tuesday, October 2	Municipal Election

## *Expiring Terms:*

<u>Mayor</u> Matthew Hunter	<u>Assembly</u> Robert Potrzuski Benjamin Miyasato	<u>School Board</u> Cass Pook Eric VanCise
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# Assembly Calendar

2017   Jan   Feb   Mar   Apr   May   Jun   Jul   Aug   Sep   Oct   Nov   Dec   2019  
August 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
29   <u>Jul</u>	30	31	1   <u>Aug</u>	2	3	4
			6:00pm Library Commission	12:00pm SEDA Board Meeting	5:00pm deadline for filing candidate petitions	
5	6	7	8	9	10	11
			6:00pm Historic Preservation	12:00pm LEPC 2:00pm Health Needs & Human Services Commission		
12	13	14	15	16	17	18
	6:00pm Work Session: SCH RFP Oral Presentations	12:00pm Parks & Rec 6:00pm Regular Assembly Mtg				
19	20	21	22	23	24	25
	6:00pm Town Hall Meeting: SCH RFP Harrigan Centennial Hall (Doors open at 5pm)	Eisenbeisz 12:00pm Tree/Landscape	Eisenbeisz 6:00pm Police and Fire Commission	6:00pm Hospital Board Meeting Eisenbeisz 7:00pm Planning Commission	Eisenbeisz	Eisenbeisz
26	27	28	29	30	31	1   <u>Sep</u>
Eisenbeisz	Eisenbeisz	Eisenbeisz 6:00pm Regular Assembly Mtg	Eisenbeisz	Eisenbeisz 6:00pm Special Meeting	Eisenbeisz	

# Assembly Calendar

2017 Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec 2019

September 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26 Aug	27	28	29	30	31	1 Sep
Eisenbeisz	Eisenbeisz	Eisenbeisz 6:00pm Regular Assembly Mtg	Eisenbeisz	Eisenbeisz 6:00pm Special Meeting	Eisenbeisz	
2	3	4	5	6	7	8
	HOLIDAY		6:00pm Library Commission	12:00pm SEDA Board Meeting		
9	10	11	12	13	14	15
		12:00pm Parks & Rec 6:00pm Regular Assembly Mtg	Eisenbeisz 6:00pm Historic Preservation 6:15pm Port & Harbors Commission	Eisenbeisz 12:00pm LEPC 2:00pm Health Needs & Human Services Commission 7:00pm Planning Commission	Eisenbeisz	
16	17	18	19	20	21	22
		12:00pm Tree/Landscape 6:00pm Govt to Govt Dinner - location tba		6:00pm Special Meeting: Non Profit Grant Awards		
23	24	25	26	27	28	29
		6:00pm Regular Assembly Mtg	6:00pm Police and Fire Commission	6:00pm Hospital Board Meeting 7:00pm Planning Commission		
30	1 Oct	2	3	4	5	6
			6:00pm Library Commission	12:00pm SEDA Board Meeting		



# Service Award

*On behalf of the City and Borough of Sitka is hereby awarded to*

***Brendan Jones***

*this expression of grateful acknowledgment for your two and a half years of  
valued service rendered in the public interest while serving on the  
Port and Harbors Commission. Thank you!*

Signed and sealed this 14<sup>th</sup> day of August, 2018



*Matthew*

Mayor, Matthew Hunter

*Sara Peterson*

ATTEST: Municipal Clerk, Sara Peterson



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: 18-150 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 8/8/2018 In control: City and Borough Assembly

On agenda: 8/14/2018 Final action:

Title: Special Reports: 1) Sitka Community Hospital - Rob Allen 2) Hospital RFP Consultants - Sarah Cave and Steve Huebner

Sponsors:

Indexes:

Code sections:

Attachments: [Special Reports.pdf](#)

Date	Ver.	Action By	Action	Result
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## Special Reports

- Sitka Community Hospital, Rob Allen
- Hospital RFP Consultants, Sarah Cave and Steve Huebner



# CITY AND BOROUGH OF SITKA

## Legislation Details

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File #: 18-148      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 8/3/2018      In control: City and Borough Assembly

On agenda: 8/14/2018      Final action:

Title: Approve the minutes of the July 24 and July 31 Assembly meetings

Sponsors:

Indexes:

Code sections:

Attachments: [Consent and Minutes.pdf](#)

Date	Ver.	Action By	Action	Result
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# **CONSENT AGENDA**

## **POSSIBLE MOTION**

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**I MOVE TO APPROVE THE CONSENT AGENDA  
CONSISTING OF ITEM A**

**I wish to remove Item(s) \_\_\_\_\_**

**REMINDER – Read aloud a portion of each item being  
voted on that is included in the consent vote.**

Should this item be pulled from the Consent Agenda the following motion is suggested:

## **POSSIBLE MOTION**

**I MOVE TO** approve the minutes of the July 24 and July 31 Assembly meetings.



# CITY AND BOROUGH OF SITKA

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

## Minutes - Draft

### City and Borough Assembly

*Mayor Matthew Hunter  
Deputy Mayor Steven Eisenbeisz,  
Vice Deputy Mayor Bob Potrzuski,  
Aaron Bean, Kevin Knox, Dr. Richard Wein,  
Benjamin Miyasato*

*Municipal Administrator: Keith Brady  
Municipal Attorney: Brian Hanson  
Municipal Clerk: Sara Peterson*

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Tuesday, July 24, 2018

6:00 PM

Assembly Chambers

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#### REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

**Present:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

IV. CORRESPONDENCE/AGENDA CHANGES

**18-146** Reminders, Calenders and General Correspondence

None.

V. CEREMONIAL MATTERS

**18-140** Citation - Honoring U.S. Coast Guard Day

Mayor Hunter read and presented a Citation, honoring U.S. Coast Guard Day, to Commander Mike Frawley and Master Chief Josh Ewing.

VI. **SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Sitka Community Hospital, Municipal Departments, School District, Students and Guests (five minute time limit)**

Investment Committee Chair Mike Reif briefed the Assembly on the Committee's work,

reported investment managers, Alaska Permanent Capital Management, had recommended the addition of a new asset class, and noted a large takeout percentage was causing the Permanent Fund to grow slowly. The goal was ultimately to reduce the amount to 4%.

## VII. PERSONS TO BE HEARD

Michelle Putz noted Sitka had become less affordable and encouraged the Assembly to explore ways to make it more equitable.

## VIII. REPORTS

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

Administrator - Brady reminded the public that property tax bills were mailed July 16 and due no later than September 14, announced the Utility Cost Subsidization program would start August 1 and interested citizens could meet with the Finance Department to verify eligibility, and provided an update on bulk water infrastructure.

Attorney - Hanson reported Legal Assistant, Coral Crenna, was out of the office through August 12 and to contact him directly.

Liaisons - Wein summarized the recent meeting of the Health Needs and Human Services Commission and Miyasato reported on the Investment Committee meeting.

Clerk - Peterson spoke to the Board and Commission vacancies and told of the candidate filing deadline for the municipal election.

## IX. CONSENT AGENDA

- A     18-142            Approve the minutes of the July 10 Assembly meeting

This item was APPROVED by unanimous consent.

## X. BOARD, COMMISSION, COMMITTEE APPOINTMENTS

- B     18-143            Appoint Dr. Paul Bahna to an unexpired term on the Library Commission

Wein and Hunter thanked Dr. Bahna for applying.

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

Yes:   6 -   Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

Absent:   1 -   Eisenbeisz

## XI. UNFINISHED BUSINESS:

- C 18-138** Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson noted there were questions regarding insurance at the July 10 meeting. Upon further review, he stated it was unclear as to why the "x" mark appeared on the insurance provisions of the previous lease. He stated it was best practice to require the tenant to have property damage and general liability insurance. Hanson advised he had requested Seafood Producers Cooperative to provide a certificates of insurance - general liability and product. The Assembly wished to see proof of insurance prior to taking action.

**A motion was made by Wein that this Item be POSTPONED to the meeting of August 14. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

- D ORD 18-30** Making supplemental appropriations for Fiscal Year 2019 (E911 Software System Acquisition)

Wein expressed a desire to review the contract prior to approving an appropriation.

**A motion was made by Knox that this Ordinance be APPROVED on SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Potrzuski, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Eisenbeisz

- E ORD 18-33** Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.24 "Transient Lodging Tax" and Chapter 4.09 "Sales Tax", by exempting transient lodging rent from sales tax (companion ordinance to Ordinance 2018-34A)

Rachel Roy and Kevin Mosher spoke in opposition.

Wein believed passage of this ordinance would eventually allow for a potential increase in alcohol tax. Hunter reminded alcohol was the only commodity that could not be taxed higher than a sales tax. The ordinance at hand, would exempt eligible bed tax sales from sales tax. Hunter clarified this ordinance would only go into effect if Ordinance 2018-34A was approved by the Assembly and ultimately the voters.

**A motion was made by Potrzuski that this Ordinance be APPROVED ON SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 4 - Miyasato, Potrzuski, Hunter, and Knox

**No:** 2 - Bean, and Wein

**Absent:** 1 - Eisenbeisz

**XII. NEW BUSINESS:**

- F ORD 18-34A** Amending Title 4 "Revenue and Finance" of the Sitka General Code, by modifying Chapter 4.24 "Transient Lodging Tax", Section 4.24.020 "Imposition of Transient Lodging Tax"; and, submitting the question of such an amendment to the qualified voters at a regular election on October 2, 2018 (ballot proposition)

Knox wished to see the issue be brought forward to the voters. Miyasato spoke in opposition and believed the increase would have a negative impact on revenues.

**A motion was made by Knox that this Ordinance be APPROVED ON FIRST READING AS PREVIOUSLY AMENDED. The motion PASSED by the following vote. (Note: Section 3.02 of the Home Rule Charter states the only way an ordinance fails on first reading is if there are four votes in opposition.)**

**Yes:** 3 - Potrzuski, Hunter, and Knox

**No:** 3 - Miyasato, Bean, and Wein

**Absent:** 1 - Eisenbeisz

- G 18-145** Approve 1) the Extension of Agreement between the City and Borough of Sitka and the Nugget Restaurant regarding Airport Sublease and 2) the Consent To and Approval of Assignment of Sublease between the City and Borough of Sitka and the Nugget Restaurant to DPJT, Inc. (possible executive session)

**A motion was made to go into executive session with the Municipal Attorney to discuss legal matters affecting the municipality with respect to the Nugget Restaurant sublease at the Sitka Rocky Gutierrez Airport, the immediate knowledge of which would adversely affect the finances of the municipality. The motion PASSED by the following vote.**

**Yes:** 6 - Hunter, Bean, Wein, Miyasato, Knox, Potrzuski

**Absent:** 1 - Eisenbeisz

The Assembly was in executive session from 6:55pm to 7:15pm.

**A motion was made by Potrzuski to reconvene as the Assembly in regular session. The motion PASSED by a unanimous voice vote.**

The Assembly requested an update on the sublease from the Municipal Attorney at the September 25 Assembly meeting.

**A motion was made by Bean to APPROVE the Extension of Agreement between the City and Borough of Sitka and the Nugget Restaurant regarding Airport Sublease and APPROVE the Consent To and Approval of Assignment of Sublease between the City and Borough of Sitka and the Nugget Restaurant to DPJT, Inc. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

- H RES 18-15** Approving submittal and execution of Municipal Harbor Facility Grant applications to the State of Alaska, Department of Transportation and Public Facilities (DOT&PF) in the amounts of \$1,500,000 for the project entitled Eliason Harbor Electrical Replacement, and \$203,000 for the project entitled Thomsen Harbor Corrosion Protection

Hunter reminded these grants may or may not be funded by the state. In addition, he noted the \$1.5 million for the Eliason Harbor electrical replacement had been in the Harbor Master Plan for a number of years. Bean spoke in opposition, stating the projects could lead to future rate increases which he was not in favor of.

**A motion was made by Knox that this Resolution be APPROVED ON FIRST AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Potrzuski, Hunter, Knox, and Wein

**No:** 1 - Bean

**Absent:** 1 - Eisenbeisz

- I RES 18-16** Approving submittal and execution of an application to the Alaska Municipal Bond Bank to issue an amount of Harbor Revenue Bonds in the amount of \$8,025,000 through the Bond Bank to finance the City and Borough of Sitka's portion of Phase 1 of the reconstruction of Crescent Harbor

Harbor staff spoke to the failing infrastructure in Crescent Harbor and stressed the need for replacement. Potrzuski thanked staff and noted the importance of the project. Knox feared delaying the project and the potential problems associated with delay. Wein agreed the harbor needed to be replaced; the issue was how to best finance it. He suggested the City explore self investment. Bean spoke in opposition to spending money on the project and in turn increasing rates. Jay Sweeney, Chief Finance and Administrative Officer, stated the City could request a grant extension from the State if desired, however, reminded procuring a grant was difficult and the opportunity may not present itself again.

**A motion was made by Potrzuski that this Resolution be APPROVED ON FIRST AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 4 - Miyasato, Potrzuski, Hunter, and Knox

**No:** 2 - Bean, and Wein

**Absent:** 1 - Eisenbeisz

- J RES 18-17** Approving submittal and execution of an application to the Alaska Municipal Bond Bank to issue an amount of Airport Terminal Revenue Bonds up to \$4,025,000 through the Bond Bank to finance the City and

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**Borough of Sitka's portion of the renovation of the Rocky Gutierrez Airport Terminal**

Public Works Director, Michael Harmon, commented the project provided an opportunity to replace aging infrastructure and create efficiencies. Wein believed the airlines should contribute to the cost of the project. He encouraged the City to explore self investment.

**A motion was made by Knox that this Resolution be APPROVED ON FIRST AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 4 - Miyasato, Potrzuski, Hunter, and Knox

**No:** 2 - Bean, and Wein

**Absent:** 1 - Eisenbeisz

**XIII. PERSONS TO BE HEARD:**

Kevin Mosher expressed concern over Sitka's debt load.

**XIV. EXECUTIVE SESSION**

**K 18-144 Financial Matter: Baranof Island Brewing Company - Forbearance Agreement**

**A motion was made by Miyasato to go into executive session with Chief Finance and Administrative Officer Jay Sweeney and Controller Melissa Haley to discuss subjects that tend to prejudice the reputation and character of any person and to discuss matters, the immediate knowledge of which, would adversely affect the finances of the City and Borough of Sitka and invite in if desired, and when ready, Suzan Hess and/or Rick Armstrong of Baranof Island Brewing Company and/or their Attorney, Brita Speck. The motion PASSED by the following vote.**

**Yes:** 6 - Potrzuski, Miyasato, Knox, Bean, Hunter, Wein

**Absent:** 1 - Eisenbeisz

The Assembly was in executive session from 8:35pm to 9:15pm.

**A motion was made by Potrzuski to reconvene as the Assembly in regular session. The motion PASSED by a unanimous voice vote.**

**A motion was made by Wein to extend the forbearance agreement between the City and Borough of Sitka and BISCO to December 31 with reporting requirements promulgated by the Finance Director. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

**XV. ADJOURNMENT**



A motion was made by Miyasato to ADJOURN. Hearing no objections, the meeting ADJOURNED at 9:18pm.

ATTEST:

\_\_\_\_\_  
Sara Peterson, MMC  
Municipal Clerk



# CITY AND BOROUGH OF SITKA

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

## Minutes - Draft

### City and Borough Assembly

*Mayor Matthew Hunter  
Deputy Mayor Steven Eisenbeisz,  
Vice Deputy Mayor Bob Potrzuski,  
Aaron Bean, Kevin Knox, Dr. Richard Wein,  
Benjamin Miyasato*

*Municipal Administrator: Keith Brady  
Municipal Attorney: Brian Hanson  
Municipal Clerk: Sara Peterson*

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Tuesday, July 31, 2018

6:00 PM

Assembly Chambers

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#### SPECIAL MEETING

#### I. CALL TO ORDER

#### II. FLAG SALUTE

#### III. ROLL CALL

**Present:** 5 - Miyasato, Potrzuski, Knox, Bean, and Wein

**Absent:** 2 - Eisenbeisz, and Hunter

#### IV. CORRESPONDENCE/AGENDA CHANGES

None.

#### V. PERSONS TO BE HEARD

Ben Miyasato reminded drivers to watch for pedestrians at the roundabout.

#### VI. NEW BUSINESS:

##### A ORD 18-36

Adding a ballot question on the next municipal regular election to be held on October 2, 2018, on whether to exempt the municipality from the provisions of AS 18.35.301 - 18.35.350, an act prohibiting smoking in certain places (effective October 1, 2018), and, if exempted, Sitka General Code, Chapter 9.20 "Smoking in Public Places and Places of Employment", would continue to be the law for the municipality as to banning smoking in certain public places

Testifying in opposition to the ordinance was Amelia Mosher, Charles Bingham, Amanda Roberts, and Doug Osborne.

In support of the ordinance was Karen Lucas, Kevin Mosher, Margaret Carlson, and Stan Filler.

Wein, while not in support of smoking, believed the question should be placed before the voters to decide. Bean agreed. Knox spoke in opposition, stating the tobacco industry purposefully manipulated individuals into smoking. He stated as a public health measure it was paramount to reduce every available avenue.

**A motion was made by Wein that this Ordinance be APPROVED ON FIRST READING. The motion PASSED by the following vote. (Note: Section 3.02 of the Home Rule Charter states the only way an ordinance fails on first reading is if there are four votes in opposition.)**

**Yes:** 2 - Bean, and Wein

**No:** 3 - Miyasato, Potrzuski, and Knox

**Absent:** 2 - Eisenbeisz, and Hunter

## **VII. PERSONS TO BE HEARD:**

Additional comments regarding Ordinance 2018-36: Stan Filler spoke in support of maintaining the status quo, Margaret Carlson reiterated the need for a public vote, Doug Osborne agreed businesses should have rights, however, if employees and patrons health was at risk it was the governments place to step in, and Charles Bingham stated action should be taken to reduce smoking related illnesses.

## **VIII. EXECUTIVE SESSION**

None.

## **IX. ADJOURNMENT**

**A motion was made by Miyasato to ADJOURN. Hearing no objections the meeting ADJOURNED at 7:02pm.**

**ATTEST:** \_\_\_\_\_

**Sara Peterson, MMC  
Municipal Clerk**



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: 18-138 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 7/3/2018 In control: City and Borough Assembly

On agenda: 8/14/2018 Final action:

Title: Approve the Extension of and Amendment to Agreement between the City and Borough of Sitka and Seafood Producers Cooperative regarding the Sitka Marine Service Center

Sponsors:

Indexes:

Code sections:

Attachments: [Motion and memo Marine Service Center.pdf](#)  
[Extension and Amendment MSC Lease 2018.pdf](#)  
[Certificate of Liability Insurance.pdf](#)  
[Minutes July 10 and July 24.pdf](#)  
[SMSC Lease.pdf](#)  
[SPC Extension and Lease Agreement reduced file size.pdf](#)

Date	Ver.	Action By	Action	Result
7/24/2018	1	City and Borough Assembly		
7/10/2018	1	City and Borough Assembly	POSTPONED	Pass

## **POSSIBLE MOTION**

**I MOVE TO** approve the extension of and amendment to agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center and authorize the Municipal Administrator to execute this document.

Notes:

- This item was postponed at the July 10 and July 24 meetings.
- At the July 24 Assembly meeting, the Municipal Attorney was asked to contact Seafood Producers Cooperative for further insurance coverage information. He has done so and provided an amendment for your consideration.
- The Certificate of Liability Insurance is included in your packet.



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## MEMORANDUM

**To:** Mayor Hunter and Assembly Members

**From:** Keith Brady, Municipal Administrator

**Date:** 7-3-18

**Subject:** Approval of the renewal of the lease agreement with Seafood Producers Cooperative

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### Summary

The Marine Service Center (MSC) has been leased to Seafood Producers Cooperative and North Pacific Seafoods for the last 10 years. Both parties have split the MSC building for their operations. The 5 year lease started in 2008, with an option to extend twice for additional five-year terms. North Pacific Seafoods has notified us within the contracted time frame that they will not extend their lease.

We have had conversations with Seafood Producers Cooperative on possible changes to their contract, however due to timing of the lease expiration and the need to extend we thought it prudent to renew the contract with them without changes. Any changes to the contract will come before the assembly for approval.

### Fiscal Note

This lease generates revenue for CBS. The current rate, adjusted for CPI, is at \$10,157.86/month (\$121,894.32 annually). Sales tax is to be paid in addition to stated rent.

### Recommendation

Approve a five-year lease extension with Seafood Producers Cooperative.

**EXTENSION OF AND AMENDMENT TO AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA AND  
SEAFOOD PRODUCERS COOPERATIVE  
REGARDING SITKA MARINE SERVICE CENTER**

The City and Borough of Sitka (“CBS”), of 100 Lincoln Street, Sitka, Alaska 99835, and Seafood Producers Cooperative (“SPC”), of 2875 Roeder Avenue, Bellingham, Washington 98225 (“SPC”), agree to extend and amend the Lease Agreement between the City and Borough of Sitka and Seafood Producers Cooperative (the “Agreement”), dated October 28, 2008. The Parties agree to extend the Agreement for the second of two five-year extension periods allowed by Section 1.2 of the Agreement. The extended term will expire on June 30, 2023.

Section 7.1, entitled “Insurance,” shall be replaced with language as follows: SPC shall carry and maintain, during the entire term of this agreement, at SPC’s sole cost and expense, a commercial general liability insurance policy with limits of not less than \$1,000,000 per occurrence, insuring against any and all liability of SPC with respect to the Premises or arising out of the use or occupancy thereof. SPC shall furnish CBS with a certificate of insurance, showing that CBS has been named as an additional insured on said policy. SPC shall also carry first party property insurance covering all personal property on the premises including inventory, equipment and improvements. This shall be an all-risk type of property insurance. CBS shall maintain first party property insurance covering the Premises.

All other terms and conditions of the Agreement remain in full force and effect during the extended term of the Agreement.

This Extension/Amendment was approved by the CBS Assembly on \_\_\_\_\_.

**SEAFOOD PRODUCERS COOPERATIVE**

**CITY AND BOROUGH OF SITKA, ALASKA**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: P. Keith Brady  
Its: Municipal Administrator

**[ACKNOWLEDGMENTS ON NEXT PAGE]**

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by P. Keith Brady, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, its \_\_\_\_\_ for the SEAFOODS PRODUCERS COOPERATIVE, an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_





SEAFPRO-01

LMIGUEL

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/25/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Servco Pacific Insurance 800 Fifth Ave., Suite 2400 Seattle, WA 98104	<b>CONTACT</b> Lisa Kirstein <b>NAME:</b>		
	<b>PHONE</b> (A/C, No, Ext): (206) 216-4857	<b>FAX</b> (A/C, No): (206) 260-2903	
	<b>E-MAIL ADDRESS:</b> lisak@servcopacific.com		
<b>INSURED</b>  Seafood Producers Cooperative 2875 Roeder Avenue, Suite 2 Bellingham, WA 98225	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Alaska National Insurance Company		38733
	<b>INSURER B:</b> Navigators Insurance Company		42307
	<b>INSURER C:</b> Lloyd's of London		15792
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
		<b>INSURER F:</b>	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			18G LS 32243	07/01/2018	07/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			18G AS 32243	07/01/2018	07/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 25,000			SE18LIA00901902	07/01/2018	07/01/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	18G WS 32243	07/01/2018	07/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Stock Throughput			B1353DC1804885000	07/01/2018	07/01/2019	Limit 15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
2nd Layer Excess Policy # SE18LIA00901903 - Eff 07/01/2018-07/01/2019 - Each Occurrence: \$5,000,000; Aggregate: \$5,000,000

The City and Borough of Sitka and Sitka Marine Service Center are named additional insured as per written contract. Waiver of Subrogation is included in favor of certificate holder.

## CERTIFICATE HOLDER

## CANCELLATION

The City and Borough of Sitka Sitka Marine Service Center 100 Lincoln Street Sitka, AK 99835	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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**BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

Various provisions in this endorsement restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS** in the Business Auto Coverage Form.

