

# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

*Coast Guard City, USA*

## MEMORANDUM

**To:** Mayor McConnell and Members of the Assembly

**From:** Mark Gorman, Municipal Administrator  
Maegan Bosak, Planning and Community Development Director *MB*

**Subject:** Amendment to Sitka Animal Hospital Lease for a 5 year extension

**Date:** September 19, 2016

Recently Dr. David Hunt DVM approached the Municipality with a request to extend his Sitka Animal Hospital lease for an additional 5 year term at the Sitka Animal Shelter.

Amendment No. 5 proposes to extend the lease for an additional 5 year term beginning February 29, 2017 (when the current extension expires) through February 28, 2022. The rental rate proposed remains the same at \$800 per month, based on continuing to provide reception services for the Sitka Animal Shelter.

In August 1995, the Sitka Animal Shelter was built by a group of volunteers. A portion of the building was designed to accommodate a veterinary hospital for shelter animals. Animal Control Officer Ken Buxton is also stationed in this facility.

The lease between Dr. David Hunt DVM and the City and Borough of Sitka was signed January 8, 1996 at a monthly rate of \$780.00, based on \$1 per sq. ft. Attached to the lease is Exhibit A outlining building and area usable by Sitka Animal Hospital.

The following amendments to the original lease were approved by the Assembly:

Amendment 1 – February 28, 1997- expansion of leased premises with revised rental rate of \$896 per month

Amendment 2 – September 3, 2002- extension for a 6 year period at \$1400.00 per month

Amendment 3 – April 30, 2009- extension for a 3 year period at \$1200.00 per month

Amendment 4 – September 23, 2011- extension for a 5 year period with revised rental rate of \$800 based on providing reception services for the Sitka Animal Shelter.

The proposed Amendment 5 was approved by Municipal Attorney Brian Hanson and is included in the packet.

**RECOMMENDED ACTION:** Pass a motion granting approval of the lease amendment.

Providing for today...preparing for tomorrow

*Landlord also provides utilities.*

**AMENDMENT NO. 5 TO LEASE  
BETWEEN CITY AND BOROUGH OF SITKA  
AND SITKA ANIMAL HOSPITAL**

City and Borough of Sitka ("CBS" or "Lessor"), 100 Lincoln Street, Sitka, Alaska, 99835, and Dr. David Hunt, D.V.M., P.C., d/b/a Sitka Animal Hospital ("Leesee"), PO Box 1774, Sitka, Alaska 99835, agree to amend and modify the "Lease (Sitka Animal Hospital)" ("Lease"), dated January 8, 1996, including its amendments consisting of the first amendment by letter dated February 28, 1997, Sitka Animal Hospital Second Amendment to Lease (September 3, 2002), third amendment by CBS Assembly motion on August 12, 2003, Sitka Animal Hospital Third Amendment to Lease (April 30, 2009), and Amendment No. 4 to Lease (September 23, 2011), approved by the CBS Assembly motion on September 13, 2011. This Amendment No. 5 to Lease Agreement Between City and Borough of Sitka and Sitka Animal Hospital ("Amendment No. 5") was approved by the CBS Assembly in accordance with the Lease at Section 24 by motion, adding a new Section 4.5 (new language underlined; deleted language stricken):

**4.5 Extension of Term.** The term of the Lease as provided for in Section 4, and based on prior amendments, is extended for five years, beginning February 29, 2017, until February 28, 2022. The rent during this extension period shall be \$800 per month. Sitka Animal Hospital shall continue providing reception services for the animal shelter.

All other sections of the Lease that are not modified by this Amendment No. 5 remain in full force and effect.

This Amendment No. 5 was approved by the City and Borough Assembly on September 27, 2016.

Amendment No. 5 becomes effective on February 29, 2017, which is when the current extension of the Lease expires, based on Sitka Animal Hospital Fourth Amendment to Lease.

**CITY AND BOROUGH OF SITKA**

By:  
Its:

*[Signature]*  
ACTING  
Administrator

STATE OF ALASKA )

)ss.

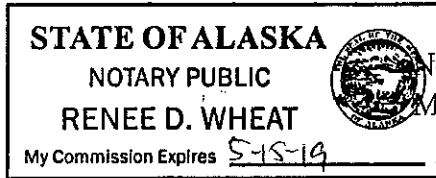
**MUNICIPAL ACKNOWLEDGEMENT**

FIRST JUDICIAL DISTRICT )

**THIS CERTIFIES** that on the 21<sup>st</sup> day of October, 2016 before me, a Notary Public in and for the State of Alaska, personally appeared Bryan Bertachei, <sup>Acting</sup> Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of

Alaska, and by signing this document verifies that he is authorized to execute the document on its behalf, and he signs freely and voluntarily.