The coverages provided by this endorsement apply per "accident" and, unless otherwise specified, are subject to all of the terms, conditions, exclusions and deductible provisions of the policy, to which it is attached.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.1. Who Is An Insured is amended to include:

- d. Any "employee" of yours while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- e. Any person or organization for whom you have agreed in writing to provide insurance such as is afforded by this Coverage Form, but only with respect to liability arising out of the ownership, maintenance or use of "autos" covered by this policy. If such person or organization has other insurance then this insurance is primary to and we will not seek contribution from the other insurance.

**SECTION IV – Business Auto Conditions, Paragraph A. 5. – Transfer of Rights of Recovery Against Others To Us** is amended to include:

**5. Transfer of Rights of Recovery Against Others to Us**

This condition does not apply to any person(s) or organization(s) to the extent that subrogation against that person or organization is waived prior to the "accident" or the "loss" under a contract with that person or organization.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.2.a. (2) – **Supplementary Payments** is replaced by the following:

- (2) Up to \$10,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

**SECTION II – COVERED AUTO LIABILITY COVERAGE**, Paragraph A.2.a. (4) – **Supplementary Payments** is replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**SECTION II – COVERED AUTO LIABILITY COVERAGE, Paragraph A.2.c. – Voluntary Property Damage** is added as follows:

**c. Voluntary Property Damage**

At your written request, we may make a voluntary payment for Property Damage caused by an "insured", but without liability to a third party, up to \$25,000. We will not make a Voluntary Property Damage payment to anyone who is an "insured" under this policy.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.2. – Towing** is replaced by the following:

**Towing**

We will pay up to \$500 for towing and labor costs incurred each time a covered "auto" that is a:

- a. Private passenger;
- b. Truck;
- c. Pick-up truck;
- d. Panel ; or
- e. Van

type vehicle under 20,000 lbs. of Gross Vehicle Weight is disabled. However, the labor must be performed at place of disablement.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.3. – Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles** is replaced by the following:

**Glass Breakage – Hitting a Bird or Animal – Falling Objects or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay the following under Comprehensive Coverage:

- a. Glass Breakage;
- b. "Loss" caused by hitting a bird or animal; and

- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**Glass Repair – Waiver of Deductible**

No deductible applies to glass breakage, if the glass is repaired rather than replaced.

**SECTION III – PHYSICAL DAMAGE COVERAGE, Paragraph A.4.a. – Transportation Expenses** is replaced by the following:

**a. Transportation Expenses**

We will pay up to \$200 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" that is a:

- (1) Private passenger;
- (2) Truck;
- (3) Pick-up truck;
- (4) Panel; or
- (5) Van

type vehicle under 20,000 lbs. of Gross Vehicle Weight. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
Paragraph A.4.b. – **Loss of Use Expenses** is  
replaced by the following:

**b. Loss of Use Expenses – Hired, Rented,  
or Borrowed Automobiles**

We will pay expenses for which an  
“insured” becomes legally responsible to  
pay for loss of use of a vehicle hired,  
rented or borrowed without a driver under  
a written rental contract or agreement.  
We will pay for loss of use expenses, if  
caused by:

- (1) Other than Collision, only if the  
Declarations indicate that  
Comprehensive Coverage is provided  
for the vehicle withdrawn from  
service.
- (2) Specified Causes of Loss only if the  
Declarations indicate that Specified  
Causes of Loss Coverage is provided  
for the vehicle withdrawn from  
service.
- (3) Collision only if the Declarations  
indicate that Collision Coverage is  
provided for the vehicle withdrawn  
from service.

However, the most we will pay for any  
expenses for loss of use is \$200 per day, to a  
maximum of \$1,500.

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
Paragraph A.4.c. – **Non-Transportation Loss of Use  
Expenses** is added as follows:

**c. Non-Transportation Loss of Use  
Expenses**

We will pay up to \$2,000 for non-  
transportation expense incurred by you,  
because of “loss” to a covered “auto”, if  
caused by:

- (1) Other than Collision, only if the  
Declarations indicate that  
Comprehensive Coverage is provided  
for the “auto” withdrawn from service;

- (2) Specified Causes of Loss only if the  
Declarations indicate that Specified  
Causes of Loss Coverage is provided  
for the “auto” withdrawn from service;  
or
- (3) Collision only if the Declarations  
indicate that Collision Coverage is  
provided for the “auto” withdrawn  
from service.

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
Paragraph A.4.d. – **Airbag Coverage** is added as  
follows:

**d. Airbag Coverage**

We will pay for the cost to repair, replace,  
or reset an airbag that inflates for any  
reason other than as a result of a  
collision, if the Declarations indicate that  
the covered “auto” has Comprehensive  
Coverage or Specified Causes of Loss  
Coverage.

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
Paragraph A.4.e. – **Rental Reimbursement  
Coverage** is added as follows:

**e. Rental Reimbursement Coverage**

We will pay up to \$75 per day for rental  
reimbursement expenses incurred by you  
for the rental of an “auto” because of  
“loss” to a covered “auto” that is a:

- (1) Private Passenger;
- (2) Truck;
- (3) Pick-up truck;
- (4) Panel; or
- (5) Van

type vehicle under 20,000 lbs. of Gross  
Vehicle Weight. Payment applies in  
addition to the otherwise applicable  
amount of each coverage you have on a  
covered “auto”. No deductibles apply to  
this coverage.

- (1) We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

(a) The number of days reasonably required to repair or replace the covered "auto".

(b) 30 days.

- (2) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

- (3) The Rental Reimbursement Coverage described above does not apply to a covered "auto" that is described or designated as a covered "auto" on Rental Reimbursement Coverage Form CA 99 23.

**SECTION IV – BUSINESS AUTO CONDITIONS – Paragraph B.2. – Concealment, Misrepresentation Or Fraud is amended by adding **Unintentional Failure to Disclose Hazards** at the end of Paragraph B.2. as follows:**

**Unintentional Failure to Disclose Hazards**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**SECTION IV – BUSINESS AUTO CONDITIONS – Paragraph B.5.b. – Other Insurance** is replaced by the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent, or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**SECTION V – DEFINITIONS – Paragraph C. – "Bodily injury"** is replaced by the following:

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these. Mental anguish means any type of mental or emotional illness or disease

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No.

Countersigned By \_\_\_\_\_



---

**COMMERCIAL GENERAL LIABILITY COVERAGE ENHANCEMENT ENDORSEMENT**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Various provisions in this endorsement restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS** in the Commercial General Liability Coverage Form.

The coverages provided by this endorsement apply per "occurrence" and, unless otherwise specified, are subject to all of the terms, conditions, exclusions and deductible provisions of the policy, to which it is attached.

**NON-OWNED WATERCRAFT AMENDMENT**

- A. If endorsement **CG 21 09, CG 21 10, CG 24 50, or CG 24 51** is attached to the policy, Paragraph **A. 2. g. (2) (b)** is replaced by the following:

(b) A watercraft that you do not own that is:

(i) Less than 50 feet long; and

(ii) Not being used to carry persons or property for a charge.

- B. If Paragraph A. does not apply, Paragraph g. (2) of **2. EXCLUSION** under **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

(2) A watercraft that you do not own that is:

(a) Less than 50 feet long; and

(b) Not being used to carry persons or property for a charge.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B, Paragraph 1.b. is replaced by the following:**

- b. Up to \$10,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B, Paragraph 1.d. is replaced by the following:**

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit, including actual loss of earnings up to \$500 a day because of time off from work.

**SECTION II – WHO IS AN INSURED, paragraph 2.e. is added as follows:**

- e. Any person(s) or organization(s) (referred to throughout this coverage form as vendor) for whom you have agreed in writing to provide insurance such as is afforded by this coverage form but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

- (1) The insurance afforded to such vendor only applies to the extent permitted by law; and

- (2) If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

The insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1) The exceptions contained in Sub-paragraphs d. or f.; or
- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**SECTION II – WHO IS AN INSURED**, paragraph 2.f. is added as follows:

- f. Any person(s) or organization(s) for whom you have agreed in writing to provide insurance as is afforded by this coverage form but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you by such person(s) or organization(s).

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person(s) or organization(s).

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) The coverage to the additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**SECTION III – LIMITS OF INSURANCE, Paragraph 6.** Is replaced by the following:

6. Subject to Paragraph 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

If a limit is shown for Damage to Premises Rented to You the most we will pay under Coverage A for damages because of "property damage" to any one premises is the Limit shown in the Declarations or \$500,000, whichever is greater.

**SECTION III – LIMITS OF INSURANCE, Paragraph 7.** Is replaced by the following:

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

If a limit is shown for Medical Expense in the Declarations the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person is the Limit shown in the Declarations or \$15,000, whichever is greater.

**SECTION III – LIMITS OF INSURANCE, the following is added:**

With respect to the insurance afforded to the insureds described in Paragraphs 2.e. and 2.f. of **Section II – Who Is An Insured**, if coverage provided to such insured is required by a contract or agreement, the most we will pay on behalf of such insured is the amount of insurance:

- (1) Required by the contract or agreement; or
- (2) Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This provision shall not increase the applicable Limits of Insurance shown in the Declaration.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – Paragraph 4. – Other Insurance** is amended to add:

**d. Primary and Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

This Paragraph d. supersedes any provision to the contrary in Paragraphs a. through c. above.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – Paragraph 6. – Representations** is replaced by the following:

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information you provided to us which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable laws and regulations.



**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** – is amended to add Paragraph 10.

**10. Blanket Waiver of Transfer of Rights of Recovery Against Others**

We waive any right of recovery we may have against any person or organization as required in a written contract because of payments we make for injury or damage arising out of "your work" done under a written contract.

The waiver applies only to the person or organization required by written contract and then only if the contract requires you to obtain this agreement from us.

**SECTION V – DEFINITIONS – Paragraph 3. – "Bodily Injury"** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these. Mental anguish means any type of mental or emotional illness or disease

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No.

Countersigned By \_\_\_\_\_

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**BLANKET ADDITIONAL INSURED ENDORSEMENT**

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Who Is An Insured (Section II) is amended to include as an insured any person or organization (herein referred to as an additional insured), but only if you are required to add that person or organization as an insured to this policy by a written contract that is in effect prior to the "bodily injury", "property damage", or "personal and advertising injury".

The insurance provided to the additional insured is limited as follows:

1. That person or organization is only an additional insured for its vicarious liability for your acts or omissions in the performance of "your work".
2. The insurance provided to the additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
  - a. the preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, design or specifications; and
  - b. supervisory, inspection, or engineering services.

This endorsement changes the policy to which it is attached and, unless otherwise stated, is effective on the date issued at 12:01 A.M. standard time at your mailing address shown in the policy. **The information below is required only when this endorsement is issued subsequent to commencement of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No.

Countersigned By \_\_\_\_\_

was also in favor of a financial review. Miyasato was in support.

**A motion was made by Knox to direct staff to execute within the terms of the lease with the Sitka Historical Society, Inc., a waiver of utilities and property taxes for a period of 24 months at which time it would be revisited.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**I**      18-138

Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson felt that lease extensions needed to come forward to the Assembly. Eisenbeisz expressed lease extensions should be processed by staff. Wein had concerns of liability for the city with possible lack of general liability insurance. Chief Finance and Administrative Officer Jay Sweeney explained there was approximately a \$2 million balance in the Marine Service Center Fund and noted that the bulk head was owned by the Harbor Fund. Brady stated the lease had expired June 30th, that this was signed by Administration, however needed the assembly to ratify it. Staff had been working internally to changes in the contract. Hanson recommend postponement in order to look at the risk of insurance.

**A motion was made by Miyasato to POSTPONE this item to the July 24, 2018 Assembly meeting. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**J**      ORD 18-30

Making supplemental appropriations for Fiscal Year 2019 (*E911 Software System Acquisition*)

IT Director Ron Duvall stated this ordinance was moving dedicated E911 funds to MIS funds for the project. He told approval of the contract, not to exceed \$285,000, would be at the next regular meeting. He communicated the reasoning of this ordinance coming prior to the contract was because it took two readings and the second reading of this ordinance and the contract approval would be placed on the agenda for the next meeting together. Duvall noted funds were available, yet no money would be issued until the contract was approved. Bean inquired if the police department would move to a different location that the system could be moved. Duvall confirmed and noted that this system was for both the police department and fire department. Mayor Hunter voiced this was the process that had been done previously, and it was a matter of style yet the effect was the same.

**A motion was made by Miyasato that this ordinance be PASSED ON FIRST READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Eisenbeisz, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Potrzuski

**K**      ORD 18-31

Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.100 "Exemptions" by including an exemption for sales tax on groceries and residential utilities and



**C 18-138**

Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson noted there were questions regarding insurance at the July 10 meeting. Upon further review, he stated it was unclear as to why the "x" mark appeared on the insurance provisions of the previous lease. He stated it was best practice to require the tenant to have property damage and general liability insurance. Hanson advised he had requested Seafood Producers Cooperative to provide a certificates of insurance - general liability and product. The Assembly wished to see proof of insurance prior to taking action.

**A motion was made by Wein that this Item be POSTPONED to the meeting of August 14. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

**D ORD 18-30**

Making supplemental appropriations for Fiscal Year 2019 (E911 Software System Acquisition)

Wein expressed a desire to review the contract prior to approving an appropriation.

**A motion was made by Knox that this Ordinance be APPROVED on SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Potrzuski, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Eisenbeisz

**E ORD 18-33**

Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.24 "Transient Lodging Tax" and Chapter 4.09 "Sales Tax", by exempting transient lodging rent from sales tax (companion ordinance to Ordinance 2018-34A)

Rachel Roy and Kevin Mosher spoke in opposition.

Wein believed passage of this ordinance would eventually allow for a potential increase in alcohol tax. Hunter reminded alcohol was the only commodity that could not be taxed higher than a sales tax. The ordinance at hand, would exempt eligible bed tax sales from sales tax. Hunter clarified this ordinance would only go into effect if Ordinance 2018-34A was approved by the Assembly and ultimately the voters.

**A motion was made by Potrzuski that this Ordinance be APPROVED ON SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 4 - Miyasato, Potrzuski, Hunter, and Knox

**No:** 2 - Bean, and Wein

**Absent:** 1 - Eisenbeisz



# SEAFOOD PRODUCERS COOPERATIVE

PRODUCERS, PROCESSORS & MARKETERS OF PREMIUM QUALITY SEAFOODS

To: Mr. Michael Harmon, Public Works Director  
City and Borough of Sitka

Date: December 20, 2017

From: Craig Shoemaker, SPC VP Operations

Subject: Notification of intent to Renew SMSC Lease

Mr. Michael Harmon;

Seafood Producers Cooperative would like to renew its lease on the SMSC for the second 5-year extension from June 2018 out to June 2023.

Please advise us regarding a convenient time to meet and discuss the renewal at your convenience.

Thank you,



Craig Shoemaker VP Operations

Seafood Producers Cooperative



**EXTENSION OF AGREEMENT BETWEEN  
CITY AND BOROUGH OF SITKA AND  
SEAFOOD PRODUCERS COOPERATIVE  
REGARDING SITKA MARINE SERVICE CENTER**


The City and Borough of Sitka (“CBS”), 100 Lincoln Street, Sitka, Alaska 99835, and Seafood Producers Cooperative of 2875 Roeder Avenue, Bellingham, Washington 98225 (“SPC”) agree to extend the Agreement Between The City and Borough of Sitka and Seafood Producers Cooperative (“Agreement”) dated October 28, 2008. The Parties agree to extend the Agreement for the first of two five-year extension periods allowed by Section 1.2 and will expire on June 30, 2018. All terms and conditions set out in the Agreement remains in effect during this extension period.

This Amendment was approved by the City and Borough Assembly on May 14, 2013.

## SEAFOOD PRODUCERS COOPERATIVE

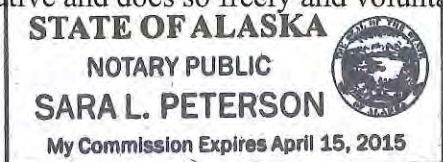
CITY AND BOROUGH OF SITKA

Thomas M. McLaughlin  
Print Name: THOMAS M. McLAUGHLIN

  
John P. Sweeney, III  
Interim Municipal Administrator

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

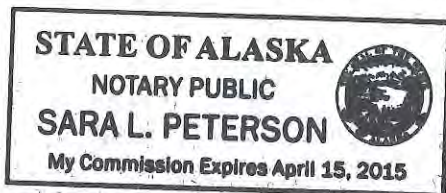
On this 5 day of June, 2013, Thomas McLaughlin, Corporate officer of Seafood Producers Cooperative, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this document on behalf of Seafood Producers Cooperative and affirms by signing this document to be authorized to sign on behalf of the Seafood Producers Cooperative and does so freely and voluntarily.



Sara Peterson  
Notary Public for Alaska  
My Commission Expires: 4-15-2015

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

On this 12 day of June, 2013, John P. Sweeney, III, Interim Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.



Sara L Peterson  
Notary Public for Alaska  
My Commission Expires: 4-15-2015



# LEASE AGREEMENT

Between

**THE CITY AND BOROUGH OF SITKA**

AND

**SEAFOOD PRODUCERS  
COOPERATIVE**

**SITKA MARINE SERVICE CENTER**



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Exhibit C – Property Description

## LEASE AGREEMENT

### PREAMBLE

This Lease Agreement is made as of July 1, 2008, between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka," "the City," or "Lessor" ) and Seafood Producers Cooperative of 2875 Roeder Avenue, Bellingham, Washington 98225, ("SPC" or "Tenant"), hereafter referred to as Lessee, Agreement or Lease, or Tenant. This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A, B, and C. Exhibit A is a pictorial representation of the areas leased in the Sitka Marine Service Center ("MSC" or "Lessee") at 611 Katlian Street, Sitka, Alaska 99835. Exhibit B describes the rental and maintenance of the MSC bulk cold storage space. Exhibit C further describes the property on Exhibit A.

### SPECIAL PROVISIONS

#### ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

##### Section 1.1 Conveyance of Estate in Lease.

Lessor, for and in consideration of the rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the "Subject Property" or "Premises" as shown on Exhibit A. Exhibit A shows an approximately 8,400-square of cold storage space. The term is five (5) years, and commences on the first day of the month immediately after the month that includes the date set out in the Preamble and ends five years later. An example of the operation of the provision in the previous sentence is that if the date set out in the Preamble is July 1, 2008, the end of the original 5-year term of the Lease Agreement is June 30, 2013.

##### Section 1.2 Options to Renew.

Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise options for two successive terms of five (5) years each upon the same terms and conditions as this Lease Agreement (except Section 1.2) with the lease payments as described in Article II. Each of these options is effective only if (a) SPC 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) SPC is in compliance with law and this Lease Agreement and is not in default under this Lease Agreement. Options to renew must be approved by the Assembly of the City and Borough of Sitka.

##### Section 1.3 Option to Purchase. ~~DELETED~~

~~Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise options for purchase during the first year of this Lease Agreement. This option~~



to purchase is for any or all of the MSC facility, the land it occupies and the adjacent recycling yard center. This option is effective only if (a) SPC makes a written request to exercise such option not less than thirty (30) days prior to the end of the first year; and (b) SPC is in compliance with law and this Lease Agreement and is not in default under this Lease Agreement. The price of the subject is to be at market value, as supported by current real estate appraisals, provided by either party, plus any outstanding balances from previous grants and loans on the facility. Option to purchase must be approved by the Assembly of the City and Borough of Sitka, and subject to the Sitka General Code enforcements. Terms of sale will be negotiated separate from this Lease Agreement.

#### **Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.**

With the exception of such improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property at the termination of this Lease Agreement or any extension thereof unless Lessee makes a separate written agreement with Sitka to do otherwise. Subject to the provisions of the next sentence, SPC shall leave behind at no cost to Sitka 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 Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and SPC shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka 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 SPC in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Subject to Sitka's obligations under Subsection 3.1(a) below, SPC agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the term of the Lease Agreement.

#### **Section 1.5 Covenants to Perform.**

This Lease Agreement 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 Five-Year Term of the Lease.**

The first year of the Lease begins on the date for commencement of this Lease Agreement set out in Article I. Each successive year of the lease begins on the corresponding anniversary of the lease. Notwithstanding any other provision of this Lease Agreement, on the term start date set out in Article I, Lessee shall pay the full rent. Subject to the provision in the previous sentence, Lessee shall pay the lease payments for each month in advance upon the first day of each and every month for which rent is due throughout the term of the Lease Agreement without the necessity of any billing by Lessor. SPC will lease the space as shown in Exhibit A for \$110,880/year payable at a rate of \$9,240/month, plus yearly CPI. Sales tax is to be paid in addition to stated rent.

### **Section 2.2 Cost of Living Adjustment to Lease Rate:**

Beginning with the second year of the lease and annually thereafter, the lease payment will be increased by the percentage increase of the Consumer Price Index from the previous year's increase. The index used will be the All Urban Consumers U.S. City Average, all items.

### **Section 2.3 Calculation and Method of Payment of Rent During Successive Optional Five-Year Renewals of the Lease.**

If Lessee decides to exercise the option to renew for successive five-year terms under Section 1.2, the Lessee must notify the City of their intent no less than six (6) months before the end of the current term of the lease. Sitka may commission a professional market appraisal of the lease property in its "as is" condition. The appraisal will not take into consideration improvements made to the property by SPC but may take into consideration improvements made by the City. Subject to the provision of the next sentence, the rental rate for each month of the successive five-year terms (also known as the Sixth and Tenth Years) shall be equal to one-twelfth of ten percent (10%) of the appraised value as determined by the appraisal described in this subsection.

### **Section 2.4 Property Tax Responsibility**

Beginning with the term of this lease and each calendar year thereafter, the Lessee will be responsible to pay property taxes to the City and Borough of Sitka for its possessory interest in the building, land, and equipment to the extent taxable as determined by the Tax Assessor.

## **ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY**

### **Section 3.1 Lessee's Obligations as to Construction, Maintenance, Repair and Safety**

(a) Except as provided herein, SPC acknowledges the leasehold is in an "as is" condition and includes the building, fixtures, appurtenances and City-provided equipment. At the sole cost and expense of SPC and in compliance with all legal requirements, SPC 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 the SPC leasehold shall be the responsibility of SPC including any water leaks or blockages caused by those protrusions, extensions or drains.

Sitka shall maintain the subject property and City-provided equipment. Sitka reserves the right to expand or modify the facility. In that event, the City and SPC will work together to complete such expansion or modification in a manner that minimizes disruption to SPC'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 were, and operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

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

(d) Lessee shall confine their equipment, storage and operation to the leasehold area. An exception to this is the use of common spaces. SPC will cooperate with other lease holders in the facility with regards to use of common spaces which includes coordination and timing of using unloading and loading areas, battery charging and use of other common areas in the building and grounds. The City Facilities Manager will act as arbitrator between leaseholders on questions on cooperative use.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee 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 Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the term of this Lease Agreement to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee thereof.

(f) Lessee may erect outdoor signage at its expense with the permission of the City Building Official and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

### **Section 3.2 Lessor's Approval of Certain Alterations or Improvements.**

Lessee 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 the Lessor, 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 Lessee shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka 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. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve SPC of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent SPC from removing at the termination of this Lease Agreement any improvements or personal property as described in Section 1.4.

### **Section 3.3 Rights of Access to Property**

(a) Lessor 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. Lessor 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 Lease Agreement. Sitka 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 leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee 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 Lessor and any applicable utility company.

(c) Lessee 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 Exhibit A attached hereto. Lessee agrees that it shall comply with the terms of said cooperative agreements, in accordance with the terms of said agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth therein.

### **Section 3.4 Additional Conditions of Leasing.**

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

(a) SPC will cooperate with the City and Borough of Sitka's Facilities Manager and City's maintenance contractor and will notify the City of any maintenance deficiencies or of any equipment failures that require maintenance or repair. SPC will be provided a 24 hour telephone number to notify the City of any event that requires immediate response by the City.

(b) SPC shall provide a summary record of all cold storage activity by customer. All product into and out of the facility will be weighed and cold storage services and charts documented by customer. These records are to be retained for a minimum of three years, and are to be made

available to the City at a reasonable time and location so that City can verify public use according to the terms of this agreement. An annual report of this business is required and is due by 31 July of each year.

(c) Lease 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.

(d) Lease 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.

(e) The charges and fees paid by Lessee to Lessor must be separated according to the City and Borough of Sitka accounting standards.

(f) The City will only invoice if lease payments are delinquent. The City will only invoice if failure to make lease payment within 30 days of due date. The City at its option can terminate the lease in accordance with this Lease Agreement.

(g) SPC will charge cold storage customers rates currently in use at the time. Rates will be clearly posted and will be uniformly charged for all cold storage service provided at the facility. Rate changes will require prior approval of the City. Rate adjustments can be proposed by either SPC or the City. Adjustments will be made to keep rates current with prevailing rates in the Puget Sound area.

(h) SPC covenants and agrees that as it relates to use of the facility, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal, State or Local laws or regulations promulgated thereunder, and SPC further grants the City the right to take such action to enforce such local covenant as it deems necessary or as it is directed pursuant to any Federal, State or Local law or regulation.

(i) Subject to the storage rights granted to SPC, cold storage will be made available to the public without discrimination to all customers that meet operating requirements of the facility.

(j) Sitka may sell the building in the future and all agreements regarding the Subject Property, including this Lease Agreement, new owner shall be completely transferable to new owner. A transfer of the property to any new owner shall not create any restrictions upon use of the Subject Property in addition to those hereunder.

(k) Lessor may, upon at least 20 days prior notice to Lessee, temporarily suspend the supply of water, wastewater service, the supply of electric power, the use of pipelines, the use of waterfront structures or the use of the Improvements in order to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities. Lessor shall



make their best effort to perform maintenance between November and March of each year.

(l) Lessee will pay the City and Borough of Sitka Fire Marshal fees and other building permit fees and shall also pay all applicable property taxes, sales taxes, utilities and assessments when due.

(m) SPC is responsible for taking any measures that SPC deems necessary to provide security for its property. Sitka is not responsible for theft or vandalism.

(n) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to utility services and will be calculated into each monthly billing from the City. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.

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

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

## **ARTICLE IV UTILITY SERVICES & RATES**

### **Section 4.1 Provision of Utility Services.**

SPC will pay for an apportioned share of the utilities based on its share of occupancy.

### **Section 4.2 Rates for Utility Services Provided by Lessor.**

Utility rates charged by Lessor for utility services Lessor provides shall be those set forth in the City and Borough of Sitka's Ordinances and General Code. SPC acknowledges the requirements of Section 9.4 as to utility lines. The Assembly of the City and Borough may change utility rates from time to time by amending the Sitka General Code.

### **Section 4.3 Lessee to Pay for Utility Services.**

Lessee will pay, or cause to be paid, all proper charges which shall be used by or supplied to the Subject Property at any time during the term of this Lease Agreement including the following for electricity and solid waste; for sewer and water; for telephone and other communication services; and for all other public or private utility services. In the event that any charge, cost, or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional rent due and payable under this Lease Agreement and shall be repaid to Lessor by Lessee immediately on rendition of a bill by the Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Sitka on behalf of Lessee. Sitka reserves the right to suspend utility services if Tenant does not pay for utility services.

#### **Section 4.4 Lessor Not Liable for Failure of Utilities or Building.**

Except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor 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's 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 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. Lessor 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 Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

#### **Section 4.5. Requirement Regarding Potable Water Services.**

All potable water services will be metered and protected by approved backflow prevention in accordance with Section 15.05.400 of the Sitka General Code.

### **ARTICLE V INDEMNIFICATION**

#### **Section 5.1 General Indemnification of Lessor Without Limitation of Any Other Indemnity Given.**

Lessee agrees to indemnify, defend, and save harmless Lessor 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 Lessor, 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. Lessee also agrees to indemnify, defend, and save Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the term of this Lease Agreement from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (c) any act or negligence of Lessee 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 Lease Agreement in or on the Subject Property. Lessee agrees to indemnify, defend, and save harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, 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 Lease Agreement to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of damage arising out of the failure of the Lessor to perform acts or render services in its municipal capacity.

## **Section 5.2 Indemnification of Lessee.**

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee 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 Lease Agreement or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and save Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the term of this Lease Agreement from (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease Agreement; (c) any act or negligence of Lessor 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 Lease Agreement in or on the Subject Property. Lessor agrees to indemnify, defend, and save harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, 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 Lease Agreement to indemnify the Lessee.

## **Section 5.3 Reimbursement of Costs of Obtaining Possession.**

Each Party agrees to pay and to indemnify the other party prevailing in any dispute hereunder against, all costs and charges, including but not limited to, full reasonable counsel and legal fees lawfully and reasonably incurred in enforcing any provision of this Lease Agreement including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease Agreement upon expiration or earlier termination of this Lease Agreement.

## **GENERAL PROVISIONS**

### **ARTICLE VI DEFINITIONS**

#### **Section 6.1 Defined Terms.**

For the purposes of this Lease Agreement, 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, any part thereof, any right or interest or penalty therein or any rent and income received therefrom as well as sales taxes on rent.

(c) "Improvement" or "improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Land, as well as all 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, elevators, escalators, 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 Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the improvements remaining on the 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 lease.

(d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the Subject Property.

(g) "Subject Property" is the area leased as shown on Exhibit A.

(h) "Sublessee" and "Sublease" -- any reference to "sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee rents or leases the Subject Property from Lessor.

## **ARTICLE VII INSURANCE**

### **Section 7.1 Insurance.**

The City shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000), including direct damage boiler and machinery insurance. The City shall maintain on the building and other City improvements on which the premises are located a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least the actual cash value.

### **Section 7.2 Notification of Claim, Loss, or Adjustment.**

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in this Section 7.

### **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 Lease Agreement, 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 Lease Agreement 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 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.**

Lessee has no power under this Lease Agreement to assign the Lease Agreement. Lessee has no power under this Lease Agreement to transfer the Subject Property. Lessee 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.**

Lessee shall not sublease the Subject Property or any portion of it without the prior written approval of the Assembly of the City and Borough of Sitka. All Subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including Exhibits B and C. Lessor's consent to a sublease of the Subject Property shall not release SPC from its obligations under the Lease Agreement. Lessor'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 Property As Is - Repairs.**

The Lessee 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 their present condition and without any representations or warranties of any kind or nature whatsoever by the Lessor as to their condition or as to the use or occupancy which may be made of them. The Lessee assumes the sole responsibility for the Lease Agreement Between City and Borough of Sitka

And Seafood Producers Cooperative

condition of the improvements located on the Subject Property. Nothing in the foregoing shall relieve the Lessor of its general municipal obligations.

#### **Section 9.2 Compliance with Laws.**

Lessee shall throughout any term of this Lease Agreement, at Lessee'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.

#### **Section 9.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.**

Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other materials that require special handling are encountered during construction activities or during the terms of this Lease Agreement.

#### **Section 9.4 Use of Utility Lines.**

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

#### **Section 9.5 Permits and Approvals for Activities.**

Lessee shall be responsible for obtaining all necessary permits and approvals including food processing/purveying for its activities unless otherwise specifically allowed by Lessor. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans, and the result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply any applicable laws.

### **ARTICLE X LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED**

#### **Section 10.1 Performance of Lessee's Covenants To Pay Money.**

The Lessee 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 the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease Agreement, make any other payment in a manner and extent that the Lessor may deem desirable.



## **Section 10.2 Lessor's Right To Cure Lessee's Default.**

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

## **Section 10.3 Reimbursement of Lessor and Lessee.**

All sums advanced by the Lessor 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 the Lessee, in the respective amounts so advanced, to the Lessor. This reimbursement shall be made on demand, or, at the option of the Lessor, may be added to any rent then due or becoming due under this Lease Agreement and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any Rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

## **ARTICLE XI DAMAGE OR DESTRUCTION**

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

(a) If the Premises 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 Premises, nor shall Tenant's liability to pay rent under this Lease cease, without the mutual consent of the parties hereto; in case of any such destruction or injury, Lessor 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 Premises, a proportionate allowance shall be made to Tenant from the rent corresponding to the time during which and to the portion of the Premises of which Tenant shall be so deprived of the use on account thereof.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Tenant in writing within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor 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 notice, to elect either to terminate this Lease and further liability hereunder, or to extend the term by written notice to Lessor of this Lease by a period of time equivalent to the time from the happening of such destruction or injury until the Premises are restored to their former condition. In the event Tenant elects to extend the term of this Lease, Lessor shall restore the Premises to the former condition within the time specified in the notice, and Tenant shall not be liable to pay rent for the period from the time of such destruction or injury until the Premises are so restored to the former condition.

(c) In addition to all rights to cancel or terminate this Lease set forth in Subsections 11.1(a) and 11.1(b), if the Premises and or the MSC building of which the Premises and a part are destroyed or damaged during the last two (2) years of the renewal term of this Lease or any extension or renewal thereof to the extent of fifty per cent (50%) or more of the value of the Premises and/or the MSC building of which the Premises are a part, then Lessor shall have the right to cancel and terminate this Lease as of the date of such damage or destruction by giving Tenant written notice thereof within ninety (90) days after the date of said damage or destruction.

## **ARTICLE XII MECHANIC'S LIENS**

### **Section 12.1 Discharge of Mechanics' Liens.**

The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the Lessee's interest in the property, nor against the improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with or the assent of the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

## **ARTICLE XIII LIEN FOR RENT AND OTHER CHARGES**

### **Section 13.1 Lien for Rent.**

The whole amount of the rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by the Lessor under the provisions of this Lease Agreement, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease Agreement or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease Agreement, shall be and they are declared to constitute a valid and prior lien upon the Subject Property and any improvements, and upon the Lessee's leasehold 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 the Lessee to pay any installment of 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 the Lessor to the Lessee.

(b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease Agreement including payment of taxes on the part of the Lessee 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 the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the Lessee, 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 the Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of the Lessee's interest in this Lease Agreement): (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 the Lessee 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 Lease Agreement is taken under a writ of execution.

### **Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease Agreement 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 Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement as are required by the Bankruptcy Code (including but not limited to, 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 Lease Agreement shall be deemed rejected automatically and the Lessor shall have the right immediately 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 Lease Agreement.

### **Section 14.3 Remedies in Event of Default.**

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

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

(b) The Lessor may terminate the Lessee's right of possession and may repossess the entire Subject Property and any improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to the Lessee (except as above expressly provided for) and without terminating this Lease Agreement, in which event the Lessor 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 the Lessor (including the right to relet the Subject Property and building for a term greater or lesser than that remaining under the stated term of this Lease Agreement and the right to relet the Subject Property and 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, the Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and improvements that may be reasonably necessary or convenient in the Lessor's judgment reasonably exercised; and if the Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property and 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 the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the Lessor 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 the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. 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 the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease Agreement, the Lessor 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 Lease Agreement.

(d) Upon the termination of this Lease Agreement and the term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the Lessee 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, the Lessor 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. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

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

#### **Section 14.4 Waivers and Surrenders To Be In Writing.**

No covenant or condition of this Lease Agreement shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the Lessor'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 the Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of the Lessor to any other act or matter.

### **ARTICLE XV LESSOR'S TITLE AND LIEN**

#### **Section 15.1 Lessor's Title and Lien Paramount.**

The Lessor shall have title to the Land and building, and the Lessor's lien for rent and other charges shall be paramount to all other liens on the Subject Property.

#### **Section 15.2 Lessee Not To Encumber Lessor's Interest.**

The Lessee shall have no right or power to and shall not in any way encumber the title of the Lessor in and to the property. The fee-simple estate of the Lessor in the property 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 the Lessee, and any claim to the lien or otherwise upon the Land arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the



Lessee's interest in any improvements, and shall in all respects be subject to the paramount rights of the Lessor in the property.

## **ARTICLE XVI REMEDIES CUMULATIVE**

### **Section 16.1 Remedies Cumulative.**

No remedy conferred upon or reserved to the Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or existing at law or in equity or by statute. Every power and remedy given by this Lease Agreement to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence 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 Lease Agreement shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence 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 Lease Agreement, 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 the Lessor to declare ended the term granted and to terminate this Lease Agreement 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 Lease year of the original term, or on the earlier termination of the term, the Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor, 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, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.

## **Section 17.2 Rights Upon Holding Over.**

At the termination of this Lease Agreement, by lapse of time or otherwise, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor 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 Lessor during the last month of the term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held to be a waiver by the Lessor of any right or reentry as set forth in this Lease Agreement, 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 Lease Agreement and the Term granted for the period still unexpired for any breach of the Lessee under this Lease Agreement.

## **ARTICLE XVIII MODIFICATION**

### **Section 18.1 Modification.**

None of the covenants, terms or conditions of this Lease Agreement to be kept and performed by either party to this Lease Agreement shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

## **ARTICLE XIX INVALIDITY OF PARTICULAR PROVISIONS**

### **Section 19.1 Invalidity of Provisions.**

If any provision of this Lease Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, 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 Lease Agreement 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 Lease Agreement 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 Lease Agreement 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 under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United

States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

#### **Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.**

The Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of, this Lease Agreement. All notices, demands or requests which may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, 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 Lease Agreement to be given by any party to the other party or by any party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease Agreement of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

### **ARTICLE XXII MISCELLANEOUS PROVISIONS**

#### **Section 22.1 Captions.**

The captions of this Lease Agreement 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 Lease Agreement, nor in any way affect this Lease Agreement.

#### **Section 22.2 Conditions and Covenants.**

All the provisions of this Lease Agreement 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 Lease Agreement 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 Lease Agreement.**

Time is of the essence as to the covenants in this Lease Agreement.

## **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 Lease Agreement shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease Agreement 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 the Lessee (pursuant to the terms of this Lease Agreement) or of the Lessor in and to this Lease Agreement shall act automatically as a transfer to the assignee of the Lessor or of the Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and the Lessor, and every subsequent sale, conveyance or assignment by any assignee of the Lessor or of the Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and the Lessor to the subsequent assignee.

## **ARTICLE XXIV ADDITIONAL GENERAL PROVISIONS**

### **Section 24.1 Absence of Personal Liability.**

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

to the Subject Property, or on any obligation under the terms of this Lease Agreement.

**Section 24.2 Lease Agreement Only Effective As Against Lessor Upon Assembly Approval.**

This Lease Agreement is effective as against Lessor only upon the approval of such Lease Agreement by the Assembly of the City and Borough of Sitka.

**Section 24.3 Binding Effects and Attorneys Fees.**

This Lease Agreement shall be binding up and inure to the benefit of the respective successors and assigns of the parties hereto. In the event of litigation over this Lease Agreement, the parties agree that the prevailing party shall receive full reasonable attorneys' fees.

**Section 24.4 Duplicate Originals.**

This Lease Agreement may be executed in any number of copies, each of which shall constitute an original of this Lease Agreement. 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 Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of the Lessee in the Subject Property, the Lessor 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 Lessee in the Subject Property, and the revesting of any title in the Lessor as specifically provided in this Lease Agreement.

**Section 24.6 Authority.**


The Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease Agreement and perform its obligations. Both parties also represent that this Lease Agreement 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.



**SEAFOOD PRODUCERS COOPERATIVE**



**CITY AND BOROUGH OF SITKA**

  
James Dinley  
Municipal Administrator

**STATE OF ALASKA**

)

)ss: **CORPORATE ACKNOWLEDGMENT**

**FIRST JUDICIAL DISTRICT**

)

On this ~~28~~ day of ~~September~~ <sup>October</sup>, 2008, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who by me duly sworn, did say that he is the \_\_\_\_\_ of SEAFOOD PRODUCERS COOPERATIVE and acknowledged that said LEASE AGREEMENT was signed by him freely and voluntarily and on behalf of said corporation by authority of its bylaws.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires:

**STATE OF ALASKA**

)

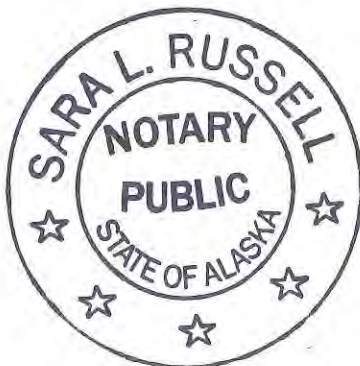
)ss. **MUNICIPAL ACKNOWLEDGMENT**


**FIRST JUDICIAL DISTRICT**

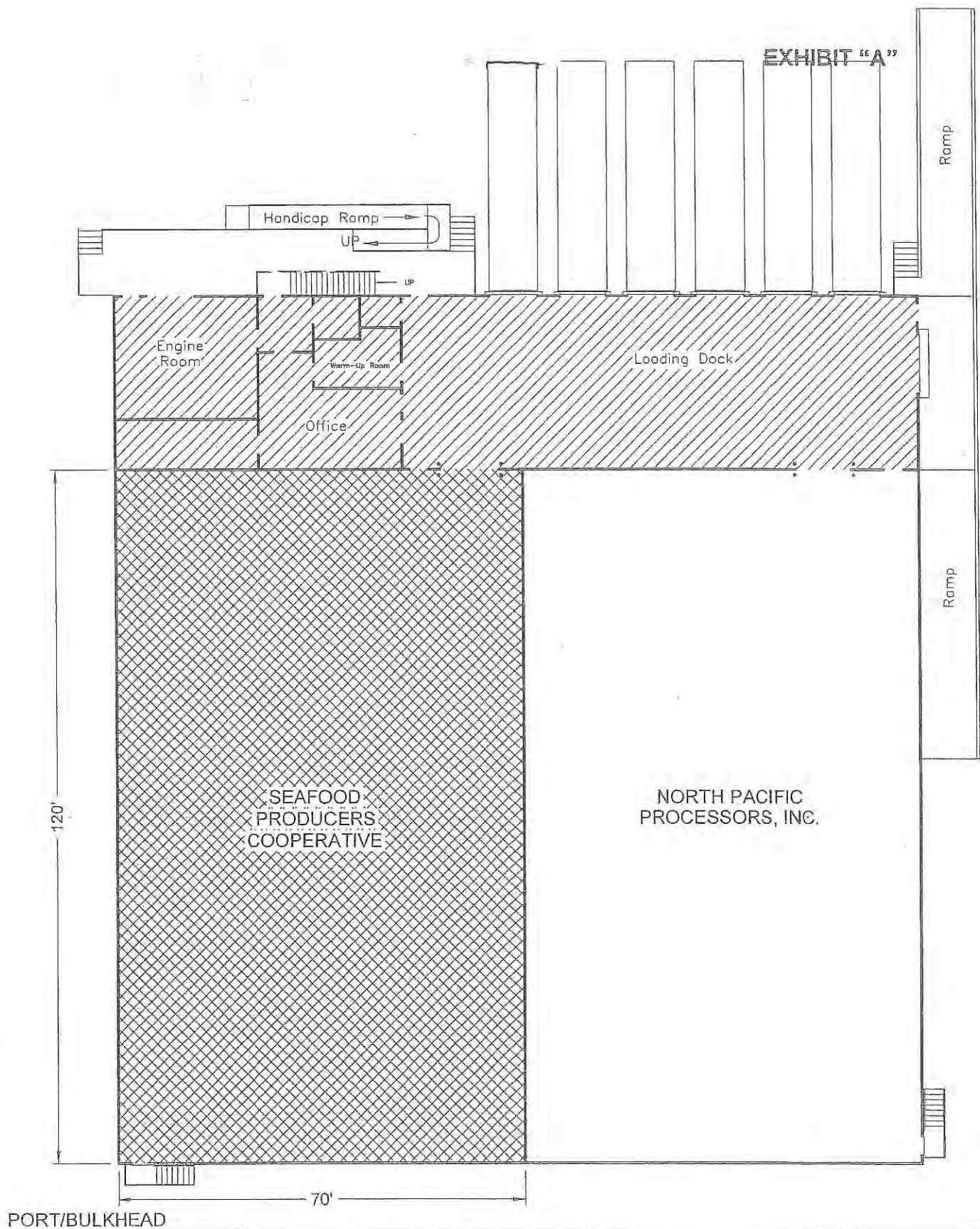
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

THIS CERTIFIES that on this ~~28~~ day of ~~September~~ <sup>October</sup>, 2008, before me, a Notary Public in and for the State of Alaska, personally appeared JAMES E. DINLEY, Municipal Administrator to me known and known to me to be the person whose name is subscribed to the foregoing LEASE AGREEMENT, a Municipal corporation organized under the laws of the State of Alaska, that he has been authorized to execute the foregoing LEASE AGREEMENT on its behalf and he executed the same freely and voluntarily as the free act and deed.

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



  
Notary Public for Alaska  
My Commission Expires: 4-15-2011



-  COMMON AREAS
-  LEASED PREMISES

# MARINE SERVICES CENTER



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## **EXHIBIT "B"**

### **RENTAL AND MAINTENANCE OF MARINE SERVICES CENTER BULK COLD STORAGE SPACE**

This lease is for rental of space to **SPC** to meet their cold storage needs and to provide cold storage service to the seafood processing interests in the community.

#### Description of Facilities

The **CITY** will make available 8,400 square feet of refrigerated cold storage for exclusive use by **SPC** for cold storage of products related to their business. Major components of this exclusive use space will include:

- Cold storage space with the capability to store approximately 1,800,000 pounds of seafood at -10°F to -20°F.
- Shared office space and warm-up room for cold storage staff.
- Refrigeration, lighting, heating and other utility services required for use.

In addition, the lessee will have access and use of common spaces in the building and at the site for the following uses:

- Restrooms for employees.
- Access to building for delivery of project to the facility for cold storage.
- Access to the building for van loading frozen project for off-site delivery.
- Covered receiving area to accommodate receiving and handling of seafood from the processors main plant into cold storage.
- Loading dock for placing frozen product into vans for shipment.
- Electrical service for charging fork truck batteries.

#### Excluded Uses at the Site

The following uses are specifically prohibited at the site or as a part of the lessees use of the common spaces or exclusive use spaces:

- Primary processing of seafood.
- Delivery or handling of unprocessed seafood.
- Secondary processing of seafood.



- Retail sales. The term "retail sales" means direct retail sales to customers coming to the site to view and purchase a product. Examples would be a marine chandlery, sales of equipment, provisions and supplies, and sales of seafood products similar to a grocery or convenience store operation.
- Equipment storage or any other activity not directly related to the lessees exclusive use cold storage activities at the site.

#### Items to be Provided by the Lessee

- All equipment for handling the lessees seafood products for cold storage including electric fork trucks and electric charging equipment.
- Racks or stacking aids for cold storage.
- Totes, boxes or other supplies related to lessee's cold storage service activities.
- Telephone, garbage collection or any other utility required for operations that are not provided by the **CITY**.
- All permits or licenses required for **SPC** operations.
- All utilities to be the responsibility of the lessee.

#### Items to be Provided by the CITY

- Common building and site space for use by **SPC**.
- Building maintenance of cold storage equipment and common areas at no charge to **SPC**.
- Management of individual lease agreements at the site.
- Janitorial services in the office, warm-up room, bathrooms and entry. These areas will be cleaned weekly.

**\*\*See next page at \*\***

#### General Provisions of the Lease Agreement - See Lease Agreement

As a condition of the lease, **SPC** shall provide property damage and comprehensive general liability insurance in the amount of one million dollars. The insurance will include coverage for loss or spoilage for **SPC** products stored. The CITY and Borough of Sitka shall be named as an additional insured on the policy for all activities related to the lessee or the lessees activities on the site.

The lessee shall carry Worker's Compensation Insurance covering all its employees working at the site.

If one lease is terminated, the other tenant has the first right to lease the vacated area. This right expires 30 days after the termination.

JMC  
R

The term of the lease will be five years. The lease shall terminate June 30, 2013. The lessee may not assign its rights without prior written approval of the **CITY**, but such approval will not be unreasonably withheld. The lease may be extended on a year by year basis on mutual agreement of the parties. No extensions are guaranteed. **SPC** shall request extensions 60 days prior to the term date of the original lease or subsequent extended date. The **CITY** will act on the request within 30 days from receipt of the request.

Prior to the approval of any assignment or sublease, the **CITY** shall be provided with all of the terms of the proposed transaction. Approval of assignment or sublease will only be made if it is in the best interests of the **CITY**.

No alterations will be made to the building without prior approval of the **CITY**. All alterations for the benefit of **SPC** will be at the expense of **SPC** and will be installed to comply with all applicable codes and regulations.