WITNESS my hand and official seal the date and year in this certification.



Notary Public for Alaska *Renee D. Wheat*  
My Commission expires: 5-15-19

**SITKA ANIMAL HOSPITAL**

A handwritten signature of David J. Hunt.

David J. Hunt, D.V.M., P.C., President

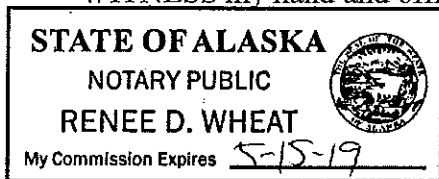
STATE OF ALASKA )

)ss. **ACKNOWLEDGEMENT**

FIRST JUDICIAL DISTRICT )

**THIS CERTIFIES** that on this 20<sup>th</sup> day of October, 2016 before me, a Notary Public in and for the State of Alaska, personally appeared David J. Hunt, D.V.M., P.C., President of Sitka Animal Hospital, and by signing this document verifies that he is authorized to execute the document on its behalf, and he signs freely and voluntarily.

WITNESS my hand and official seal the date and year in this certification.



Notary Public for Alaska *Renee D. Wheat*  
My Commission expires: 5-15-19

LEASE  
[SITKA ANIMAL HOSPITAL]

THIS LEASE, dated Nov. 8, 1996, is made and entered into by and between the CITY AND BOROUGH OF SITKA, ALASKA ("Landlord") and DR. DAVID J. HUNT d/b/a SITKA ANIMAL HOSPITAL ("Tenant"). Landlord and Tenant hereby agree as follows:

1. Property and Improvements. Landlord is the owner of certain realty (the "Property") situated at 209 Jarvis Street in Sitka, Alaska. There is currently situated on the Property a building (the "Building") intended for use as an animal shelter and related office space, together with an associated vehicular parking area (the "Parking Area") and other improvements necessary to enable the Building to be so used (the Building, Parking Area, and other improvements are hereinafter collectively referred to as the "Improvements").

2. Leased Premises. Landlord hereby leases to Tenant, and Tenant rents from Landlord, that part of the Building which is outlined or cross-hatched on the floor plan attached hereto as Exhibit A and incorporated herein by this reference (such part of said Building is hereinafter referred to as the "Premises"). During the term of this Lease, Tenant shall also have such nonexclusive easements with respect to the Building as may be reasonably necessary for access to the Premises. The area of the Premises as shown on Exhibit A is approximately 180 square feet.

3. Finishing of Premises. Prior to January 1, 1996, Landlord shall make all improvements, installations, and items of finish concerning the Premises (hereinafter referred to as the "Tenant Finish") required to enable use and occupancy of the Premises for an animal hospital and clinic, including all interior and entrance doors; carpeting and related pad; ceiling tile; all wall finishes; all window coverings; the fire protection system; all heating ductwork; all lighting fixtures; all electrical outlets and light switches; all telephone outlets; all molding and trim; and any and all equipment and items of finish necessarily related to any of the foregoing. In designing and installing the Tenant Finish, Landlord shall comply with the reasonable directions and requirements of Tenant. Landlord shall supply the Tenant Finish at its own expense.

4. Term. The term of this Lease shall commence on the date on which Tenant opens its business in the Premises to the public. Unless Landlord otherwise agrees, Tenant shall not so open and shall not move its furniture, equipment, or personnel into the Premises before the date specified in Section 3, by which Landlord is required to complete the Tenant Finish. The date on which Tenant opens its business to the public shall hereinafter be referred to as the "Commencement Date." When the Commencement Date can be fixed, the parties shall, upon the written request of either, enter into a writing which memorializes such Date. Notwithstanding the foregoing provisions, if the Commencement Date has not arrived prior to the expiration of 6 months after the date of this Lease, this Lease shall thereupon automatically cease to be of any force or effect. Unless such term is prematurely terminated pursuant to the provisions of this Lease, the term hereof shall consist of the seven (7) year period following the

Commencement Date plus, if the Commencement Date falls on other than the first day of a month, the balance of such partial calendar month.

5. Option to Shorten Term. Tenant shall be entitled, at its option, to have the term of this Lease expire as of any date in advance of the expiration of the term set forth in Section 4 of this Lease, provided Tenant provides written notice to Landlord at least one calendar month prior to such date.

6. Rent. During the entire term hereof Tenant shall pay to Landlord as monthly rent, the sum of \$ 780.<sup>00</sup> per month. Rent shall be paid in advance on the first day of each month throughout the term hereof (if the Commencement Date of the term is other than the first day of a month, Tenant shall pay to Landlord, on such Date, a pro rata share of the monthly rent, as rent for the fractional calendar month with which the term hereof begins). Each rental payment required to be paid under this Lease shall be delivered to Landlord at such place as Landlord may from time to time designate in writing.