The lease area will be open to inspection by the **CITY** at all times.

The lease may be terminated by the **CITY** for breach of the lease agreement. In this event, **SPC** will be provided notice and will have 30 days to correct the breach prior to termination.

The lease may be terminated at any time by mutual agreement of both parties.

Upon termination or completion of this lease agreement, all **SPC** equipment or stored items will be removed and the leased space returned to its original condition less normal wear and tear.

Any repairs done to damage done to the facility by **SPC** forklift operation will be paid for by **SPC**. This includes but is not limited to overhead doors and tracks, plumbing and dock levelers. Normal wear and tear will be considered.

**\*\*CITY** will not be held liable for temperature variation in MSC Cold Storage due to improperly handled (above 5°F in temperature and/or wet cardboard boxes) product being introduced to the cold storage vault by **SPC**.

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### ***EXHIBIT "C"***

The premises leased are portions of the building as shown in Exhibit "A" located on the following property:

A portion of Alaska Tidelands Survey No. 15, Sitka, Alaska, said portion commonly referred to as the Port Development Facility and more particularly described as follows: Beginning at the witness corner to meander Corner No. 11 of U.S. Survey 2542, Sitka Indian Village, Sitka, Alaska; thence N 39°59'56" W a distance of 433.22 feet to a point on the Southerly right-of-way of Katlian Avenue henceforth to be known as Corner No. 1 of this description and the true point of beginning; thence S 44°53'41" W a distance of 2.54 feet to Corner No. 2 of Parcel #4 of the property leased to Halibut Producers Cooperative by the CITY and Borough of Sitka, and Corner No. 2 of this description; thence S 44°53'41" W for 206.76 feet to Corner No. 3; thence S 45°06'49" E a distance of 40.00 feet to Corner No. 4; thence S 43°15'43" W for 16.00 feet to Corner No. 5; thence S 45°06'19" E a distance of 5.00 feet to Corner No. 6; thence S 44°53'41" W for 9.00 feet to Corner No. 7; thence N 45°32'30" W a distance of 356.66 feet to Corner No. 8; thence N 44°19'08" E a distance of 237.34 feet to a point on the Southerly right-of-way of Katlian Avenue as Corner No. 9; thence along the right-of-way of Katlian Avenue in a southeasterly direction along a curve to the Left, whose delta angle is 27°57'49" and whose radius is 507.46 feet for a distance of 247.67 feet to Corner No. 10; thence S 57°00' E a distance of 3.00 feet to Corner No. 11, a point on a curve to the Right whose delta angel is 7°56'07" and whose radius is 477.46 feet, a distance of 66.13 feet to Corner No. 1 and the True Point of Beginning. Sitka Recording District, First Judicial District, State of Alaska.





# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: ORD 18-34A Version: 1 Name:

Type: Ordinance Status: AGENDA READY

File created: 7/3/2018 In control: City and Borough Assembly

On agenda: 8/14/2018 Final action:

Title: Amending Title 4 "Revenue and Finance" of the Sitka General Code, by modifying Chapter 4.24 "Transient Lodging Tax", Section 4.24.020 "Imposition of Transient Lodging Tax"; and, submitting the question of such an amendment to the qualified voters at a regular election on October 2, 2018 (ballot proposition)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion and Ord 2018-34A.pdf](#)

Date	Ver.	Action By	Action	Result
7/24/2018	1	City and Borough Assembly		
7/10/2018	1	City and Borough Assembly	PASSED ON FIRST READING AS AMENDED	
7/10/2018	1	City and Borough Assembly	AMENDED	Pass
7/10/2018	1	City and Borough Assembly	AMENDED	Fail
7/10/2018	1	City and Borough Assembly	AMENDED	Fail

Sponsors: Hunter / Knox

**POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-34A  
on second reading.

CITY AND BOROUGH OF SITKA  
ORDINANCE NO. 2018-34A

**BALLOT PROPOSITION OCTOBER 2018**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING TITLE 4 "REVENUE AND FINANCE" OF THE SITKA GENERAL CODE, BY MODIFYING CHAPTER 4.24 "TRANSIENT LODGING TAX", SECTION 4.24.020 "IMPOSITION OF TRANSIENT LODGING TAX"; AND, SUBMITTING THE QUESTION OF SUCH AN AMENDMENT TO THE QUALIFIED VOTERS AT A REGULAR ELECTION ON OCTOBER 2, 2018**

**1. CLASSIFICATION.** All sections of this ordinance, except section 5 regarding the ballot proposition, are of a permanent nature, with section 4 intended to become a part of the Sitka General Code, if approved by the qualified voters at the October 2, 2018, regular election.

**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.** The purpose of this ordinance is to raise revenue for the City and Borough of Sitka by increasing the transient lodging tax from six percent to twelve percent of the lodging rent charged. This ordinance must be approved by the voters in a ballot proposition. The Assembly will contemporaneously consider an ordinance which exempts transient lodging rent from sales tax, but only if the aforementioned ballot proposition is approved by the voters. The net effect of approval of the ballot proposition increasing the transient lodging tax and passage of the ordinance exempting transient lodging rent from sales tax would be a zero or one percent increase in taxes, depending on the applicable sales tax rate, on transient lodging rent.

**4. ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code section 4.24.020, entitled "Imposition of transient lodging tax", at subsection C, is amended to read as follows (new language underlined; deleted language stricken):

**TITLE 4  
REVENUE AND FINANCE**

**\* \* \***

**Chapter 4.24  
TRANSIENT LODGING TAX**

**Sections:**

- 4.24.010 Definitions.
- 4.24.020 Imposition of transient lodging tax.
- 4.24.030 Collection and accrual.
- 4.24.040 Transient lodging tax audits.
- 4.24.050 Youth camps.

4.24.060 Confidential and nonconfidential tax information.

4.24.070 Visitor activities enhancement fund.

\* \* \*

**4.24.020 Imposition of transient lodging tax.**

\* \* \*

C. The tax shall be ~~six~~ twelve percent of the lodging rent charged.

**5. BALLOT PROPOSITION.** The following question shall be placed before the voters at the general election to be held on October 2, 2018:

Proposition No. \_\_\_\_

Shall the Sitka General Code be amended to increase the tax on transient lodging rent, previously known as "bed tax", from 6 percent to 12 percent?

☐ YES

☐ NO

**Informational:** An affirmative vote on this ballot proposition would amend the Sitka General Code section 4.24.020, entitled "Imposition of transient lodging tax", at subsection C, by increasing the transient lodging tax to twelve percent. If approved by the qualified voters, this amendment will become effective January 1, 2019.

Furthermore, on the same date this ballot proposition was brought before the Assembly, Ordinance No. 2018-33 was brought before the Assembly. The purpose of that ordinance is to exempt the transient lodging rent from sales tax should this ballot proposition be approved by the voters. The net effect of approval of the ballot proposition increasing the transient lodging tax and passage of the ordinance exempting transient lodging rent from sales tax would be a zero or one percent increase in taxes, depending on the applicable sales tax rate, on transient lodging rent.

**6. EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

The amendment to the Sitka General Code set forth in Section 4 hereof shall only become effective if the ballot proposition set forth in Section 5 hereof is approved by a majority of the qualified voters at the regular election held on October 2, 2018. Subject to the foregoing, the effective date of this amendment shall be January 1, 2019.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska, this 14<sup>th</sup> day of August, 2018.

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Matthew Hunter, Mayor

ATTEST:

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Sara Peterson, MMC  
Municipal Clerk

1<sup>st</sup> reading 7/10/18

1<sup>st</sup> reading amended 7/24/18

2<sup>nd</sup> reading 8/14/18

Sponsors: Hunter / Knox





# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: ORD 18-36    Version: 1    Name:

Type: Ordinance    Status: AGENDA READY

File created: 7/26/2018    In control: City and Borough Assembly

On agenda: 8/14/2018    Final action:

Title: Adding a ballot question on the next municipal regular election to be held on October 2, 2018, on whether to exempt the municipality from the provisions of AS 18.35.301 - 18.35.350, an act prohibiting smoking in certain places (effective October 1, 2018), and, if exempted, Sitka General Code, Chapter 9.20 "Smoking in Public Places and Places of Employment", would continue to be the law for the municipality as to banning smoking in certain public places (ballot proposition)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion Ord 2018-36.pdf](#)  
[BALLOT PROP Ord 2018-36 smoking exemption.pdf](#)  
[Ord 2005-29.pdf](#)  
[Senate Bill 63.pdf](#)

Date	Ver.	Action By	Action	Result
7/31/2018	1	City and Borough Assembly		

Sponsors: Wein / Bean

**POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-36  
on second reading.

CITY AND BOROUGH OF SITKA  
ORDINANCE NO. 2018-36

**BALLOT PROPOSITION OCTOBER 2018**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA ADDING A BALLOT QUESTION ON THE NEXT MUNICIPAL REGULAR ELECTION TO BE HELD ON OCTOBER 2, 2018, ON WHETHER TO EXEMPT THE MUNICIPALITY FROM THE PROVISIONS OF AS 18.35.301 – 18.35.350, AN ACT PROHIBITING SMOKING IN CERTAIN PLACES (EFFECTIVE OCTOBER 1, 2018), AND, IF EXEMPTED, SITKA GENERAL CODE, CHAPTER 9.20 “SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT”, WOULD CONTINUE TO BE THE LAW FOR THE MUNICIPALITY AS TO BANNING SMOKING IN CERTAIN PUBLIC PLACES**

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

**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.** The State of Alaska Legislature adopted new statutory provisions, effective October 1, 2018, at AS 18.35.301 – 18.35.350, containing comprehensive provisions which prohibit smoking in certain places, relate to education on the smoking prohibition, relate to municipal regulation of smoking in certain places, relate to established villages and local option elections to allow smoking in public places, and provides for an effective date of October 1, 2018. This new law would supersede existing municipal law in Sitka General Code, Chapter 9.20, known as the “Sitka Clean Indoor Air Law of 2005”, thereby eliminating many areas where smoking is currently not regulated, e.g., bars and private clubs. The new law also expands the areas outside where smoking is prohibited. In particular, the new law would prohibit smoking in the bars and private clubs in the municipality that have chosen not to declare their establishments as nonsmoking under existing municipal law, i.e., Ernie’s Bar, Pioneer Bar, Moose and American Legion. The new law imposes an unreasonable restriction on personal behavior and causes an unreasonable negative financial impact on establishments that, under the existing law, have chosen to remain exempt from the smoking prohibition. The exemption from the new law intends to keep the status quo. The declared purposes of the existing law under Ordinance No. 2005-29 are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment, and, (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke. Those purposes continue to be satisfied by keeping the status quo.

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

Section 1. The City and Borough of Sitka shall be exempted from the provisions of AS 18.35.301 – 18.35.350, effective October 1, 2018, relating to smoking in certain public places, if the exemption is approved by the voters of the City and Borough of Sitka.

Section 2. The exemption created by Section 1 of this ordinance shall apply during such times as the City and Borough of Sitka has in effect an ordinance banning smoking in certain places enacted under former AS 18.35.300 – 18.35.365 as those statutes provided prior to October 1, 2018, which it currently does under Sitka General Code, Chapter 9.20.

Section 3. An election is to be held on Tuesday, October 2, 2018, in the City and Borough of Sitka, and the following proposition shall be submitted to the qualified voters of the City and Borough of Sitka for approval or rejection. A majority of those electors qualified and voting in favor of the proposition shall be required for approval.

Proposition No. \_\_\_\_

Shall the City and Borough of Sitka, Alaska, exempt itself from the provisions of AS 18.35.301 – 18.35.350, relating to smoking in certain public places?

☐ YES

☐ NO

**Informational:** An affirmative vote of this ballot proposition would exempt the City and Borough of Sitka from the provisions of AS 18.35.301 – 18.35.350, relating to smoking in certain public places. In that case, Sitka General Code, Chapter 9.20, entitled “Smoking in Public Places and Places of Public Employment”, would remain in effect. Under Chapter 9.20, smoking is prohibited or regulated in certain public places. However, under Chapter 9.20, smoking is not prohibited or regulated in “bars” and “private clubs”, except if declared by the establishment as “nonsmoking.” If the question is rejected, the new law, AS 18.35.301 – 18.35.350, would prohibit smoking in certain enclosed public places, including “bars” and “private clubs”.

**6. EFFECTIVE DATE.** This ordinance shall become effective on the day after certification of the next regular municipal election of October 2, 2018, provided a majority of voters vote in favor of the proposition.

\_\_\_\_\_  
Matthew Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Sara Peterson, MMC  
Municipal Clerk

1<sup>st</sup> reading 7/31/18  
2<sup>nd</sup> reading

Sponsors: Wein / Bean

## CITY AND BOROUGH OF SITKA

### ORDINANCE NO. 2005-29

#### AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 9, HEALTH AND SANITATION, OF THE SITKA GENERAL CODE TO CONTROL ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, AND PROVIDING FOR A PENALTY

1. **CLASSIFICATION.** This ordinance, which shall be known as the Sitka Clean Indoor Air Law of 2005, is of a permanent nature and is intended to become part of the Sitka General Code.
2. **SEVERABILITY.** If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.
3. **FINDINGS AND PURPOSE.** The City and Borough of Sitka does hereby find that:
  - a. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually. In Alaska, tobacco use claims 500 lives annually, with 120 lives lost to secondhand smoke.
  - b. The Public Health Service's National Toxicology Program has listed second handsmoke as a known carcinogen with no safe level of exposure.
  - c. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.
  - d. The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.



- e. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.
- f. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.
- g. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- h. Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.
- i. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.
- j. Smoking is a cause of many fires. Additionally cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.

Based on these findings, the Assembly of the City and Borough of Sitka finds and declares that the purposes of this ordinance are:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and
  - (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.
4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska that a new Chapter 9.20, Smoking in Public Places and Places of Employment is added to the Sitka General Code, to read as follows:

## Chapter 9.20

### Smoking in Public Places and Places of Employment

#### Sections:

9.20.005	Definitions.
9.20.010	Application to City and Borough-owned facilities.
9.20.015	Prohibition of smoking in public places.
9.20.020	Prohibition of smoking in places of employment.
9.20.025	Reasonable distance.
9.20.030	Where smoking is not regulated.
9.20.035	Declaration of establishment as nonsmoking; prohibition of children in places of employment where smoking is permitted.
9.20.040	Posting of signs.
9.20.045	Non-retaliation.
9.20.050	Enforcement.
9.20.055	Violations and penalties.
9.20.060	Other applicable laws.
9.20.070	Popular name.

#### 9.20.005 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

1. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
2. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
3. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

4. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
5. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
6. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
7. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
8. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.
9. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
10. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

11. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
12. "Smoking" means inhaling, exhaling, burning, or carrying any lighted Tobacco product in any form, with the exemption of religious ceremonies.
13. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar enclosed places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

9.20.010 Application to City and Borough-owned facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City and Borough of Sitka shall be subject to the provisions of this Chapter.

9.20.015 Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed public places within the City and Borough of Sitka including but not limited to, the following places:

1. Aquariums, fish hatcheries, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, Laundromats, hotels, and motels.
3. Areas and/or buildings that host youth agencies.
4. Bingo facilities.
5. Convention facilities.
6. Elevators.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.



9. Licensed child care and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Public transportation facilities, including buses and taxicabs, under the authority of the City and Borough of Sitka and ticket, boarding, and waiting areas of public transit depots.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City and Borough of Sitka or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City and Borough of Sitka.
17. Service lines.
18. Shopping malls.
19. Sports arenas, including enclosed places in outdoor arenas.
20. Vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.

9.20.020 Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

9.20.025 Reasonable distance.

Smoking shall be prohibited near entrances, windows and ventilation systems of all work sites of public places where smoking is prohibited by this regulation. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation shall establish a no smoking area which extends a reasonable distance from any entrance, windows and ventilation systems to any enclosed area where smoking is prohibited; such reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the no smoking area in order to discourage smoking within the established boundaries.

9.20.030 Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 9.20.015 and 9.20.020:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Private vehicles.
3. Marine vessels, except vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.
4. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20) of rooms rented to guests in a hotel or motel may be so designated.
5. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
6. Outdoor areas of places of employment except those covered by the provisions of section 9.20.025.

7. Any bar, defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, as long as such bar is in a "stand-alone building" and the bar shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.
8. Private clubs, including but not limited to the Elks, Moose, and American Legion, as long as each such private club is in a "stand-alone building" and the private club shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.

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 18 shall not be permitted in any place of employment where smoking is allowed.

9.20.040. Posting of signs.

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every exterior entrance a conspicuous sign clearly stating that smoking is prohibited.

9.20.045 Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

9.20.050 Enforcement

- A. This chapter shall be enforced by the Sitka Police Department or by other officials so authorized by the City and Borough Administrator.
- B. Notice of the provisions of this chapter shall be given to all applicants for a business license in the City and Borough of Sitka.
- C. Any citizen who desires to register a complaint under this chapter may request/solicit enforcement from/with the Sitka Police Department.
- D. The Public Works Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- G. In addition to the remedies provided by the provisions of this section, the City and Borough Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

9.20.055 Violations and penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who willfully fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$ 100) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

3. A fine not exceeding three hundred dollars (\$300) for each additional violation within one (1) year.

C. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

9.20.060 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

9.20.070 Popular name.

This law shall be known as the Sitka Clean Indoor Air of 2005.

5. The ballot measure shall read as follows:

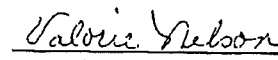
Shall the City and Borough of Sitka pass a law that would prohibit smoking in public places and places of employment?

Yes ☐ No ☐

**Informational:** See Chapter 9.20 of proposed Ordinance 2005-29 for definitions, application, prohibitions, reasonable distance, where smoking is not regulated, posting, enforcement and violations.

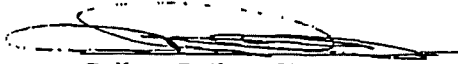
6. **EFFECTIVE DATE.** This ordinance shall become effective forty-five (45) days from the date of October 4, 2005 if a majority of voters voting on this ordinance approve it.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 12th day of July, 2005.

  
Valorie Nelson, Deputy Mayor

ATTEST:

**Note: This ordinance received a majority vote with the following results.**

  
Colleen Pellett, CMC  
Municipal Clerk

Proposition No. 2

YES	1820
NO	1504





# LAWS OF ALASKA

**2018**

**Source**

HCS CSSB 63(RLS) am H

**Chapter No.**

\_\_\_\_\_

**AN ACT**

Prohibiting smoking in certain places; relating to education on the smoking prohibition; relating to municipal regulation of smoking in certain places; relating to established villages and local option elections to allow smoking in public places; and providing for an effective date.

\_\_\_\_\_

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1



## AN ACT

1 Prohibiting smoking in certain places; relating to education on the smoking prohibition;  
2 relating to municipal regulation of smoking in certain places; relating to established villages  
3 and local option elections to allow smoking in public places; and providing for an effective  
4 date.

5 \_\_\_\_\_  
6 \* **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section  
7 to read:

8 LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is  
9 intended to alter applicable law relating to liability of a manufacturer, dispenser, or other  
10 person for a cause of action that may arise from smoking tobacco, e-cigarettes, or other oral  
11 smoking devices in an enclosed area or to otherwise limit the state immunity from liability  
12 provided for in state law. In this section, "e-cigarette," "enclosed area," and "smoking" have  
13 the meanings given to those terms in AS 18.35.399.

14 \* **Sec. 2.** AS 18.35 is amended by adding new sections to read:

1                   **Article 4. Prohibition of Smoking in Certain Places.**

2                   **Sec. 18.35.301. Prohibition of smoking.** (a) An individual may not smoke in  
3 an enclosed area in a public place, including an enclosed area

4                               (1) at an entertainment venue or a sports arena;

5                               (2) on a bus, in a taxicab, on a ferry, or in another vehicle used for  
6 public transportation;

7                               (3) at a public transit depot, bus shelter, airport terminal, or other  
8 public transportation facility;

9                               (4) at a retail store or shopping center;

10                              (5) at a place of government or public assembly located on property  
11 that is owned or operated by the state, a municipality, or a regional educational  
12 attendance area, or by an agent of the state, a municipality, or a regional educational  
13 attendance area.

14                   (b) An individual may not smoke in an enclosed area

15                              (1) in an office building, office, hotel, motel, restaurant, bar, retail  
16 store, or shopping center;

17                              (2) in a common area in an apartment building or multiple-family  
18 dwelling;

19                              (3) in a place of employment, including a vehicle;

20                              (4) at a public or private educational facility;

21                              (5) at a health care facility, including residential units in the health care  
22 facility;

23                              (6) in a building or residence that is used to provide paid child care,  
24 whether or not children are present in the building or residence, or care for adults on a  
25 fee-for-service basis; however, nothing in this paragraph is intended to prohibit an  
26 individual from smoking in a private residence that is in a building where another  
27 residence provides paid child care or care for adults;

28                              (7) on a vessel operating as a shore-based fisheries business under  
29 AS 43.75.

30                   (c) An individual may not smoke outdoors

31                              (1) within 10 feet of playground equipment located at a public or

1 private school or a state or municipal park while children are present;  
2 (2) in a seating area for an outdoor arena, stadium, or amphitheater;  
3 (3) at a place of employment or health care facility that has declared  
4 the entire campus or outside grounds or property to be smoke-free;  
5 (4) within  
6 (A) 10 feet of an entrance to a bar or restaurant that serves  
7 alcoholic beverages;  
8 (B) 20 feet of an entrance, open window, or heating or  
9 ventilation system air intake vent at an enclosed area at a place where smoking  
10 is prohibited under this section; or  
11 (C) a reasonable distance, as determined by the owner or  
12 operator, of an entrance, open window, or heating or ventilation system air  
13 intake vent of  
14 (i) a vessel covered by this section; or  
15 (ii) a long term care facility as defined in AS 47.62.090.  
16 (d) Notwithstanding (a) and (b) of this section, unless the owner or operator  
17 prohibits it, an individual may smoke at a retail tobacco or e-cigarette store that  
18 (1) is in a building that  
19 (A) is freestanding; or  
20 (B) if it is attached to another business or building,  
21 (i) has a separate entrance;  
22 (ii) is separated from the other business or building in a  
23 manner that does not allow e-cigarette vapor or aerosol to travel into  
24 the other business or building;  
25 (iii) the other business or building does not serve as a  
26 residence, child care facility, facility providing care for adults on a fee-  
27 for-service basis, school, or health care facility; and  
28 (iv) smoking is limited to the use of an e-cigarette;  
29 (2) is not  
30 (A) a business that is licensed under AS 04.11 to serve  
31 alcoholic beverages at an outdoor location;



1 (B) a business that is licensed under AS 05.15 to sell pull-tabs;

2 or

3 (C) a retail store that is within an indoor public place or  
4 workplace.

5 (e) Notwithstanding (a) and (b) of this section, smoking may be permitted in a  
6 separate enclosed smoking area located in a terminal for international passengers who  
7 are in transit in a state-owned and state-operated international airport and who are  
8 restricted by federal law from leaving the airport, if the smoking area is vented directly  
9 to an outdoor area that is not an area where smoking is prohibited under (c) of this  
10 section.

11 (f) Notwithstanding (b) of this section, unless the owner or operator prohibits  
12 it, an individual may smoke

13 (1) in a vehicle that is a place of employment when the vehicle is used  
14 exclusively by one person;

15 (2) on a vessel when the vessel is engaged in commercial fishing or  
16 sport charter fishing.

17 (g) Notwithstanding (a) and (b) of this section, an individual may smoke at

18 (1) a private club if the private club

19 (A) has been in continuous operation at the same location since  
20 January 1, 2017;

21 (B) is not licensed to serve alcoholic beverages; and

22 (C) is not a place of employment;

23 (2) an e-cigarette store if the e-cigarette store has been in continuous  
24 operation at the same location since January 1, 2017.

25 (h) Nothing in this section prohibits an individual from smoking

26 (1) at a private residence, except a private residence described in (b) of  
27 this section or while a health care provider is present;

28 (2) in a stand-alone shelter if the stand-alone shelter meets the  
29 following requirements:

30 (A) food or drink may not be sold or served in the stand-alone  
31 shelter; and

1 (B) the stand-alone shelter meets the minimum distance  
2 requirements of (c) of this section; or

3 (3) in an establishment licensed under AS 17.38 that is freestanding if  
4 the smoking is in accordance with regulations adopted by the Marijuana Control  
5 Board created under AS 17.38.080.

6 (i) In this section,

7 (1) "freestanding" means a building that is not supported by another  
8 structure and does not share ventilation or internal air space with an adjoining  
9 structure and smoke from the building cannot travel into the adjoining structure;

10 (2) "health care provider" has the meaning given in AS 09.65.300;

11 (3) "private club" means an organization, legal entity, or informal  
12 association of persons that

13 (A) is the owner, lessee, or occupant of a building or portion of  
14 a building used exclusively for club purposes at all times;

15 (B) is operated solely for a recreational, fraternal, social,  
16 patriotic, political, benevolent, or athletic purpose; and

17 (C) has been granted exemption from the payment of federal  
18 income tax as a club under 26 U.S.C. 501;

19 (4) "retail tobacco or e-cigarette store"

20 (A) means a store

21 (i) that primarily sells cigarettes, e-cigarettes, cigars,  
22 tobacco and products containing tobacco, and pipes and other smoking  
23 or e-cigarette accessories;

24 (ii) in which the sale of other products is incidental; and

25 (iii) that derives at least 90 percent of its gross revenue  
26 from the sale of cigarettes, e-cigarettes, cigars, tobacco and products  
27 containing tobacco, and pipes and other smoking or e-cigarette  
28 accessories;

29 (B) does not include

30 (i) a tobacco or e-cigarette department or section of a  
31 business that does not meet the criteria in (A) of this paragraph; or

1 (ii) a business that is also a restaurant or grocery store.

2 **Sec. 18.35.306. Notice of prohibition.** (a) A person who is in charge of a place  
3 or vehicle where smoking is prohibited under AS 18.35.301 shall conspicuously  
4 display in the place or vehicle a sign that

5 (1) reads "Smoking Prohibited by Law--Fine \$50";

6 (2) includes the international symbol for no smoking; or

7 (3) includes the words "No Puffin" with a pictorial representation of a  
8 puffin holding a burning cigarette enclosed in a red circle crossed with a red bar.

9 (b) A person in charge of a building at which smoking is prohibited within a  
10 specific distance from the entrance of the building under AS 18.35.301(c)(4) shall  
11 conspicuously display a sign that reads "Smoking within (number of feet) Feet of  
12 Entrance Prohibited by Law--Fine \$50" visible from the outside of each entrance to  
13 the building.

14 (c) The department shall furnish signs required under this section to a person  
15 who requests them with the intention of displaying them.

16 **Sec. 18.35.311. Duty of employers and building managers.** (a) An employer  
17 may not permit an employee, customer, or other person to smoke inside an enclosed  
18 area at a place of employment.

19 (b) The owner, operator, manager, or other person who manages a building or  
20 other place where smoking is prohibited under AS 18.35.301 may not provide ashtrays  
21 or other smoking accessories for use in that building or place.

22 (c) An employer may not require an employee, customer, or other person to  
23 enter a stand-alone shelter as defined in AS 18.35.301(h) for a purpose other than  
24 smoking.

25 **Sec. 18.35.316. Powers and duties of the commissioner.** (a) The  
26 commissioner

27 (1) shall administer and enforce the requirements of AS 18.35.301 -  
28 18.35.399;

29 (2) may adopt regulations under AS 44.62 (Administrative Procedure  
30 Act) necessary to carry out the duties under this section.

31 (b) In addition to other powers granted the commissioner under AS 18.35.301

1 - 18.35.399, the commissioner may delegate to another agency the authority to  
2 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

3 **Sec. 18.35.321. Public education.** (a) The commissioner shall ensure that  
4 employers, property owners, property operators, and other members of the public are  
5 provided ongoing access to

6 (1) a program of education regarding the requirements in AS 18.35.301  
7 - 18.35.399;

8 (2) an electronically published printable brochure that summarizes the  
9 requirements in AS 18.35.301 - 18.35.399.

10 (b) The program of education under (a) of this section may be provided in  
11 combination with the comprehensive smoking education, tobacco use prevention, and  
12 tobacco control program established in AS 44.29.020(a)(14).

13 **Sec. 18.35.326. Nonretaliation.** (a) An employer may not discharge or in any  
14 other manner retaliate against an employee because the employee cooperates with or  
15 initiates enforcement of a requirement in AS 18.35.301 - 18.35.399.

16 (b) The owner or operator of a vehicle or other place that is subject to a  
17 requirement in AS 18.35.301 - 18.35.399 may not retaliate against a customer or other  
18 member of the public for cooperating with or initiating enforcement of a requirement  
19 in AS 18.35.301 - 18.35.399.

20 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301  
21 - 18.35.399 prohibits a municipality from adopting an ordinance imposing additional

22 (1) limitations on smoking;

23 (2) duties on employers, owners, operators, and other persons who are  
24 subject to the requirements of AS 18.35.306 or 18.35.311 related to smoking; or

25 (3) limitations on smoking in an outdoor area at a municipal park  
26 designated as a children's playground.

27 \* **Sec. 3.** AS 18.35.340(a) is amended to read:

28 (a) The commissioner shall develop and maintain a procedure for processing  
29 reports of violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326  
30 [AS 18.35.300, 18.35.305, AND 18.35.330].

31 \* **Sec. 4.** AS 18.35.340(b) is amended to read:

(b) If, after investigating a report made under this section, the commissioner determines that a violation has occurred, (1) the commissioner may file a civil complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the department issues a citation, the violation shall be processed and disposed of under AS 18.35.341.

\* **Sec. 5.** AS 18.35.340(c) is amended to read:

(c) A person who violates AS 18.35.301 [AS 18.35.300 OR 18.35.305] and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of [NOT LESS THAN \$10 NOR MORE THAN] \$50. A person who violates AS 18.35.306 or 18.35.311 [AS 18.35.330] and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not less than \$50 [\$20] nor more than \$300. Each day a violation of AS 18.35.306 or 18.35.311 [AS 18.35.330] continues after a civil complaint for the violation has been filed and served on the defendant constitutes a separate violation. A person who violates AS 18.35.326 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not more than \$500.

\* **Sec. 6.** AS 18.35.341(a) is amended to read:

(a) A peace officer may issue a citation for a violation of AS 18.35.301, 18.35.311, or 18.35.326 [AS 18.35.300 OR 18.35.305] committed in the officer's presence or for a violation of AS 18.35.306 [AS 18.35.330]. The provisions of AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

\* **Sec. 7.** AS 18.35.341(b) is amended to read:

(b) An employee of the department designated by the commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a citation for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was committed in the employee's presence. A citation issued under this subsection shall be



1 in the same form and shall be processed in the same manner as a citation issued by a  
2 peace officer under (a) of this section. An employee of the department may not arrest a  
3 person for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326  
4 [AS 18.35.300, 18.35.305, OR 18.35.330].

5 \* **Sec. 8.** AS 18.35.341(c) is amended to read:

6 (c) A person who violates AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326  
7 [AS 18.35.300, 18.35.305, OR 18.35.330] is guilty of a violation as defined in  
8 AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN  
9 \$10 NOR MORE THAN] \$50 for a violation of AS 18.35.301, [AS 18.35.300 OR  
10 18.35.305 AND] by a fine of not less than \$50 [\$20] nor more than \$300 for a  
11 violation of AS 18.35.306 or 18.35.311, and by a fine of not more than \$500 for a  
12 violation of AS 18.35.326 [AS 18.35.330]. Each day a violation of AS 18.35.306 or  
13 18.35.311 [AS 18.35.330] continues after a citation for the violation has been issued  
14 constitutes a separate violation.

15 \* **Sec. 9.** AS 18.35.341(d) is amended to read:

16 (d) The supreme court shall establish a schedule of bail amounts for violations  
17 of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 [AS 18.35.300, 18.35.305,  
18 AND 18.35.330], but in no event may the bail amount exceed the maximum fine that  
19 may be imposed for the violation under (c) of this section. The bail amount for a  
20 violation must appear on the citation.

21 \* **Sec. 10.** AS 18.35.342 is amended to read:

22 **Sec. 18.35.342. Multiple fines prohibited.** A person may not be fined more  
23 than once for each violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326  
24 [AS 18.35.300, 18.35.305, OR 18.35.330].

25 \* **Sec. 11.** AS 18.35.343 is amended to read:

26 **Sec. 18.35.343. Injunctions.** The commissioner or any affected party may  
27 institute an action in the superior court to enjoin repeated violations of AS 18.35.301,  
28 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, or 18.35.330].

29 \* **Sec. 12.** AS 18.35.350 is amended to read:

30 **Sec. 18.35.350. Enforcement authority.** The commissioner or the  
31 commissioner's designee is responsible for enforcing the provisions of AS 18.35.301 -

1        **18.35.399** [AS 18.35.300 - 18.35.365]. This section does not limit the authority of  
2        peace officers.

3        \* **Sec. 13.** AS 18.35 is amended by adding new sections to read:

4                **Sec. 18.35.357. Municipal regulation.** A municipality may, by ordinance  
5        ratified by voters in a regular municipal election, exempt the municipality from the  
6        provisions of AS 18.35.301 - 18.35.350. Unless the municipality has adopted an  
7        ordinance banning smoking in certain public places, if a municipality exempts itself  
8        from the provisions of AS 18.35.301 - 18.35.350, former AS 18.35.300 - 18.35.365  
9        apply in the municipality as those statutes provided on September 30, 2018.

10              **Sec. 18.35.359. Local option election by an established village.** (a) If a  
11        majority of the voters voting on the question vote to approve the option, AS 18.35.301  
12        - 18.35.350 do not apply within the boundaries of the established village and former  
13        AS 18.35.300 - 18.35.365 apply in the village as those statutes provided on  
14        September 30, 2018.

15              (b) A ballot question to adopt a local option under this section must at least  
16        contain language substantially similar to the following: "Shall (name of village) adopt  
17        a local option not to comply with AS 18.35.301 - 18.35.350, relating to smoking in  
18        certain public places? (yes or no)."

19              (c) If a majority of the voters voting on the question vote to remove the option,  
20        an established village shall remove a local option previously adopted under (a) of this  
21        section. The option is repealed effective the first day of the month following  
22        certification of the results of the election.

23              (d) A ballot question to remove a local option under (c) of this section must at  
24        least contain language substantially similar to the following: "Shall (name of village)  
25        remove the local option currently in effect, that permits smoking in certain public  
26        places, so that there is no longer any local option in effect? (yes or no)."

27              (e) An election to adopt a local option under (a) of this section or remove a  
28        local option under (c) of this section shall be conducted as required in this section.

29              (f) Upon receiving a petition of 35 percent or more of the registered voters  
30        residing within an established village, the lieutenant governor shall place on a separate  
31        ballot at a special election the local option or removal of a local option that constitutes

1 the subject of the petition. The lieutenant governor shall conduct the election under  
2 AS 15.

3 (g) An election under (f) of this section to remove a local option may not be  
4 conducted during the first 24 months after the local option was adopted or more than  
5 once in a 36-month period.

6 (h) After a petition has been certified as sufficient to meet the requirements of  
7 (f) of this section, another petition may not be filed or certified until after the question  
8 presented in the first petition has been voted on.

9 (i) Except as provided under (j) and (k) of this section, for purposes of this  
10 section, the perimeter of an established village is a circle around the established  
11 village that includes an area within a five-mile radius of the post office of the  
12 established village. If the established village does not have a post office, the perimeter  
13 of an established village is a circle around the established village that includes an area  
14 within a five-mile radius of another site selected by the local governing body or by the  
15 department if the established village does not have a local governing body.

16 (j) If the perimeter of an established village determined under (i) of this  
17 section includes an area that is within the perimeter of another established village, and  
18 the other established village has not adopted a local option under (a) of this section,  
19 the local option does not apply in the overlapping area.

20 (k) If the department determines that the perimeter of an established village  
21 determined under (i) of this section does not accurately reflect the perimeter of the  
22 established village, the department may establish the perimeter of the established  
23 village and the overlapping areas described under (j) of this section for purposes of  
24 applying a local option selected under this section.

25 (l) If a majority of the voters vote to adopt a local option under (a) of this  
26 section or remove a local option under (c) of this section, the lieutenant governor shall  
27 notify the department of the results of the election immediately after the results are  
28 certified. The department shall immediately notify the Department of Law and the  
29 Department of Public Safety of the results of the election.

30 \* **Sec. 14.** AS 18.35 is amended by adding a new section to read:

31 **Sec. 18.35.399. Definitions.** In AS 18.35.301 - 18.35.399,

1                   (1) "business" means a for-profit or nonprofit sole proprietorship,  
2 partnership, joint venture, corporation, professional corporation, private club, retail  
3 seller of goods or services, or other business entity;

4                   (2) "commissioner" means the commissioner of health and social  
5 services or the commissioner's designee;

6                   (3) "department" means the Department of Health and Social Services;

7                   (4) "e-cigarette" means any product containing or delivering nicotine  
8 or any other substance intended for human consumption that can be used by a person  
9 through inhalation of vapor or aerosol from the product, of any size or shape, whether  
10 the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-  
11 pipe, e-hookah, vape pen, or any other product name or descriptor; "e-cigarette" does  
12 not include drugs, devices, or combination products authorized for sale by the United  
13 States Food and Drug Administration as those terms are defined in 21 U.S.C. 301 -  
14 392 (Food, Drug, and Cosmetic Act), unless the use of those products simulate  
15 smoking or expose others to vapor or aerosol;

16                   (5) "employee" means a person who is employed by a business for  
17 compensation or works for a business as a volunteer without compensation;

18                   (6) "employer" means the state, a municipality, a regional educational  
19 attendance area, and a person or a business with one or more employees;

20                   (7) "enclosed area" means space between a floor and a ceiling that is  
21 bounded on two or more sides by a combination of walls, doorways, windows, or  
22 other physical barriers that may be open, partially open, closed, retractable, temporary,  
23 or permanent;

24                   (8) "established village" means an area that does not contain any part  
25 of an incorporated city or another established village, that is an unincorporated  
26 community in the unorganized borough, and that has 25 or more permanent residents;

27                   (9) "health care facility" means an office or institution providing care  
28 or treatment for physical, mental, emotional, or other medical, dental, physiological, or  
29 psychological diseases or conditions; private, municipal, or state hospital; independent  
30 diagnostic testing facility; primary care outpatient facility; skilled nursing facility;  
31 kidney disease treatment center, including freestanding hemodialysis units;

1 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or  
2 Alaska Veterans' Home administered by the department under AS 47.55; long-term  
3 care facility; psychiatric hospital; residential psychiatric treatment center, as defined in  
4 AS 18.07.111 or AS 47.32.900; and other facilities, places of employment, or offices  
5 operated for use by doctors, nurses, surgeons, chiropractors, physical therapists,  
6 physicians, psychiatrists, or dentists or other professional health care providers to  
7 provide health care;

8 (10) "place of employment" means work areas, private offices, hotel  
9 and motel rooms, employee lounges, restrooms, conference rooms, classrooms,  
10 cafeterias, hallways, vehicles, and other employee work areas that are under the  
11 control of an employer;

12 (11) "public place" includes

13 (A) an area to which the public is invited or into which the  
14 public is admitted;

15 (B) a place where services, goods, or facilities are offered to  
16 the public;

17 (12) "smoking" means using an e-cigarette or other oral smoking  
18 device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette,  
19 pipe, or tobacco or plant product intended for inhalation.

20 \* **Sec. 15.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and  
21 18.35.365 are repealed.

22 \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

24 **APPLICABILITY.** AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,  
25 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as amended by  
26 secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this Act,  
27 AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11 of this  
28 Act, AS 18.35.350, as amended by sec. 12 of this Act, and AS 18.35.399, added by sec. 14 of  
29 this Act, apply to violations or failures to comply that occur on or after the effective date of  
30 secs. 2 - 12 and 14 of this Act.

31 \* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to



1 read:

2       TRANSITION: REGULATIONS. The Department of Health and Social Services may  
3 adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311, 18.35.316,  
4 18.35.321, 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as  
5 amended by secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this  
6 Act, AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11  
7 of this Act, AS 18.35.350, as amended by sec. 12 of this Act, AS 18.35.357 and 18.35.359,  
8 added by sec. 13 of this Act, and AS 18.35.399, added by sec. 14 of this Act. The regulations  
9 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
10 of the section being implemented.

11       \* **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

12       \* **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect October 1, 2018.



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: ORD 18-37    Version: 1    Name:

Type: Ordinance    Status: AGENDA READY

File created: 8/8/2018    In control: City and Borough Assembly

On agenda: 8/14/2018    Final action:

Title: Making Supplemental Appropriations for Fiscal Year 2019 (reappropriation of Fiscal Year 2018 unexpended appropriations)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion Memo Ord 2018-37.pdf](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-37  
on first reading with second reading scheduled for  
August 30.



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## MEMORANDUM

**To:** Mayor Hunter and Assembly Members  
Keith Brady, Municipal Administrator

**From:** Jay Sweeney, Chief Finance and Administrative Officer

**Date:** August 7, 2018

**Subject:** Approval of Ordinance 2018-37

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### Executive Summary

The purpose of FY2019 Supplemental Budget Ordinance 2018-37 is to adjust the FY2019 operating budget by re-appropriating unspent funds in the FY2018 operating budget.

### Background and Discussion

Per Section 11.2 of the Home Rule Charter of the City and Borough of Sitka (the Charter), Lapse of Appropriations and Surpluses, *"Every unencumbered surplus of the general fund or a service area shall lapse at the close of the fiscal year to the general fund or service area, respectively. An appropriation for a capital improvement shall not lapse until its purpose has been accomplished or abandoned"*.

No provision is made within the Charter for "roll-overs" of unspent funds, with the exception of encumbrances. If a Department Head wishes to retain the ability to spend unencumbered operating appropriations on into a new fiscal year, a new supplemental appropriation must be made (a re-appropriation). The administrative procedure that Sitka employs in regards to re-appropriation requests is twofold: (1) all such requests must be first approved by the Administrator, then (2) a supplemental budget ordinance must be passed, with the requisite two readings, to re-appropriate the funds. The accompanying ordinance accomplishes the second part of the process.

As an important note, when considering the annual operating budget within the context of just one fiscal year, re-appropriations of encumbered funds and re-appropriations of unencumbered, unspent funds have the effect of causing an

otherwise balanced operating budget to become unbalanced with a projected deficit, unless new revenues are identified. The practical effect, however, is that unencumbered, unspent appropriations constitute a surplus generated in the previous year and re-appropriation is a mechanism which provides for an ability to spend part of that surplus in the new fiscal year. If not re-appropriated, surpluses generated in previous fiscal years are examined by the Administrator for potential transfer into the Public Infrastructure Sinking Fund, as set forth in SGC 4.45.020.

In regards to the specific reappropriation requests, see attached ordinance.

**Fiscal Note:**

The effect of passing this ordinance will be to increase authorized expenditures in FY19 by the following amounts in the following funds:

General Fund – operating budget - \$122,735  
Wastewater Fund – operating budget - \$10,000  
Building Maintenance Fund – operating budget - \$20,200  
Building Maintenance Fund – capital expenditure budget - \$145,000

If passed, new supplemental operating appropriations will lapse June 30, 2019. New capital expenditure appropriations will not lapse until their purpose is accomplished or abandoned.

## CITY AND BOROUGH OF SITKA

**ORDINANCE NO. 2018-37**  
**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA**  
**MAKING SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2019**

**BE IT ENACTED** by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.

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 and circumstances shall not be affected thereby.

3. **PURPOSE.** The purpose of this ordinance is to make supplemental appropriations for Fiscal Year 2019.

4. **ENACTMENT.** In accordance with Section 11.10(a) of the Charter of the City and Borough of Sitka, Alaska, the Assembly hereby makes the following supplemental appropriations for the budget period beginning July 1, 2017 and ending June 30, 2018 is hereby adjusted as follows:

<b><u>FISCAL YEAR 2018 EXPENDITURE BUDGETS</u></b>
<b>GENERAL FUND</b>
<b>Administration – Operations: Re-appropriate \$65,000 from FY18 to FY19 for the completion of the Sitka Community Hospital RFP process.</b>
<b>Assessing – Operations: Re-appropriate \$26,735 from FY18 to FY19 to refine the MARS CAMA system and to contract for island inspection services.</b>
<b>Recreation- Operations: Re-appropriate \$20,000 from FY18 to FY19 for street sand.</b>
<b>Building Official – Travel/Training: Re-appropriate \$3,000 from FY18 to FY19 for the new hire to attend Building Plans Examiner seminar.</b>
<b>Library- Operations: Re-appropriate \$8,000 from FY18 to FY19 for travel and advertising expense regarding new Library Director hire.</b>
<b>ENTERPRISE AND INTERNAL SERVICES FUNDS</b>
<b>Wastewater Fund-Fixed Assets: Re-appropriate the following fixed assets from FY18 to FY19: scum concentrator drive system - \$10,000.</b>
<b>Building Maintenance Fund – Operations: Re-appropriate the following projects that were budgeted but were not completed from FY18 to FY19: Animal Shelter roof rotted soffit and siding - \$120,000; Senior Center exterior paint - \$16,000; Senior Center cook hood replacement - \$25,000; MSC replace compressor - \$4,200.</b>



In accordance with Section 11.10 (a) of the Charter of the City and Borough of Sitka, Alaska, the budget for the fiscal period July 1, 2018 and ending June 30, 2019 is hereby adjusted as follows:

<b>FISCAL YEAR 2019 EXPENDITURE BUDGETS</b>
<b>GENERAL FUND</b>
Administration – Operations: Re-appropriate \$65,000 from FY18 to FY19 for the completion of the Sitka Community Hospital RFP process.
Assessing – Operations: Re-appropriate \$26,735 from FY18 to FY19 to refine the MARS CAMA system and to contract for island inspection services.
Recreation- Operations: Re-appropriate \$20,000 from FY18 to FY19 for street sand.
Building Official – Travel/Training: Re-appropriate \$3,000 from FY18 to FY19 for the new hire to attend Building Plans Examiner seminar.
Library- Operations: Re-appropriate \$8,000 from FY18 to FY19 for travel and advertising expense regarding new Library Director hire.
<b>ENTERPRISE AND INTERNAL SERVICES FUNDS</b>
Wastewater Fund-Fixed Assets: Re-appropriate the following fixed assets from FY18 to FY19: scum concentrator drive system - \$10,000.
Building Maintenance Fund – Operations: Re-appropriate the following projects that were budgeted but were not completed from FY18 to FY19: Senior Center exterior paint - \$16,000; MSC replace compressor - \$4,200.
Building Maintenance Fund – Fixed Assets: Re-appropriate funds that were budgeted but were not completed from FY18 to FY19 in the amount of \$25,000 for the Senior Center cook hood replacement and move that appropriation to Fixed Assets.
<b>CAPITAL PROJECTS</b>
Animal Shelter Roof Rotted Soffit and Siding Project: Re-appropriate funds in the amount of \$120,000 for Animal Shelter repairs and move that appropriation to a Capital Project.

**EXPLANATION**

The Municipal Administrator has determined that various unexpended appropriations for Fiscal Year 2018, which lapsed on June 30, 2018, are essential to the Municipality. The Municipal Administrator, therefore is recommending that the lapsed appropriations identified above be re-appropriated in Fiscal Year 2019 through supplemental appropriations as set forth in Section 11.10 (a) of the Charter. A short explanation of each supplemental appropriation is included.

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

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 30th Day of August, 2018.

**ATTEST:**

\_\_\_\_\_  
Matthew Hunter, Mayor

\_\_\_\_\_  
Melissa Henshaw, CMC  
Acting Municipal Clerk



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: ORD 18-39    Version: 1    Name:

Type: Ordinance    Status: AGENDA READY

File created: 8/8/2018    In control: City and Borough Assembly

On agenda: 8/14/2018    Final action:

Title: Amending Title 15 "Public Utilities" of the Sitka General Code by repealing Chapter 15.01 "Electric Utility Policies" Section 15.01.020 "Electrical Rates" (Plug-In Electric Vehicle Incentive Credit)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion Memo Ord 2018-39.pdf](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-39  
on first reading with second reading scheduled for  
August 30.