7. Parking. During the term of this Lease Tenant shall have an easement to use, as parking for itself, its employees, visitors, and business invitees, the Parking Area described in Section 1 of this Lease. Tenant may use the Parking Area as is necessary for the operation of Tenant's business in the Premises. Landlord at its expense shall maintain the Parking Area in good condition and repair and shall remove snow therefrom as soon as reasonably possible after each snowfall. Landlord shall take such actions as are necessary to ensure that the easement granted Tenant under this Section 7 is not impaired or violated by other parties, including other lessees, occupants, or users of the Improvements.

8. Shared Rooms. Located in the Building and identified on Exhibit A are a waiting room, restroom, storage room, and laundry room. Such rooms are not part of the Premises, but during the term of this Lease: (a) Tenant shall have an easement to use, for itself, its employees, visitors, and business invitees the waiting room and restroom; (b) Tenant shall have an easement to use for itself and its employees the storage room and laundry room (including use of the washer and dryer contained therein). (The waiting room, restroom, storage room and laundry room identified in this Section 8 are hereinafter referred to collectively as the "Shared Rooms.") Landlord at its expense shall maintain the Shared Rooms and keep them in a safe, clean, attractive and working condition. Landlord at its expense shall provide the janitorial services reasonably needed to keep the Shared Rooms clean and free of refuse.

9. Use. Tenant shall use the Premises as a veterinary clinic/animal hospital and for purposes ordinarily incidental to such use. Tenant shall not commit any waste upon the Premises and shall not conduct or allow any business, activity, or thing on the Premises which is or becomes unlawful, prohibited, or a nuisance.

10. Services and Utilities. Landlord agrees to furnish, at its own expense, electricity and heat to the Premises sufficient for Tenant's comfortable use and occupancy of the Premises.

Landlord shall maintain and keep lighted the Parking Area, Shared Rooms, and all common stairs, hallways, entries, and other rooms in the Building.

11. Alterations. Subsequent to the initial finishing that occurs pursuant to Section 3 of this lease, Tenant at its expense and with no right of reimbursement from Landlord, may make changes, additions, and improvements to the Premises to better adapt the Premises to its use and occupancy; provided, however, that any such change, addition, or improvement shall be in conformity with all applicable laws and ordinances.

12. Destruction. Both Landlord and Tenant shall have the right to terminate this Lease in the event the Building is destroyed or damaged by fire, earthquake, or other casualty to such an extent that it is untenable in whole or in part. Any such right of termination must be exercised through written notice given by Tenant to Landlord or Landlord to Tenant within 30 days following the date of destruction or damage.

13. Assignment and Subletting. Except as otherwise provided by the following provisions of this Section, Tenant shall not assign this Lease or any interest herein, or sublet the Premises or any part thereof, except upon the prior written consent of Landlord. Tenant shall not be required to obtain the prior written or any other consent of Landlord to assign this Lease to a corporation owned or controlled by Tenant. Assigning Tenant shall upon such assignment be relieved of all liability under this Lease, and all liability thereafter is on the assignee corporation.

14. Default by Tenant. Tenant shall not be in default under this Lease unless Tenant fails to perform an obligation required of it within 30 days after written notice by Landlord to Tenant specifying the respects in which Tenant has failed to perform such obligation; provided, however, that if the nature of Tenant's obligation is such that more than 30 days are reasonably required for performance or cure, then Tenant shall not be in default if Tenant commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

15. Remedies for Tenant's Default. In the event of any default or breach by Tenant, Landlord may pursue any remedy allowed by law.

16. Remedies for Landlord's Default. In the event of any default or breach by Landlord, Tenant may at any time, without waiving or limiting any other right or remedy available to it, terminate this Lease upon written notice to Landlord, or pay or perform the obligation as to which Landlord is in default (in which event Tenant's cost of so doing may be withheld and offset from rent), or initiate legal proceedings for recovery of Tenant's damages and costs, or pursue any combination of the foregoing remedies or remedy allowed by law.

17. Indemnification and Insurance

(a) Tenant releases Landlord from any liability for damage to property of, or personal injury to, Tenant's directors, officers, agents, employees, invitees, and guests arising out of, or in connection with, Tenant's use of the Premises, not including, however, liability resulting from the sole negligence or intentional acts or omissions of Landlord or its agents, employees, or contractors. Tenant shall indemnify, defend, and save harmless Landlord, its officers, employees and agents from any and all claims, suits, losses, damages, damages to property and injuries to persons, of whatever kind or nature arising from actions by Tenant in the conduct of its operations on the Premises or resulting from carelessness, negligence, or improper conduct of Tenant or any of its directors, officers, agents, employees, but not including any claims, suits, losses, damages, damages to property and injuries to persons, of whatever kind or nature, resulting from the negligent or intentional acts or omissions of Landlord or its agents, employees, or contractors.