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## MEMORANDUM

**To:** Mayor Hunter and Assembly Members  
Keith Brady, Municipal Administrator

**From:** Jay Sweeney, Chief Finance and Administrative Officer

**Reviewed:** Mayor Hunter and Assembly Member Potrzuski

**Date:** August 6, 2018

**Subject:** Approval of Ordinance 2018-39

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### **Executive Summary**

Mayor Hunter and Assembly Member Potrzuski have requested that an ordinance be prepared to repeal the Plug-in Electric Vehicle (PEV) Incentive Credit. Staff has been asked to provide background and a brief fiscal note for the ordinance.

### **Background and Discussion**

Ordinance 2015-23, adopted by the Assembly on May 4, 2015, provided for PEV incentive credits. The amount of the credits authorized were (1) \$120 per vehicle for residential customers, with a maximum of 2 PEVs per household; and (2) \$200 per vehicle for general service customers, with a maximum of 5 PEVs per customer.

The amount of PEV incentive credits utilized have been small since Ordinance 2015-23 was adopted. The total of credits obtained since inception of the program has been \$5,640, which breaks out as follows:

FY2016 – 2 credits, \$240  
FY2017 – 22 credits, \$2,640  
FY2018 – 23 credits, \$2,760

### **Fiscal Note**

Due to the very small utilization of incentive credits by the public, elimination of the incentive credit will have very little impact on the financial condition and performance of the electric utility and no rate impact.



CITY AND BOROUGH OF SITKA  
ORDINANCE NO. 2018-39

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING TITLE 15 “PUBLIC UTILITIES” OF THE SITKA GENERAL CODE BY REPEALING CHAPTER 15.01 “ELECTRIC UTILITY POLICIES” SECTION 15.01.020 “ELECTRICAL RATES”

**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 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.** The purpose of this ordinance is to repeal the plug-in Electric Vehicle (PEV) Incentive Credit, currently offered to residents of Sitka who have purchased a PEV and use city and borough electricity to charge PEV.

**4. ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code section 15.01.020 “Electric Rates” at subsection O is amended to read as follows (new language underlined; deleted language stricken):

TITLE 15  
PUBLIC UTILITIES

\* \* \*

Chapter 15.01  
Electric Utility Policies

Sections:

- 15.01.005 Definitions.
- 15.01.010 Statement of purpose.
- 15.01.012 Level of authority and responsibilities.
- 15.01.020 Electrical rates.
- 15.01.025 Customer and city rights and responsibilities.
- 15.01.030 Deposits—Fees.
- 15.01.035 General requirements.
- 15.01.040 Service connections.
- 15.01.045 Line extension.
- 15.01.050 Subdivisions.
- 15.01.055 Mobile home parks, RV parks, private marinas and boat docks.
- 15.01.060 Rental structures.
- 15.01.065 Motors and controllers.
- 15.01.070 Undesirable characteristics.
- 15.01.075 Special equipment.
- 15.01.080 Customer generation.

\* \* \*

**15.01.020 Electrical rates.**

\* \* \*

O. ~~RESERVED~~ Plug-in Electric Vehicle (PEV) Incentive Credit. A one hundred twenty dollar annual PEV energy credit will be applied to all eligible residential class customers that register and operate a plug-in electric vehicle within the CBS up to a maximum of two PEVs per household. A two hundred dollar annual PEV energy credit will be applied to all eligible general service customers that register and operate a plug-in electric vehicle within the CBS up to a maximum of five PEVs.

\* \* \*

**5. EFFECTIVE DATE.** This ordinance shall become effective October 1, 2018.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska, this 30<sup>th</sup> day of August, 2018.

\_\_\_\_\_  
Matthew Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Henshaw, CMC  
Acting Municipal Clerk

1<sup>st</sup> reading 8/14/18

2<sup>nd</sup> reading 8/30/18

Sponsors: Hunter/ Potrzuski





# CITY AND BOROUGH OF SITKA

## Legislation Details

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File #: ORD 18-40    Version: 1    Name:

Type: Ordinance    Status: AGENDA READY

File created: 8/8/2018    In control: City and Borough Assembly

On agenda: 8/14/2018    Final action:

Title: Authorizing a property tax exemption through December 31, 2020 for the Sitka Historical Society, Inc. in the lease premises at Harrigan Centennial Hall

Sponsors:

Indexes:

Code sections:

Attachments: [Motion and Ord 2018-40.pdf](#)  
[July 10 minutes.pdf](#)  
[Revised Sitka Historical Society Lease.pdf](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-40  
on first reading with second reading scheduled for  
August 30.

Note:

- On July 10, the Assembly approved a lease agreement between the Sitka Historical Society, Inc. and the City and Borough of Sitka. In addition, the Assembly directed staff to execute within the terms of the lease a waiver of utilities and property taxes for a period of 24 months.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2018-40

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING A PROPERTY TAX  
EXEMPTION THROUGH DECEMBER 31, 2020 FOR THE SITKA HISTORICAL SOCIETY, INC. IN THE  
LEASED PREMISES AT HARRIGAN CENTENNIAL HALL

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not 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.** The purpose of this ordinance is to exempt from property tax the leasehold interest of the Sitka Historical Society, Inc., in the leased premises at Harrigan Centennial Hall, as realized from the Lease Agreement between the City and Borough of Sitka, Alaska ("CBS"), and Sitka Historical Society, Inc. ("SHS"), which was approved at the regular Assembly meeting on July 24, 2018. The exemption, known as the "community purpose optional property tax exemption," is authorized under Sitka General Code, subsection 4.12.025.E, which adopts and incorporates Alaska Statute 29.45.050(b)(1)(A), which, in order to receive the exemption, requires SHS to be "an organization not organized for business or profit-making purposes and [the property] used exclusively for community purposes." The code and statute also requires, to be exempted, that the "income derived from rental of that property does not exceed the actual cost to [CBS] of the use by [SHS]." In all respects, the conditions are met for the exemption. The exemption term proposed is from the starting date of the lease until December 31, 2020.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska, upon finding as follows:

- (1) SHS is an organization not organized for business or profit-making purposes; and,
- (2) the leasehold premises at Harrigan Centennial Hall is used exclusively for community purposes; and,
- (3) income derived by CBS from the lease of the leasehold premises at Harrigan Centennial Hall to SHS (which is zero) does not exceed the actual cost to CBS of the use by SHS;

thereby, SGC 4.12.025.E is satisfied and SHS is exempt from property tax from the starting date of the lease until December 31, 2020. The Assembly may extend this exemption by ordinance.

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

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 30<sup>th</sup> day of August, 2018.

\_\_\_\_\_  
Matthew Hunter, Mayor

**ATTEST:**

\_\_\_\_\_  
Melissa Henshaw, CMC  
Acting Municipal Clerk

1<sup>st</sup> reading 8/14/18  
2<sup>nd</sup> reading 8/30/18

Sponsor: Administrator

**H**      [18-136](#)

Approve a lease agreement between the Sitka Historical Society, Inc. and the City and Borough of Sitka for a portion of 330 Harbor Drive

Executive Director of the Sitka History Museum Hal Spackman mentioned the July 26 grand opening date for the museum noting the museum had been in existence since 1957. Spackman told of lease amendments he felt the museum needed and several members of the audience showed their support for the museum by raising hands. Amendments included a sign outside of the museum by approval of the assembly, a waiver of utility fees, a waiver of rental fees for foyer use for special events not to conflict with other activities, and a waiver of property tax.

Municipal Attorney Brian Hanson stated the lease came to the legal department many months ago, that it has been challenging to work through as the previous lease was decades old. Don Kluting, Harrigan Centennial Hall (HCH) Director spoke of concerns with the sign amendments inconjunction to the master plan of the entire HCH campus. He told of utility costs and noted if the fees were waived, the overall HCH budget would need to increase. He mentioned concern with use of the foyer since it was the main entrance, that it would need to be coordinated, and HCH staff would be required to be on duty for events which would add additional costs.

Bean had concerns, but thought all parties could get to a place where everyone agreed, or mentioned to shorten the term. Wein wanted more information regarding the sign amendment. Eisenbeisz had concerns with the unlimited utilities and the need to increase the HCH budget to subsidize utilities. He noted that the amendments were shifting the burden back to the city and therefore the public, and wondered if the museum would offer free access to public. Spackman noted that most museums were ran by the city and felt it was a great service provided at less expense to the city. He stated the museum needed time and monetary relief. Knox voiced that a thirty year term was long, and that the Historical Society provided a benefit. He would like to know the cost of the amendments. Mayor Hunter clarified historically they had been charged, however relayed the funding the city paid to the Historical Society had decreased over the years. He thought it was a reasonable expenditure from the Visitor's Enhancement Fund. He mentioned granting the waivers for a period of time in order to know the costs. Miyasato agreed and voiced a one year waiver. He was in support of a long term lease. Wein was in support of the subsidization. Bean agreed with Hunter and Wein, and offered a 24 month term. Knox wished to go forward with the long term lease but on a short term basis for the utilities and property tax waiver to be revisited in 24 months. Mayor Hunter stated he would like to approve the lease and then make amendments. Eisenbeisz reminded that the sign code needed to be followed, was amendable to the waiver of property tax, but thought utilities should be paid.

**A motion was made by Miyasato to approve a lease agreement between the Sitka Historical Society, Inc. and the City and Borough of Sitka for a portion of 330 Harbor Drive and authorize the Municipal Administrator to execute this document.**

**Yes:** 4 - Miyasato, Hunter, Knox, and Wein

**No:** 2 - Eisenbeisz, and Bean

**Absent:** 1 - Potrzuski

John Stein noted the items were a public trust and the artifacts were irreplaceable.

Eisenbeisz requested a financial review and confirmed with Spackman that the timing of the 24 months coming due in the summer season would not cause concern. Bean

was also in favor of a financial review. Miyasato was in support.

**A motion was made by Knox to direct staff to execute within the terms of the lease with the Sitka Historical Society, Inc., a waiver of utilities and property taxes for a period of 24 months at which time it would be revisited.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**I**      [18-138](#)

Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson felt that lease extensions needed to come forward to the Assembly. Eisenbeisz expressed lease extensions should be processed by staff. Wein had concerns of liability for the city with possible lack of general liability insurance. Chief Finance and Administrative Officer Jay Sweeney explained there was approximately a \$2 million balance in the Marine Service Center Fund and noted that the bulk head was owned by the Harbor Fund. Brady stated the lease had expired June 30th, that this was signed by Administration, however needed the assembly to ratify it. Staff had been working internally to changes in the contract. Hanson recommend postponement in order to look at the risk of insurance.

**A motion was made by Miyasato to POSTPONE this item to the July 24, 2018 Assembly meeting. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**J**      [ORD 18-30](#)

Making supplemental appropriations for Fiscal Year 2019 (*E911 Software System Acquisition*)

IT Director Ron Duvall stated this ordinance was moving dedicated E911 funds to MIS funds for the project. He told approval of the contract, not to exceed \$285,000, would be at the next regular meeting. He communicated the reasoning of this ordinance coming prior to the contract was because it took two readings and the second reading of this ordinance and the contract approval would be placed on the agenda for the next meeting together. Duvall noted funds were available, yet no money would be issued until the contract was approved. Bean inquired if the police department would move to a different location that the system could be moved. Duvall confirmed and noted that this system was for both the police department and fire department. Mayor Hunter voiced this was the process that had been done previously, and it was a matter of style yet the effect was the same.

**A motion was made by Miyasato that this ordinance be PASSED ON FIRST READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Eisenbeisz, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Potrzuski

**K**      [ORD 18-31](#)

Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.100 "Exemptions" by including an exemption for sales tax on groceries and residential utilities and



# **LEASE AGREEMENT**

**BETWEEN**

**THE  
CITY AND BOROUGH OF  
SITKA, ALASKA**

**AND**

**SITKA HISTORICAL SOCIETY  
INC.**



**LEASE AGREEMENT  
BETWEEN  
CITY AND BOROUGH OF SITKA, ALASKA,  
AND  
SITKA HISTORICAL SOCIETY, INC.**

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**EXHIBITS:**

Exhibit A – Diagram of Subject Property

**LEASE AGREEMENT  
BETWEEN  
CITY AND BOROUGH OF SITKA, ALASKA,  
AND  
SITKA HISTORICAL SOCIETY, INC.**

**PREAMBLE**

This Lease agreement ("Lease") between City and Borough of Sitka, Alaska, and Sitka Historical Society, Inc., is effective upon execution of the Lease by both Parties, City and Borough of Sitka, Alaska, of 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor" ) and Sitka Historical Society, Inc., of 330 Harbor Drive, Sitka, Alaska 99835 ("Lessee"). This Lease consists of the Special Provisions, the General Provisions, and the attached Exhibit A, which is a pictorial representation of the area leased.

**SPECIAL PROVISIONS**

**ARTICLE I LEASE, TERM, TERMINATION OF LEASE, OPTION TO RENEW, NO RENT, ETC.**

**Section 1.1 Conveyance of Estate in Lease**

Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the "Subject Property" or "Premises" as shown on Exhibit A. The Subject Property is approximately 3,843 square feet of Harrigan Centennial Hall ("HCH") located at 330 Harbor Drive, Sitka Alaska, consisting of Room 142 Museum Store (314 square feet), Room 143 Administration (253 square feet), Room 144 Director's Office (185 square feet), Room 145 Research (194 square feet), Room 146 Curator's Office (133 square feet), Room 147 Processing (111 square feet), Room 148 Repository (823 square feet), and Room 149 Museum (1830 square feet).

**Section 1.2 Lease Term**

The Lease term is for thirty (30) years and commences on May 1, 2018, and ends on April 30, 2048, unless sooner terminated or extended as provided in this Lease. The Lease term may be extended, based on the Option to Renew in Section 1.3.

**Section 1.3 Option to Renew.**

Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise the option for one successive term of thirty (30) years upon the same terms and conditions as this Lease (except Section 1.2). This option is effective only if (a) Lessee makes a written request to exercise such an option not more than one year or less than six months from the end of the immediately preceding term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease. The option to renew must be approved by Lessor Assembly.

**Section 1.4 No Rent**

Lessee shall pay no rent for lease of the Subject Area.



### **Section 1.5 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.**

With the exception of the Improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property constructed, installed, or deposited on the Subject Property at the termination of this Lease. Subject to Lessee's obligations under subsection 4.1 below, all Improvements shall remain on and be surrendered with the Subject Property on the termination of the Lease, except as otherwise agreed in writing by the Parties. Any personal property or Improvements not removed after thirty (30) days have passed after termination of this Lease shall be deemed abandoned, and at Lessor's option, shall become property of Lessor. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat and clean condition at the end of the Term of the Lease.

### **Section 1.6 Covenants to Perform.**

This Lease 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 PROPERTY TAX RESPONSIBILITY**

### **Section 2.1 Property Tax Responsibility.**

Beginning in the calendar year 2021 and on the condition that the Assembly approves by ordinance, pursuant to SGC 4.12.025.E, the "community purpose optional property tax exemption under AS 29.45.050(b)(1)(A)" for the preceding time period, Lessee will be responsible to pay any property taxes to Sitka for Lessee's possessory interest in the building, land, and equipment to the extent taxable as determined by the Sitka Assessor, which is assessed as of January 1 of each calendar year. The Assembly may extend the exemption by ordinance. If the Assembly fails to approve the exemption, Lessee's responsibility to pay property taxes commences on the effective date of this lease.

## **ARTICLE III RESTRICTIONS UPON USE OF SUBJECT PROPERTY**

### **Section 3.1 Lessee's Obligations as to Construction, Maintenance, Repair and Safety.**

(a) Except as otherwise provided in this Lease, Lessee acknowledges the leasehold is in an "as is" condition. Lessee shall not make any Improvements to the Subject Property unless it first receives Lessor's written consent. Such consent shall not be unreasonably withheld. All such Improvements consented to shall be made by qualified and licensed professionals in accordance with local, state and Federal laws and regulations. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may repair and/or maintain any improvements, using materials of good quality and matching existing finishes.

Lessor reserves the right to expand or modify the Subject Property. In that event, Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses and as specified in this Lease Agreement.

(d) Lessee shall confine its operation to the Subject Property.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee 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 Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the Term of this Lease to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessor may erect outdoor signage, at its expense, which includes Lessee's use, but is not obligated to do so. If Lessor does so, Lessor shall consult with Lessee, as to style, size, and physical placement location of the sign, and may consider Lessee's recommendations. Lessee may erect outdoor signage, at its expense, with the written consent of Lessor submitted to the HCH Manager and approved by the Municipal Administrator. The style, size, and physical placement location of the sign will be approved on a case-by-case basis.

### **Section 3.2 Lessor's Approval of Certain Alterations or Improvements.**

Lessee 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 Lessor submitted to the HCH Manager and approved by the Municipal Administrator, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes water and wastewater systems, electrical systems, and HVAC systems. In requesting consent, Lessee shall comply with all applicable laws and ordinances, and shall submit to the HCH Manager of Lessor 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. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting, Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease any improvements or personal property as described in Section 1.5.

### **Section 3.3 Rights of Access to Property.**

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner, with reasonable prior notice except in the case of an emergency for safety or hazard, 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. Lessor also



reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner, with reasonable prior notice, for the purposes of inspection of all work being performed in connection with the construction of Improvements; Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee 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 Lessor and any applicable utility company.

(c) Lessee acknowledges that the Subject Property is or shall be subject to agreements for ingress and egress, utilities, parking, and maintenance of common areas. Lessee agrees that it shall comply with the terms of such 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 therein.

(d) Lessee shall notify the HCH Manager in writing of its schedule and at least one week in advance of any changes to its schedule. Lessee shall notify the HCH Manager in writing at least one week in advance of any events scheduled by Lessee on the Subject Property. Lessee shall not conduct any event which uses the common areas of the building, other than for ingress and egress, unless it first receives Lessor's written consent submitted to the HCH Manager.

#### **Section 3.4 Additional Conditions of Leasing.**

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

(a) Lessee will cooperate with Sitka employees and HCH staff and will notify HCH staff of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify Lessor of any event that requires immediate response by Lessor.

(b) Lessee 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, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State, or local laws or regulations promulgated thereunder, and Lessee further grants Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal, State or local laws and regulations.

(c) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Lessor shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(d) Lessee shall timely pay any applicable Building Inspector fees and other building permit fees and shall also timely file and pay all applicable property taxes and assessments.

(e) Lessee shall be responsible for taking any measures that Lessee deems necessary to provide security for its property. Lessor is not responsible for theft or vandalism.

(f) Any utility costs associated with the Subject Property shall be paid by Lessee, currently excluding Sitka Sales tax. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Sitka Assembly. Lessee shall timely pay all Sitka billings. Failure of Lessee to file and pay Sitka taxes, and pay utilities, may subject his Lease to be terminated.

(g) In accord with commercially reasonable standards and the rules, Lessee shall not store hazardous or explosive materials on the Subject Property.

(h) Janitorial for common areas in the Building is provided by Lessor at its own cost and expense. Lessee will provide all janitorial services and supplies for the Subject Property at Lessee's expense.

(i) Lessor shall have the right to establish and maintain reasonable rules and regulations concerning the maintenance, management, use, and operation of the common areas and the right to make any changes or alterations to the common areas which in Lessor's judgment are necessary and appropriate for the proper functioning of the building. Lessor, at its cost, shall maintain the common areas, including ice and snow removal and lights.

(j) The Subject Property includes no designated parking spaces. All parking is public.

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

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

## **ARTICLE IV POSSESSION and CONSTRUCTION OF IMPROVEMENTS.**

### **Section 4.1 Lessee's Construction Obligations.**

Upon approval as required by Section 3.2, and at the sole cost and expense of Lessee and pursuant to building permits and all legal requirements and in compliance with all warranties applicable to the building, Lessee shall purchase, construct and/or develop the appropriate Improvements, personal property, or fixtures, including but not limited to any structures referred to in Section 1.1 or this Lease, and other items on the Subject Property in a first class manner, of good quality and all work shall be performed diligently. The items to be purchased, constructed and/or developed shall be those reasonably necessary to conduct Lessee's intended business operations on Subject Property.

(a) In addition to Section 3.1(a) of this Lease, Lessor, in its proprietary capacity only, agrees to cooperate reasonably with Lessee in its efforts to secure the requisite permits, licenses and approvals to allow the purchase, construction, and/or development of any project by Lessee. Notwithstanding the foregoing, Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license or approval (including a building permit) or to meet any other requirements for development of any project. Nothing in this Lease is intended or shall be construed to require that Lessor exercise its discretionary

authority under its regulatory ordinances to further any project nor binds the Lessor to do so. Lessor will process applications for permits, licenses and approvals as if such application were made without any Lessor participation in such project and shall act in good faith with respect thereto.

(b) Approval by Lessor of any item shall not constitute a representation or warranty by Lessor that such item complies with any legal requirements and Lessor assumes no liability. Lessor has no obligation or duty to design, supervise the design, construct or supervise the construction of the Improvements. Lessor's approval of the construction plans, as provided below, is for the sole purpose of protecting its rights as the owner of the building and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, or any obligation on Lessor to insure that work or materials are in compliance with the construction plans or any warranties or building requirements imposed by a governmental agency. Lessor is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements or any other items, the cost of which shall at all times remain the sole liability of Lessee.

(c) For all acts other than the acts of Lessor, its officers, agents, and employees, Lessee covenants to indemnify, defend and hold harmless Lessor and its agents and employees from and against all claims and demands whatsoever for loss or damage including property damage, personal injury and wrongful death arising out of construction of the Improvements, any development or repairs made at any time on the Subject Property, the performance of this Lease by Lessee, its agents, employees, contractors, subcontractors or invitees, any incident, fire or other casualty in respect of the Subject Property, any failure by Lessee to keep the Subject Property, or any improvements on it, in a safe condition, and all other activities occurring on or at the Subject Property.

## **ARTICLE V UTILITY SERVICES and RATES**

### **Section 5.1 Provision of Utility Services.**

Lessor shall provide utility services to or reasonably accessible from the Subject Property.

### **Section 5.2 Rates for Utility Services Provided by Lessor.**

Utility rates charged by Lessor for utility services shall be those set forth in Sitka's Customer Service Policy and/or Sitka General Code. The Sitka Assembly may change utility rates from time to time by amending the Customer Service Policies and/or Sitka General Code.

### **Section 5.3 Lessee to Pay for Utility Services.**

Lessee will pay, or cause to be paid, all proper charges for any of the following, if available: electricity and solid waste; sewer and water; and for all other public or private utility services, which shall be used by or supplied to the Subject Property at any time during the term of this Lease. In the event that any charge, cost, or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional charges due and payable under this Lease, and shall be repaid to Lessor by Lessee immediately on rendition of a bill by Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Lessor on behalf of



Lessee. Lessor reserves the right to suspend utility services if Lessee does not pay for utility services. Failure to timely pay utility services may also result in Lessor terminating this Lease. Notwithstanding the foregoing, Lessee shall be exempt from paying for utility services for the first twenty-four months of this Lease. The Assembly may extend this exemption by motion.

**Section 5.4 Lessor Not Liable for Failure of Utilities or Building.**

Except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor 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 building or the Subject Property, or leakage of gasoline or gas from pipes, appliances, sewer, or plumbing works or from any other place. Lessor 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 or Nature, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

**Section 5.5. Requirement Regarding Potable Water Services.**

All potable water services will be metered and protected by approved backflow prevention in accordance with Customer Service Policies and/or Sitka General Code.

**ARTICLE VI LIABILITY and INDEMNIFICATION**

**Section 6.1 Liability of Lessee and Indemnification of Lessor.**

Lessee agrees to indemnify, defend, and hold harmless Lessor 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 Lessor or pre-existing conditions, 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. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the Term of this Lease from: (a) any condition of the Subject Property or Improvements placed on it by Lessee; (b) any breach or default on the part of Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; (c) any act or negligence of Lessee 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 Lease in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, 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 Lease to indemnify Lessor. The agreements of indemnity by Lessee do not apply to any claims of damage arising out of the failure of Lessor to perform acts or render services in its municipal capacity.