(b) Tenant shall obtain and maintain continuously in effect at all times during the term hereof, at Tenant's sole expense, general liability insurance protecting against liability which may accrue by reason of Tenant's conduct incident to the use of the Premises, or resulting from any accidents occurring in or about the Parking Area, Shared Rooms, or other common areas available for use by Tenant. Such insurance shall provide liability limits of \$1,000,000 for personal injury, death, or property damage, combined single limit. Such insurance shall name Landlord as an additional insured thereunder. Such insurance shall require the insurance carrier to give Landlord at least thirty (30) days written notice prior to cancellation of the policy.

(c) No more than thirty (30) days after the signing of this Lease, Tenant shall deposit with the Landlord, a copy or copies of such insurance policy or policies, or a certificate of such insurance coverage as evidence that the coverage required herein has been obtained by the Tenant.

(d) Landlord agrees to notify Tenant in writing, as soon as practicable, of any claim, demand, or action rising out of an occurrence covered hereunder and to cooperate with Tenant in the investigation and defense thereof, unless Landlord believes its interests conflict with those of the Tenant.

18. Attorneys' Fees. If any action is brought because of any default under or to enforce or interpret any of the provisions of this Lease, the party prevailing in such action shall be entitled to recover from the other reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

19. Notices. Any notice required or permitted hereunder to be given or transmitted between the parties shall be either personally delivered or mailed postage prepaid addressed, if to Landlord at 100 Lincoln Street, Sitka, Alaska 99835 (or at such other address for notice purposes as Landlord may hereafter designate in writing), and, if to Tenant, at P.O. Box 1774,

Sitka, Alaska 99835 (or at such other address for notice purposes as Tenant may hereafter designate in writing). Any notice which is mailed shall be effective upon delivery.

20. Rights Upon Termination. All alterations, additions and fixtures which are made or installed by Tenant in the Premises shall be considered and shall remain the personal property of Tenant and may be removed by Tenant upon termination of this Lease, provided such removal can be accomplished without damage to the Premises. In addition, all equipment and furnishings leased or purchased by Tenant for use in the Premises, including, but not limited to, X-ray machines, desks, tables, examining tables, shelving, chairs, and animal cages, shall be and remain Tenant's personal property and may be removed by Tenant upon termination of this Lease. Upon termination of this Lease, Tenant shall leave the Premises in good, tenantable condition.

21. Access to Premises. Tenant shall be entitled to have access to and to use the Premises and Shared Rooms 24 hours per day, 365 days per year.

22. Signs. Tenant at its own expense may install on the outside of the Building and/or Premises, or on any other portion of the Property upon which the parties mutually agree, signs or lettering which identifies the occupant of and/or business conducted in the Premises.

23. Waiver and Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

24. Prior Agreements, Lease Amendments, and Time Effective. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any of such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on either party until fully executed by both.

25. Miscellaneous. All Exhibits, addenda, riders, and provisions, if any, attached to this Lease are a part hereof. Any provision of this Lease which may prove to be invalid shall in no way affect or invalidate any other provision hereof, and such other provision shall be valid to the maximum extent permitted by law. The headings and titles of the various provisions of this Lease shall have no effect upon the construction or interpretation of any part hereof. As used in this Lease the singular shall include the plural, the plural shall include the singular, the whole shall include each part thereof, and any gender shall include both other genders. The covenants and conditions herein contained shall apply to and bind the heirs, personal representatives, successors, and assigns of the parties hereto. Time is of the essence of this Lease and of each and all of its provisions in which performance is a factor. This Lease shall be governed by the laws of the State of Alaska.



IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on or as of the day and year first above written.

"Landlord":

THE CITY AND BOROUGH OF  
SITKA, ALASKA

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

Title: \_\_\_\_\_

*Mary L. [Signature]*  
*City Administrator*

"Tenant":

DR. DAVID J. HUNT,  
d/b/a SITKA ANIMAL HOSPITAL

*David J. Hunt*

**EXHIBIT A**

**to**

**Lease**

Here attach a copy of the floor plan(s) of the Building that: (a) shows (with a bold line or by cross-hatching) the location and configuration of the Premises (keeping in mind that the Premises do not include the Shared Rooms); and (b) identify by name each of the Shared Rooms.

L

B

Laundry

A

NO FINISHES REQUIRED  
THIS AREA

Storage

Restroom

Waiting Room

B

20' GATE SEPT  
BY FR

A: Veterinary Hospital

B: Boarding Facility