**Section 6.2 Liability of Lessor and Indemnification of Lessee.**

Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee 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 Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the Term of this Lease from (a) any condition of the Subject Property or Improvements placed on it by Lessor; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; (c) any act of negligence of Lessor 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 Lease in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, 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 Lease to indemnify Lessee.

**Section 6.3 Reimbursement of Costs of Obtaining Possession.**

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease for all costs and charges, including but not limited to, full reasonable attorney and legal fees lawfully incurred in enforcing any provision of this Lease including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease upon expiration or earlier termination of this Lease.

**GENERAL PROVISIONS****ARTICLE VII DEFINITIONS****Section 7.1 Defined Terms.**

For the purposes of this Lease, 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 15.1.
- (b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.
- (c) "Improvements" or "improvements" means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property, including any construction fencing or signage, excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the Improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which

such items are removed being returned to a condition at least as good as that existing on the date of this Lease. "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 the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(g) "Sublessee" and "Sublease" -- any reference to "Sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "Sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee leases the Subject Property from Lessor.

## **ARTICLE VIII INSURANCE**

### **Section 8.1 Insurance.**

Lessee shall obtain and maintain property damage and comprehensive general liability insurance in the amount of One Million Dollars (\$1,000,000), on the Subject Property including Improvements. Lessor shall be named as an additional insured. Additionally, Lessee shall have the statutory amount of any Workers Compensation.

### **Section 8.2 Notification of Claim, Loss, or Adjustment.**

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 8.1.

### **Section 8.3 Waiver of Subrogation.**

The Party 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 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 Lease Agreement, 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 Lease to be so insured. In such coverage the Parties hold on or 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. 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.



Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with the approval of the Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

#### **ARTICLE IX RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY**

##### **Section 9.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.**

Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with the approval of the Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

##### **Section 9.2 Limitations on Subleases.**

Lessee shall not sublease the Subject Property or any portion of it except with the approval of the Sitka Assembly, which approval shall not be unreasonably withheld. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

#### **ARTICLE X USE and PROTECTION OF THE SUBJECT PROPERTY**

##### **Section 10.1 Property As Is - Repairs.**

Lessee 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 their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the Improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

##### **Section 10.2 Compliance with Laws.**

Lessee shall throughout the Term of this Lease and any extension, at Lessee'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 Lessor of its general obligations in its municipal capacity.

##### **Section 10.3 Permits and Approvals for Activities.**

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Contemporaneously with making any application for permits to any public entity other than the Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the of Sitka to facilitate review by

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

## **ARTICLE XI LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED**

### **Section 11.1 Performance of Lessee's Covenants To Pay Money.**

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

### **Section 11.2 Lessor's Right To Cure Lessee's Default.**

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

### **Section 11.3 Reimbursement of Lessor by Lessee.**

All sums advanced by Lessor 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 Lessee, in the respective amounts so advanced, to Lessor. This reimbursement shall be made on demand, or, at the option of Lessor, may be added to any sum then due or becoming due under this Lease and Lessee covenants to pay the sum or sums with interest, and Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by Lessee.

## **Article XII: DAMAGE OR DESTRUCTION**

### **Section 12.1 Repair and Replacement of Structures and Improvements Following Damage.**

(a) If the Premises, other than those Improvements made by Lessee, 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 Lessee shall not be entitled to surrender possession of the Premises, without the mutual consent of the Parties; in case of any such destruction or injury, Lessor 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 Lessee shall be unable to use all or any portion of the Premises, no allowance shall be made to Lessee.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease and further liability hereunder, or to extend the Term of this Lease by a period of time equivalent to the time from the happening of such destruction or injury until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease, Lessor shall restore the Premises to their former condition within the time specified in the notice.

### **ARTICLE XIII MECHANIC'S LIENS**

#### **Section 13.1 Discharge of Mechanics' Liens.**

Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against Lessee's interest in the property, nor against the Improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone having a right to possession of the Subject Property or Improvements as a result of an agreement with or the assent of Lessee. If any mechanics' lien shall be filed against the Subject Property, including the Improvements, Lessee shall cause it to be discharged of record within thirty (30) days after the date that Lessee has knowledge of its filing.

### **ARTICLE XIV LIEN FOR TAXES and OTHER CHARGES**

#### **Section 14.1 Lien for Taxes and Other Charges.**

The amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by Lessor in enforcing the provisions of this Lease or on account of any delinquency of Lessee in carrying out any of the provisions of this Lease, shall be and they are declared to constitute a valid and prior lien upon Lessee and Lessee's Improvements to the Subject Property, and upon Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

### **ARTICLE XV DEFAULT PROVISIONS**

#### **Section 15.1 Events of Default.**

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

(a) The failure of the Lessee to pay any 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 Lessor to Lessee.



(b) The failure of Lessee to perform any of the other covenants, conditions and agreements of this Lease including payment of taxes on the part of Lessee 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 Lessor contends that Lessee has failed to perform any of the covenants, conditions and agreements) from Lessor to Lessee unless, with respect to any default which cannot be cured within thirty (30) days, Lessee, or any person holding by, through or under Lessee, 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 sixty (60) days.

(c) The filing of an application by Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of Lessee's interest in this Lease): (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 Lessee 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 sixty (60) consecutive days, or if this Lease is taken under a writ of execution.

#### **Section 15.2 Assumption or Assignment of Lease to Bankruptcy Trustee.**

In the event that this Lease 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.*), the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease as are required by the Bankruptcy Code (including but not limited to, 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 Lease shall be deemed rejected automatically and Lessor shall have the right immediately 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 Lease.

#### **Section 15.3 Remedies in Event of Default.**

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

(a) Lessor may terminate this Lease and the Term created, in which event Lessor 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 Lease, of any sum of money and

damages due under the terms of this Lease to Lessor and Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.5 above.

(b) Lessor may terminate Lessee'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 Lessee (except as above expressly provided for) and without terminating this Lease, in which event Lessor 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 Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated Term of this Lease Agreement and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in Lessor's judgment reasonably exercised; and if Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property is 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 charges accruing from it, to satisfy the charges above provided to be paid, then Lessee shall pay to Lessor as damages a sum equal to the amount of the charges reserved in this Lease for the period or periods as and when payable pursuant to this Lease, or, if the Subject Property or any part of it has been relet, Lessee shall satisfy and pay any deficiency upon demand from time to time; and Lessee acknowledges that Lessor 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 Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.5 above.

(c) In the event of any breach or threatened breach by Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease, Lessor 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 Lease.

(d) Upon the termination of this Lease and the Term created, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.5. If possession is not immediately surrendered, Lessor 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, if such can be done without using force. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, Lessor may treat the



default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, Lessor shall have the right to carry out or complete the work on behalf of Lessee without terminating this Lease.

**Section 15.4 Waivers and Surrenders To Be In Writing.**

No covenant or condition of this Lease shall be deemed to have been waived by Lessor unless the waiver be in writing, signed by Lessor or Lessor'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 Lessee from the obligation, wherever required under this Lease, to obtain the consent of Lessor to any other act or matter.

**ARTICLE XVI LESSOR'S TITLE And LIEN**

**Section 16.1 Lessor's Title and Lien Paramount.**

Lessor has title to the Subject Property, and Lessor's lien for taxes and other charges shall be paramount to all other liens.

**Section 16.2 Lessee Not To Encumber Lessor's Interest.**

Lessee shall have no right or power to and shall not in any way encumber the title of Lessor in and to the Subject Property. The fee-simple estate of Lessor in the Subject Property 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 Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee in the Subject Property and Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of Lessor in the Subject Property.

**ARTICLE XVII REMEDIES CUMULATIVE**

**Section 17.1 Remedies Cumulative.**

No remedy conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

**Section 17.2 Waiver of Remedies Not To Be Inferred.**

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

**Section 17.3 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 Lease, 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 Lessor to declare ended the Term granted and to terminate this Lease because of any event of default.

#### **ARTICLE XVIII SURRENDER and HOLDING OVER**

##### **Section 18.1 Surrender at End of Term.**

On the last day of the original term, or on the earliest termination of the term, Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to Lessor at the termination of the Lease, subject to the provisions of Section 1.5, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. If the Subject Property is not so surrendered, Lessee shall repay Lessor for all expenses which Lessor shall incur by reason of it, and in addition, Lessee shall indemnify, defend and hold harmless Lessor from and against all claims made by any succeeding Lessee against Lessor, founded upon delay occasioned by the failure of Lessee to surrender the Subject Property.

##### **Section 18.2 Rights Upon Holding Over.**

At the termination of this Lease, by lapse of time or otherwise, Lessee shall yield up immediately possession of the Subject Property to Lessor and, failing to do so, agrees, at the option of Lessor, to pay to Lessor for the whole time such possession is withheld, a sum per day equal to \$100.00. The provisions of this Article shall not be held to be a waiver by Lessor of any right or reentry as set forth in this Lease Agreement, 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 Lease Agreement and the Term granted for the period still unexpired for any breach of Lessee under this Lease Agreement.

#### **ARTICLE XIX MODIFICATION**

##### **Section 19.1 Modification.**

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

#### **ARTICLE XX INVALIDITY OF PARTICULAR PROVISIONS**

##### **Section 20.1 Invalidity of Provisions.**

If any provision of this Lease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

#### **ARTICLE XXI APPLICABLE LAW and VENUE**

**Section 21.1 Applicable Law.**

This Lease 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 Lease shall be only in the Superior Court for the State of Alaska, First Judicial District, at Sitka, Alaska.

**ARTICLE XXII NOTICES****Section 22.1 Manner of Mailing Notices.**

In every case where under any of the provisions of this Lease or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to Lessor or Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States Post Office registered or certified mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, Alaska, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving written notice of the changed address, to become effective seven (7) days following the giving of written notice.

**Section 22.2 Notice to Leasehold Mortgagee and Secured Parties.**

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

**Section 22.3 Sufficiency of Service.**

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

**Section 22.4 When Notice Deemed Given or Received.**

Whenever a notice is required by this Lease to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

**ARTICLE XXIII MISCELLANEOUS PROVISIONS****Section 23.1 Captions.**

The captions of this Lease 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 Lease, nor in any way affect this Lease.



**Section 23.2 Conditions and Covenants.**

All the provisions of this Lease 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 23.3 Entire Agreement.**

This Lease 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 23.4 Time of Essence as to Covenants of Lease Agreement.**

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

**ARTICLE XXIV COVENANTS TO BIND and BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY****Section 24.1 Covenants to Run with the Subject Property.**

All covenants, agreements, conditions and undertakings in this Lease shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease 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.

**ARTICLE XXV ADDITIONAL GENERAL PROVISIONS****Section 25.1 Absence of Personal Liability.**

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

**Section 25.2 Lease Only Effective as Against Lessor upon Assembly Approval.**

This Lease is effective as against Lessor only upon the approval of the Sitka Assembly.

**Section 25.3 Binding Effects and Attorney's Fees.**

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

**Section 25.4 Duplicate Originals.**

This Lease may be executed in any number of copies, each of which shall constitute an original of this Lease. 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 25.5 Declaration of Termination.**

With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of Lessee in the Subject Property, Lessor 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 Lessee in the Subject Property, and the revesting of any title in Lessor as specifically provided in this Lease Agreement.

**Section 25.6 Authority.**

Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease and perform its obligations. Both Parties also represent that this Lease 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.

**Section 25.7 Recordation.**

Lessee understands that Lessor may not record this Lease. At the request of Lessor or Lessee the parties shall execute a memorandum of this Lease for recording purposes in lieu of recording this Lease in such form as may be satisfactory to them or their respective attorneys.

**[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]**



**CITY AND BOROUGH OF SITKA, ALASKA**

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: P. Keith Brady  
Its: Municipal Administrator

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by P. Keith Brady, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

**SITKA HISTORICAL SOCIETY, INC.**

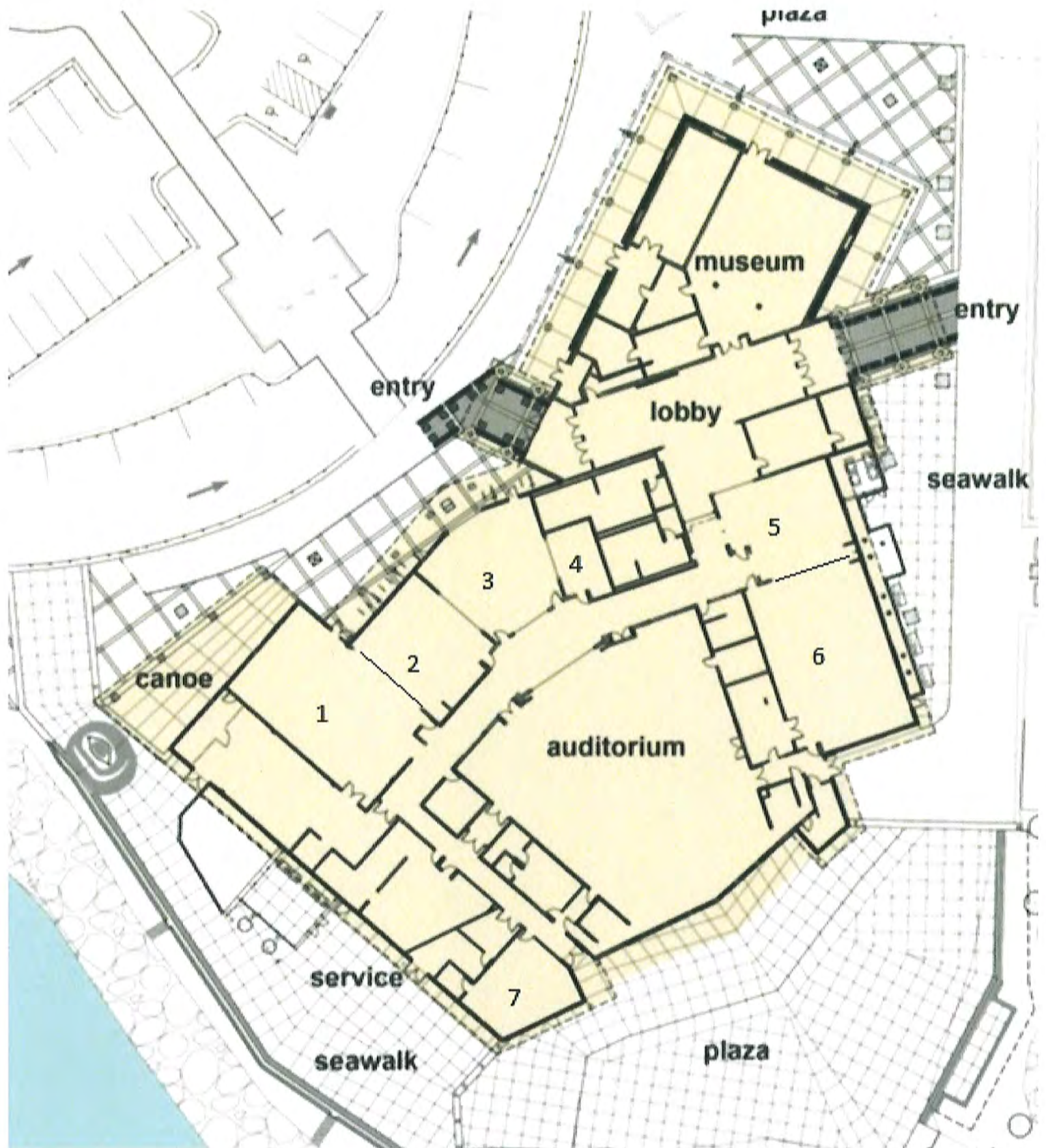
\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Hal Spackman  
Its: Executive Director

STATE OF ALASKA                    )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Hal Spackman, Executive Director of the SITKA HISTORICAL SOCIETY INC., an Alaska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_



**Exhibit A**



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: ORD 18-41    Version: 1    Name:

Type: Ordinance    Status: AGENDA READY

File created: 8/8/2018    In control: City and Borough Assembly

On agenda: 8/14/2018    Final action:

Title: Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.020 "Collection of Tax" (products not authorized for sales tax exemptions on sales tax free days)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion and Ord 2018-41.pdf](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2018-41  
on first reading with second reading scheduled for  
August 30.

CITY AND BOROUGH OF SITKA  
ORDINANCE NO. 2018-41

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING TITLE 4 "REVENUE  
AND FINANCE" OF THE SITKA GENERAL CODE BY MODIFYING CHAPTER 4.09 "SALES  
TAX" AT SECTION 4.09.020 "COLLECTION OF 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 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.** The purpose of this ordinance is to add alcoholic beverages, tobacco products, and marijuana to the list of the products that are not authorized for sales tax exemptions on sales tax free day(s), if and when the assembly approves sales tax free day(s), typically held in November.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code section 4.09.020 "Collection of Tax" at subsection B is amended to read as follows (new language underlined; deleted language stricken):

TITLE 4  
REVENUE AND FINANCE

\*\*\*

Chapter 4.09  
SALES TAX

\*\*\*

Sections:  
4.24.020 Collection of tax

\*\*\*

**4.24.020 Collection of tax**

A. The tax described in Section 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 Section 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.

B. The assembly at their first meeting of September each year shall consider whether to authorize any sales tax free day(s) that have historically followed Thanksgiving. If authorized the sales tax free day(s) will not be applicable to any sale of fuel, alcoholic beverages, tobacco products, and marijuana, as such are defined in this code, nor affect any sale which is part of a continuing obligation of the buyer to pay the seller over time.



\* \* \*

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

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska, this 30th day of August, 2018.

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Matthew Hunter, Mayor

ATTEST:

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Melissa Henshaw, CMC  
Acting Municipal Clerk

1<sup>st</sup> reading 8/14/18  
2<sup>nd</sup> reading 8/30/18

Sponsors: Hunter / Miyasato



# CITY AND BOROUGH OF SITKA

## Legislation Details

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File #: 18-149      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 8/3/2018      In control: City and Borough Assembly

On agenda: 8/14/2018      Final action:

Title: Award a professional services contract to Arcticom LLC for the E911 system replacement with a not to exceed amount of \$285,000

Sponsors:

Indexes:

Code sections:

Attachments: [Motion Memo and Contract.pdf](#)  
[Minutes July 10 and July 24.pdf](#)  
[2018-30.pdf](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**

**I MOVE** to award a professional services contract to Arcticom LLC for the E911 system replacement with a not to exceed amount of \$285,000 and authorize the Municipal Administrator to execute this document.

Note:

- A supplemental appropriation in the amount of \$285,000 was approved by the Assembly on July 24, 2018 for the E911 software system acquisition.



# City and Borough of Sitka

## Information Technology Department

100 Lincoln Street • Sitka, Alaska 99835

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### MEMORANDUM

**To:** Mayor Hunter and Assembly Members  
Keith Brady, Municipal Administrator

**From:** Ron Duvall, Information Technology Director *RAD*

**Cc:** Jay Sweeney, Chief Finance and Administrative Officer,  
Jeff Ankerfelt, Chief of Police,  
Dave Miller, Fire Chief

**Date:** August 14, 2018

**SUBJECT:** E911 SYSTEM REPLACEMENT PROFESSIONAL SERVICES CONTRACT

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### Background

The City and Borough of Sitka (CBS) Information Technology Department recently completed a Request for Proposal (RFP) process to replace the CBS E911 System. We received bids from three vendors.

- Alaska Communications
- Arcticom LLC.
- Solacom Technologies, Inc.

The bid process included an opportunity for all interested parties to visit Sitka to gain a complete understanding of how the Sitka Police Department (SPD) operates and the requirements outlined in the RFP package. Once the bids were received and reviewed by the bid review committee the three vendors were invited to Sitka to present their solution and allow key employees to see and make comments on potential solutions.

### Evaluation Categories:

- Did they meeting specifications outline in the RFP package?
- Total Cost

- Management Plan and Approach to their proposed Scope of Work
- Vendor qualifications to complete the installation of a new E911 system
- Vendor financial capacity to complete the installation of a new E911 system

Bid review committee:

- Ron Duvall, IT Director
- Don MacKinnon, System Administrator
- Lyn Blankenship, Dispatch/Records Supervisor

Goals of the E911 System Replacement Project:

1. Provide a commercially supported E911 system for servicing CBS Emergency Services
2. Upgrade the E911 Call Taker and peripheral systems to current industry standards
3. Streamline the call taking process between the E911 Call Taker System and the RMS/CAD systems

## Analysis

Each vendor presented fully functional E911 systems that would achieve the goals set out for this project. Typically software development and technology companies utilize third party vendors to resell and support their systems. This is the case for Alaska Communications and Arcticom LLC., only Solacom Technologies is the developer of the solution proposed. I have outlined our findings of each vendor and the proposed E911 Solution.

**Alaska Communications – West Safety Services, VIPER 9-1-1**

- Meet specifications
- Highly capable solution in its functionality and look and feel
- Highest cost
- Very clear and well thought out project plan and ongoing support
- Alaska based company with multiple successful installations

**Arcticom LLC. – Zetron, MAX Call-Taking**

- Meet specifications
- Highly capable solution with well thought out functionality and look and feel
- Provided true redundant capabilities to provide 100% up time
- Middle cost
- Very clear and well thought out project plan and ongoing support
- Alaska based company
- Zetron has completed multiple successful installations in communities or similar size



#### **Solacom Technologies – Solacom Guardian**

- Meet most specifications
- Capable solution with well thought out functionality and look and feel
- Did not present a fully redundant solution
- Lowest cost
- Small international company with no experience in Alaska

The bid committee determined that Arcticom LLC. and the Zetron Max Call-Taking solution has the best capacity and proven track record to achieve the project goals.

#### **Fiscal Note**

The purchase of the necessary equipment, installation, and training based on the scope of work determined has been set to not exceed \$285,000. The ongoing annual maintenance for keeping our E911 System current and supported will be \$6,100 per year and will be funded by the designated E911 Fund.

#### **Recommendation**

I recommend you approve a Professional Services Contract with Arcticom LLC., to complete the replacement of the CBS E911 System that is not to exceed \$285,000 and to be completed by November 20, 2018.

**CONTRACT TO PROVIDE PROFESSIONAL SERVICES TO  
CITY AND BOROUGH OF SITKA BY ARCTICOM, LLC.  
FOR E911 SYSTEM REPLACEMENT**

City and Borough of Sitka ("Owner") desires the firm Arcticom, LLC. ("Contractor") to Provide Professional Services for E911 System Replacement. This Contract to Provide Professional Services to City and Borough of Sitka for the E911 System Replacement ("Contract") is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Contract.

This Contract also consists of:

**SECTION 1. DEFINITIONS**

For the purpose of this Contract, the terms used in this Contract shall have the following meaning:

- A. "Owner" shall mean the City and Borough of Sitka, Alaska.
- B. "Contractor" shall mean Arcticom, LLC, a Partner, Associate, or any other person acting for and/or in behalf of the firm Arcticom, LLC.
- C. "Owner's authorized representative" shall mean the person set forth in Section 21 (B)(2) of this Contract.
- D. "Days" shall mean calendar days.

**SECTION 2. CONTRACT TIME**

This Contract becomes effective when signed and dated by both Parties. Completion date is **November 30, 2018.**

- A. Contractor shall commence performance of the work identified in Section 4 immediately following receipt of the Notice to Proceed.
- B. Except as expressly allowed under this Contract, Owner need not grant Contractor any extension in the time provided to complete the work under this Contract. If Contractor's progress falls behind the project schedule, Contractor shall commit additional resources to the prosecution of the work, or take such other additional steps as are reasonably necessary to assure the completion of the work on schedule, all at no additional cost to Owner.

### **SECTION 3. RESPONSIBILITY OF CONTRACTOR**

At all times during Contractor's performance of professional services under this Contract, Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

### **SECTION 4. SCOPE OF SERVICE**

The services to be performed by Contractor shall include all services required to complete the tasks set forth in Contractors Scope of Services, and shall be in accordance with all applicable statutes, Sitka General Code provisions, ordinances, rules, and regulations.

### **SECTION 5. OWNERSHIP OF DOCUMENTS**

All plans, drawings, calculations, supporting data and specifications, originals and tracings, shall become the property of Owner. Such documents shall be transmitted to Owner prior to the time of final payment for the work under this Contract. Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

### **SECTION 6. TERMINATION**

This Contract may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Owner, provided that Owner notifies Contractor of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Contract; provided, however, that as a condition of the exercise of its right of termination under this subsection the terminating Party shall notify the other Party of its intent to terminate this Contract and state with reasonable specificity the grounds, and the defaulting Party shall have failed, within 30 days of receiving the notice, to cure the default.
- D. Termination pursuant to this section shall not affect the Parties' continuing obligations under this Contract.

### **SECTION 7. DUTIES UPON TERMINATION**

- A. If Owner terminates this Contract for convenience, Owner shall pay Contractor the reasonable value of any services satisfactorily rendered prior to termination. Payment under this section shall never exceed the total compensation possible under Section 9. All finished and unfinished reports and materials prepared by Contractor shall become



the property of Owner.

- B. If this Contract is terminated for cause, Owner shall pay Contractor reasonable value of the services satisfactorily rendered prior to termination less additional direct costs incurred by Owner because of Contractor's sole failure to perform satisfactorily. Any finished or unfinished documents or materials, for which Owner has compensated Contractor, shall become the property of Owner. . Under no circumstances shall payment under this section exceed the percentage value of work completed as defined by Contractors Fee Proposal and under Section 9. Under no circumstances shall payment under this section exceed the total compensation possible under Section 9.
- C. If Contractor has received payments prior to termination in excess of the amount to which it is entitled under Subsection A or B of this section, Contractor shall remit such excess to Owner within 30 days after receipt of notice to that effect.
- D. Contractor shall not be entitled to compensation under this section until Contractor has delivered to Owner all documents, records, work products, materials, and equipment owned by City and Borough of Sitka, related to this Contract and requested by Owner.
- E. If Owner terminates Contractor's services for whatever reason, Contractor may not claim any compensation under this Contract other than allowed under this section.
- F. The Owner need not recognize any claim by Contractor for reimbursable expenses or costs incurred after the time which Contractor receives notice of termination under this section.

## **SECTION 8. INDEMNIFICATION**

- A. Contractor shall indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of Contractor occurring during the course of or as a result of Contractor's performance pursuant to this Contract.
- B. Contractor shall not indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising in wrongful or negligent acts, errors or omissions solely of Owner occurring during the course of or as a result of the performance of this Contract.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both Parties, Contractor shall indemnify, defend, save and hold Owner harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from Contractor's wrongful or negligent acts occurring during the course of or as a result of Contractor's performance pursuant to this Contract.

## **SECTION 9. PAYMENT**



- A. For Contractor's Design, Bidding, Contract Services and Expenses, as described in Section 4 of this Contract, compensation will be paid on a time and expense basis, subject to Contractor's satisfactory performance, in a total amount Not to Exceed (NTE) **\$285,000** unless mutually agreed upon by both Parties, and approved by the CBS Assembly prior to commencing additional work.

Contractor shall **not** begin any phase of the work without written authorization by Owner. The Owner has the option of omitting any phase of the Contract as it deems necessary.

- B. Owner shall make payment three payments.

One Third (1/3) of the NTE amount at signing of this Contract

One Third (1/3) of the NTE amount at delivery of Equipment

Remaining billable at successful completion of the scope of work outline in the scope of work addendum.

- C. Contractor shall be entitled to no compensation under this Contract beyond the amount of Owner's express obligation under subsection A above. Compensation for preliminary drawings, specifications and reports shall not exceed 50% of the total Contract amount.
- D. The amount to be paid for additional services, at the option of Owner and as approved by the CBS Assembly, shall be negotiated at the hourly fees submitted in Contractors Revised Fee Proposal, by the Parties prior to the execution of amendments to this Contract for this work.

#### **SECTION 10. AUDIT: ACCESS TO RECORDS**

- A. Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Contract. The Owner's authorized representatives shall have the right to examine such records and accounting procedures and practices during normal business hours and subject to advance notification.
- B. The Owner's authorized representative shall have the right to examine all books, records, documents and other data of Contractor related to the negotiation, pricing and performance Contract, and any change or modification for the purpose of evaluating the accuracy, completeness, and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations, and projections used.
- C. The materials described in this section shall be made available at the business office of Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of 3 years from the date of final payment under this Contract and for such longer period, if any, as may be required by applicable statute or other provisions of this Contract.
- D. If this Contract is completely or partially terminated, records relating to the services terminated shall be made available to Owner by Contractor for a minimum of 3 years from the date of any resulting final settlement.

*Contract to Provide Professional Services to City and Borough of Sitka by Arcticom, LLC*



- E. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Contract shall be made available to Owner by Contractor until such claims or litigation have been concluded.

#### **SECTION 11. RELATIONSHIP OF PARTIES**

Contractor shall perform its obligations under this Contract as an independent Contractor of Owner. Owner may administer the Contract and monitor Contractor's compliance with its obligations. Owner shall not supervise or direct Contractor other than as provided in this section.

#### **SECTION 12. ASSIGNMENTS**

Unless otherwise allowed by this Contract or in writing by Owner, any assignment by Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and any attempt by Contractor to assign any part of its interest or delegate duties under this Contract shall give Owner the right immediately to terminate this Contract.

The Owner reserves the right to approve all subcontractor contracts.

#### **SECTION 13. NONDISCRIMINATION**

- A. Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.
- B. Contractor shall state, in all solicitations or advertisements for employees to work on jobs relating to this Contract, that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood.
- C. Contractor shall include the provisions of Subsection A in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of Contractor under this Contract.
- D. Contractor shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

#### **SECTION 14. COPYRIGHTS AND RIGHTS IN DATA**

All documents produced under this Contract are the property of Owner, including notes, drawings, reports and other technical information referred to as work products, except items which have pre-existing copyrights. Payments to Contractor for services include full compensation for all work products produced by Contractor and its subcontractors.

All such subject data furnished by Contractor pursuant to this Contract are instruments of its services in respect to this particular project. It is understood that Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If Owner reuses the subject data without Contractor's specific written verification of adaption, such reuse will be at the risk of Owner, without liability to Contractor. Any such verification of adaption requested in writing by Owner at Owner's sole option will entitle Contractor to further compensation at rates agreed upon by the Parties.

## **SECTION 15. NOTICES**

Any notice required pertaining to the subject matter of this Contract shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

**OWNER:**

City and Borough of Sitka  
Ron Duvall, IT Director  
100 Lincoln Street  
Sitka, AK 99835

**CONTRACTOR:**

Arcticom, LLC  
Richard H. Foster, President  
3301 C Street  
Suite, 400  
Anchorage, AK 99518

## **SECTION 16. CLAIMS AND DISPUTES**

If Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, Contractor shall immediately notify in writing Owner's authorized representative. If the matter cannot be resolved within seven (7) days, Contractor shall, within the next fourteen (14) days, submit a written notice of the claim. Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Contract under which the claim is made. This procedure covers all claims by Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Contract. Contractor agrees that unless these written notices are provided, Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

## **SECTION 17. SUCCESSORS AND ASSIGNS**

The Parties bind themselves, partners, successors, assigns and legal representatives to the other Party to this Contract and to partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Contract.

## **SECTION 18. INSURANCE**

- A. Contractor shall at all times during the term of this Contract, maintain in good standing the insurance described in Subsection B. Before rendering any services under this Contract, Contractor shall furnish Owner with proof of insurance in accordance with Subsection B in a form acceptable to the Risk Manager for Owner; such proof of

*Contract to Provide Professional Services to City and Borough of Sitka by Arcticom, LLC*

insurance shall be incorporated into this Contract.

B. Type of coverage:

1. Commercial General Liability

Occurrence Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000

2. Workman's Compensation  
Employers Liability Alaska Statutory

3. Professional Errors and Omissions \$2,000,000

C. Insurance Notes

1. Owner shall be named as an additional named insured on the required general liability and automobile insurance policies. The Owner shall also be granted a full waiver of any rights of subrogation by endorsement under all required policies with the exception of Professional Errors and Omissions. These requirements extend to all subcontractors.
2. Contractor is required to notify Owner if any policy is to be canceled, materially changed, or renewed, at least thirty days prior, by written notice sent by certified mail.

**SECTION 19. PERMITS, LAWS AND TAXES**

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

**SECTION 20. NON-WAIVER**

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

**SECTION 21. AMENDMENT**

- A. This Contract shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Contract as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Contract, the only authorized representatives of the Parties are:

*Contract to Provide Professional Services to City and Borough of Sitka by Arcticom, LLC*

1. Richard H. Foster, President – For Contractor
  2. Keith Brady, CBS Municipal Administrator – For Owner
- C. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means, shall be void.

## **SECTION 22. SEVERABILITY**

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

## **SECTION 23. JURISDICTION - CHOICE OF LAW**

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

## **SECTION 24. INTEGRATION**

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

**IN WITNESS WHEREOF**, the Parties have executed this Contract on the date shown below, and by their signatures, confirm they are authorized to sign this Contract.

**CITY AND BOROUGH OF SITKA**

**ARCTICOM, LLC**

\_\_\_\_\_  
**Keith Brady**  
Municipal Administrator

\_\_\_\_\_  
**Richard H. Foster**  
President

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

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

\_\_\_\_\_  
Tax ID No. 47-3410803

**ATTEST:**

**LEGAL REVIEW:**

\_\_\_\_\_  
Sara Peterson, CMC  
Municipal Clerk

\_\_\_\_\_  
Brian Hanson  
Municipal Attorney

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

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

\$285,000

\_\_\_\_\_  
Not to Exceed Contract Amount

\_\_\_\_\_  
Contract Number



was also in favor of a financial review. Miyasato was in support.

**A motion was made by Knox to direct staff to execute within the terms of the lease with the Sitka Historical Society, Inc., a waiver of utilities and property taxes for a period of 24 months at which time it would be revisited.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**I**      [18-138](#)

Approve the Extension of Agreement between Seafood Producers Cooperative and the City and Borough of Sitka regarding the Sitka Marine Service Center

Municipal Attorney Brian Hanson felt that lease extensions needed to come forward to the Assembly. Eisenbeisz expressed lease extensions should be processed by staff. Wein had concerns of liability for the city with possible lack of general liability insurance. Chief Finance and Administrative Officer Jay Sweeney explained there was approximately a \$2 million balance in the Marine Service Center Fund and noted that the bulk head was owned by the Harbor Fund. Brady stated the lease had expired June 30th, that this was signed by Administration, however needed the assembly to ratify it. Staff had been working internally to changes in the contract. Hanson recommend postponement in order to look at the risk of insurance.

**A motion was made by Miyasato to POSTPONE this item to the July 24, 2018 Assembly meeting. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Eisenbeisz, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Potrzuski

**J**      [ORD 18-30](#)

**Making supplemental appropriations for Fiscal Year 2019 (E911 Software System Acquisition)**

IT Director Ron Duvall stated this ordinance was moving dedicated E911 funds to MIS funds for the project. He told approval of the contract, not to exceed \$285,000, would be at the next regular meeting. He communicated the reasoning of this ordinance coming prior to the contract was because it took two readings and the second reading of this ordinance and the contract approval would be placed on the agenda for the next meeting together. Duvall noted funds were available, yet no money would be issued until the contract was approved. Bean inquired if the police department would move to a different location that the system could be moved. Duvall confirmed and noted that this system was for both the police department and fire department. Mayor Hunter voiced this was the process that had been done previously, and it was a matter of style yet the effect was the same.

**A motion was made by Miyasato that this ordinance be PASSED ON FIRST READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Eisenbeisz, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Potrzuski

**K**      [ORD 18-31](#)

Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.09 "Sales Tax" at Section 4.09.100 "Exemptions" by including an exemption for sales tax on groceries and residential utilities and

- C**     [18-138](#)     Approve the Extension of and Amendment to Agreement between the City and Borough of Sitka and Seafood Producers Cooperative regarding the Sitka Marine Service Center
- Municipal Attorney Brian Hanson noted there were questions regarding insurance at the July 10 meeting. Upon further review, he stated it was unclear as to why the "x" mark appeared on the insurance provisions of the previous lease. He stated it was best practice to require the tenant to have property damage and general liability insurance. Hanson advised he had requested Seafood Producers Cooperative to provide a certificates of insurance - general liability and product. The Assembly wished to see proof of insurance prior to taking action.

**A motion was made by Wein that this Item be POSTPONED to the meeting of August 14. The motion PASSED by the following vote.**

**Yes:** 6 - Miyasato, Potrzuski, Hunter, Knox, Bean, and Wein

**Absent:** 1 - Eisenbeisz

- D**     [ORD 18-30](#)     Making supplemental appropriations for Fiscal Year 2019 (E911 Software System Acquisition)

Wein expressed a desire to review the contract prior to approving an appropriation.

**A motion was made by Knox that this Ordinance be APPROVED on SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 5 - Miyasato, Potrzuski, Hunter, Knox, and Bean

**No:** 1 - Wein

**Absent:** 1 - Eisenbeisz

- E**     [ORD 18-33](#)     Amending Title 4 "Revenue and Finance" of the Sitka General Code by modifying Chapter 4.24 "Transient Lodging Tax" and Chapter 4.09 "Sales Tax", by exempting transient lodging rent from sales tax (companion ordinance to Ordinance 2018-34A)

Rachel Roy and Kevin Mosher spoke in opposition.

Wein believed passage of this ordinance would eventually allow for a potential increase in alcohol tax. Hunter reminded alcohol was the only commodity that could not be taxed higher than a sales tax. The ordinance at hand, would exempt eligible bed tax sales from sales tax. Hunter clarified this ordinance would only go into effect if Ordinance 2018-34A was approved by the Assembly and ultimately the voters.

**A motion was made by Potrzuski that this Ordinance be APPROVED ON SECOND AND FINAL READING. The motion PASSED by the following vote.**

**Yes:** 4 - Miyasato, Potrzuski, Hunter, and Knox

**No:** 2 - Bean, and Wein

**Absent:** 1 - Eisenbeisz

**CITY AND BOROUGH OF SITKA**

**ORDINANCE NO. 2018-30  
AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA  
MAKING SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2019  
(E911 SOFTWARE SYSTEM ACQUISITION)**

**BE IT ENACTED** by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.

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 and circumstances shall not be affected thereby.

3. **PURPOSE.** The purpose of this ordinance is to adjust the FY19 budgets for known changes.

4. **ENACTMENT.** The Assembly of the City and Borough of Sitka makes supplemental appropriations in the General Fund and Data Processing Fund for the acquisition of E911 system software and equipment. In accordance with Section 11.10(a) of the Charter of the City and Borough of Sitka, Alaska, the following supplemental appropriations are hereby made:

<b><u>FISCAL YEAR 2019 EXPENDITURE BUDGETS</u></b>
<b>GENERAL FUND</b>
<b>Transfers to other Funds:</b> A supplemental appropriation is hereby made in the General Fund to transfer the amount of \$285,000 from the committed fund balance for E911 surcharges to the Data Processing Fund.
<b>CAPITAL PROJECTS</b>
<b>Fund 300 – Management Information Systems Fund:</b> A supplemental appropriation is hereby made in the amount of \$285,000 for the acquisition of an E911 software system consisting of software, software licenses, and equipment.

**EXPLANATION**

The Administrator, acting upon the recommendation of the Information Technology Director, has determined that acquisition of a new E911 system is essential to maintaining public safety and emergency response capability within the Municipality.

The Municipality levies a surcharge on all telephone and cellular telephone charges within the municipality to specifically accrue funding to pay for E911 emergency response software. The funds accrued through the surcharge are not comingled with other general governmental revenues and are retained in a committed fund balance within the General Fund. At the end of FY2018, the amount of the committed fund balance in the General Fund for E911 services was \$449,000 plus any additional surcharges collected, estimated to be an additional \$80,000. Thus, funding exists to pay for a new E911 system, and, the funding can't be used for any other purpose.

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

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this  
24th Day of July, 2018.

**ATTEST:**

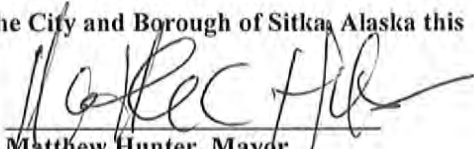


Sara Peterson, MMC  
Municipal Clerk

1<sup>st</sup> reading 7/10/18

2<sup>nd</sup> reading 7/24/18

Sponsor: Administrator

  
Matthew Hunter, Mayor



# CITY AND BOROUGH OF SITKA

## Legislation Details

File #: 18-152 Version: 1 Name:  
Type: Item Status: AGENDA READY  
File created: 8/8/2018 In control: City and Borough Assembly  
On agenda: 8/14/2018 Final action:  
Title: Discussion / Direction on the administrative policy for the Stortz Gallery at City Hall  
Sponsors:  
Indexes:  
Code sections:  
Attachments: [Stortz Gallery.pdf](#)

Date	Ver.	Action By	Action	Result
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**Discussion / Direction**  
on the administrative policy for the Stortz  
Gallery at City Hall



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## MEMORANDUM

**To:** Mayor Hunter and Assembly Members

**From:** Keith Brady, Municipal Administrator *KB*

**Date:** August 7, 2018

**Subject:** **Updated** Administrative Policy for Stortz Gallery at City Hall

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### Summary

Due to the public nature of the city, its buildings, staff, and the opportunity to exhibit items at the Stortz Gallery at City Hall we are updating the Administrative Policy regarding.

### Recommendation

Direction and support from the Assembly to operate within the updated policy.

### Details

The main points for the exhibit policy are:

- It sets the criteria for what type of artwork can be included in the gallery
- The policy addresses liability of the artwork and puts the responsibility on the artist
- It continues the position of the volunteer curator recommended by the Sitka fine arts

**ADMINISTRATIVE POLICY NO. 16-01 (A)**  
**CITY AND BOROUGH OF SITKA (CBS) POLICY FOR**  
**STORTZ GALLERY AT CITY HALL**

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**I. POLICY ISSUANCE**

This policy sets forth the framework and authorization for a City and Borough of Sitka (CBS) policy for the William Stortz Gallery at City Hall (the "Gallery").

**II. BACKGROUND**

The William Stortz Gallery at City Hall was created in remembrance of CBS Building Official William Stortz who died in the Sitka landslide of August 18, 2015, while on the job. The portrait of William, by Steve Lawrie, is the only piece of artwork in the Gallery owned by the CBS. The portrait was paid for by public donations.

All the artwork displayed in the Gallery is owned by the artist and not for sale in the Gallery. The artwork displayed does not necessarily reflect the opinions or attitudes of CBS officials or staff. Any questions about the artwork should be directed to the artist.

The Gallery is operated at no cost to the CBS.

**III. PURPOSE**

The purpose of this policy is to provide for the temporary display of artwork and artifacts in the Stortz Gallery at City Hall. The purpose of the displays are to enliven City Hall and to celebrate the creative and diverse community of Sitka.

Stortz Gallery on the second floor of City Hall has been identified as an area available for exhibits. Stortz Gallery is not a public forum. The exhibit space is located in the primary, if not the only, passageway and lobby for municipal employees and members of the public to reach certain CBS departments, to obtain certain CBS services and to conduct certain CBS business. Therefore, CBS will not display artwork or other items containing explicit sexual imagery, nudity, graphic depictions of violence, or any item that creates a hostile work environment for CBS employees.

The Curator is an uncompensated volunteer position. The Curator will be responsible for managing the exhibits in coordination with the Municipal Administrator, coordinating with other staff as necessary, to ensure code compliance and appropriate and coordinated use of the facility. The Municipal Administrator, or designee, may remove this Curator at his/her sole discretion.

**IV. PROGRAM DESCRIPTION**

The purpose, goals and objectives of this policy are:



1. To enliven and enrich the City Hall environment by incorporating artwork and artifacts into exhibits on the following topics ("Exhibit Topics"):
  - Our History- exhibits illustrating the history of Sitka;
  - Our Community- exhibits providing information on the varied residents of Sitka;
  - Our Creativity- exhibits illustrating the visual and performing arts in Sitka;
  - Our Natural Environment- exhibits showcasing Sitka's scenery and animals;
2. To enhance the aesthetic experience of persons visiting and working in City Hall.
3. To increase the awareness of the professional quality artwork produced by artists who live locally, but not to highlight any one particular artist or individual.
4. Provide exhibit space for the CBS's art and cultural material collection.

#### **V. MAINTENANCE AND PROTECTION OF ARTWORK OR EXHIBIT ITEMS**

The CBS is not responsible for maintaining or protecting any artwork, artifact or other item related to the exhibit while on display. The exhibit or exhibitor's agent shall enter into an agreement with the CBS, including a waiver releasing the CBS from any and all liability for loss or damage to the works on display and an indemnification for any claims arising from the exhibit.

The exhibit or the exhibitor's agent shall include his/her name and contact information along with the display. The CBS shall not be responsible for facilitating the sale of any work. The CBS's policy is not intended as a means of commercial sales and exhibitors shall be prohibited from displaying prices on material displayed.

Applicants are responsible for obtaining copyrights, licenses and any other permission necessary to display the artwork or artifacts and for providing accurate captions.

#### **VI. EXHIBIT PROGRAM CURATOR**

The Curator shall be recommended by the Sitka Greater Arts Council if available and willing to so recommend, and selected by the Administrator. The Curator shall review exhibit solicitations and applications and make exhibit recommendations to the Administrator. The Curator shall also make recommendations to the Assembly on any proposed changes to this policy.

The Curator will review exhibit material according to the selection criteria set forth above.

#### **VII. ARTWORK AND MATERIAL SELECTION**

The Curator shall solicit and receive exhibit proposals for exhibits.

Organizations and individuals will be eligible to submit exhibit proposals.

Exhibit proposals must be relevant to the Exhibit Topics identified above.

The CBS will not display items that contain explicit sexual imagery, nudity, or graphic depictions of violence, or any artwork that would create a hostile work environment for employees.

The CBS will not accept items that, due to the manner of construction, materials, or any other factor, may pose a threat to public safety.

#### **VIII. AUTHORITY TO PROMULGATE POLICY**

The Municipal Administrator of the CBS maintains the authority granted by the Sitka Home Rule Charter and Sitka General Code to promulgate and implement this policy.

#### **IX. EFFECTIVE DATE**

This policy will take effect as of the signing date.

Dated at Sitka, Alaska this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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P. Keith Brady  
Municipal Administrator





# CITY AND BOROUGH OF SITKA

## Legislation Details

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File #: 18-153      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 8/8/2018      In control: City and Borough Assembly

On agenda: 8/14/2018      Final action:

Title: Discussion / Direction of a request from SEDA for an economic impact analysis of Sitka Community Hospital on the local economy and the effect if current operations were to cease or be sold

Sponsors:

Indexes:

Code sections:

Attachments: [SEDA request.pdf](#)

Date	Ver.	Action By	Action	Result
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Sponsors: Wein / Bean

## **Discussion / Direction**

of a request from SEDA for an economic impact analysis of Sitka Community Hospital on the local economy and the effect if current operations were to cease or be sold



## SITKA ECONOMIC DEVELOPMENT ASSOCIATION

329 Harbor Drive, Suite 212 ★ Sitka, Alaska 99835 ★ (907) 747-2660 ★ fax (907) 747-7688 ★ [www.sitka.net](http://www.sitka.net)

Friday, August 3<sup>rd</sup>, 2018

### MEMORANDUM

To: CBS Assembly and Administrator

From: Garry White - Director

Subject: Sitka Community Hospital (SCH) Economic Impact Analysis

#### **Introduction**

The Sitka Economic Development Association (SEDA) has been approached by members of the community to request that an Economic Impact Analysis of the Sitka Community Hospital (SCH) be completed.

The SEDA Director contacted an a regional Economic Analysis firm to obtain a ball park estimate on the cost for an in-depth economic impact analysis to explore SCH's effect on the local economy and what the community could expect to see if the hospital were to close or be sold. The estimated cost of \$50,000 is outside of SEDA's financial resources.

The SEDA Board of Directors met on August 2<sup>nd</sup>, 2018 to discuss the issues and approved the following motion: M/S – Davis/Riggs

***SEDA Request that the City and Borough of Sitka (CBS) hire a third party to conduct an economic impact analysis of SCH on the local economy and the effect on the local economy if current operations were to cease or be sold before moving forward with any RFP decisions.***

Approved - 7/0