



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*

Thursday, September 27, 2018

6:00 PM

Assembly Chambers

SPECIAL MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

V. 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.

VI. UNFINISHED BUSINESS:

- A** [ORD 18-48](#) Making supplemental appropriations for Fiscal Year 2019 (legal fees phase 3 of Sitka Community Hospital RFP process)

Attachments: [Motion and Ord 2018-48.pdf](#)

VII. NEW BUSINESS:

- B** [18-183](#) Discussion / Direction / Decision on Phase 3 of the Sitka Community Hospital RFP process - specifically the Letter of Intent with SEARHC (executive session anticipated)

Attachments: [Exec Session SCH LOI.pdf](#)

[LOI - Sitka Community Hospital - DRAFT 092618.pdf](#)

VIII. PERSONS TO BE HEARD:

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

IX. EXECUTIVE SESSION

Nothing in addition to item B.

X. 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: September 24, 26*



CITY AND BOROUGH OF SITKA

Legislation Details

File #: ORD 18-48 **Version:** 1 **Name:**

Type: Ordinance **Status:** AGENDA READY

File created: 9/14/2018 **In control:** City and Borough Assembly

On agenda: 9/27/2018 **Final action:**

Title: Making supplemental appropriations for Fiscal Year 2019 (legal fees phase 3 of Sitka Community Hospital RFP process)

Sponsors:

Indexes:

Code sections:

Attachments: [Motion and Ord 2018-48.pdf](#)

Date	Ver.	Action By	Action	Result
9/20/2018	1	City and Borough Assembly		

POSSIBLE MOTION

I MOVE TO approve Ordinance 2018-48
on second and final reading.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2018-48

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA
MAKING SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2019
(LEGAL FEES PHASE 3 OF SITKA COMMUNITY HOSPITAL RFP PROCESS)

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, 2018 and ending June 30, 2019 is hereby adjusted as follows:

<u>FISCAL YEAR 2019 EXPENDITURE BUDGETS</u>
CAPITAL PROJECTS
Legal Department – Operations: Increase appropriation in the amount of \$150,000 for legal fees involving the completion of Phase 3 of the Sitka Community Hospital RFP process.

EXPLANATION

To facilitate the implementation of the decision by the Assembly to negotiate with the Southeast Alaska Regional Health Consortium (SEARHC) for the sale of the business of Sitka Community Hospital, the services of specialized outside legal counsel is necessary. This appropriation would pay for the cost of such outside legal counsel. The acquisition of such outside legal counsel will be in accordance with the provisions of Title 3 of the Sitka General Code.

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 27th Day of September, 2018.

ATTEST:

Matthew Hunter, Mayor

Sara Peterson, MMC
Municipal Clerk

1st reading 9/20/18

2nd and final reading 9/27/18



CITY AND BOROUGH OF SITKA

Legislation Details

File #: 18-183 Version: 1 Name:

Type: Item Status: AGENDA READY

File created: 9/21/2018 In control: City and Borough Assembly

On agenda: 9/27/2018 Final action:

Title: Discussion / Direction / Decision on Phase 3 of the Sitka Community Hospital RFP process - specifically the Letter of Intent with SEARHC (executive session anticipated)

Sponsors:

Indexes:

Code sections:

Attachments: [Exec Session SCH LOI.pdf](#)
[LOI - Sitka Community Hospital - DRAFT 092618.pdf](#)

Date	Ver.	Action By	Action	Result
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POSSIBLE MOTIONS

EXECUTIVE SESSION

I MOVE to go into executive session to discuss communications with outside legal counsel, Sandy Johnson, the Municipal Attorney and Municipal Administrator regarding phase 3 of the Sitka Community Hospital RFP process, specifically the letter of intent with SEARHC, matters the immediate knowledge of which would adversely affect the finances of the municipality and invite in Chief Finance and Administrative Officer, Jay Sweeney, and invite Sitka Community Hospital RFP Consultants Sarah Cave and Steve Huebner to participate telephonically.

I MOVE to reconvene as the Assembly in regular session.

*Sitka General Code 2.04.020 Meetings

D. All meetings shall be open to the public except that the following may be discussed in closed executive session:

1. Matters, the immediate knowledge of which would adversely affect the finances of the municipality;
2. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
3. Matters which by law, municipal Charter or ordinances are required to be confidential;
4. Communications with the municipal attorney or other legal advisors concerning legal matters affecting the municipality or legal consequences of past, present or future municipal actions.

LETTER OF INTENT

This letter of intent (“**LOI**”), which is effective as of September ____, 2018 (the “**Effective Date**”), is entered into by **SouthEast Alaska Regional Health Consortium** (“**SEARHC**”), a nonprofit tribal organization comprised of federally-recognized Alaska Native tribes, and the **City and Borough of Sitka, Alaska** (hereinafter referred to as “**CBS**” or “**CITY**”). Each of **CITY** and **SEARHC** is hereinafter individually termed a “**Party**,” and collectively termed the “**Parties**.”

Recitals.

WHEREAS, **CITY** operates Sitka Community Hospital (“**SCH**”); and

WHEREAS, as a result of changes in the health care industry, generally, and in reimbursement policy, specifically, it is becoming more challenging for **CITY** to operate **SCH** and continue to satisfy all other **CITY** obligations with respect to Sitka residents; and

WHEREAS, after due consideration of the current health care climate and deliberation over a period of time, the **CBS** Assembly with community input determined that the **CITY** must take action to ensure that appropriate, high-quality health care services remain available for individuals in the Sitka service area; and

WHEREAS, as a component of such necessary action, **CITY** issued a Request for Proposal (“**RFP**”) seeking to identify an organization that shares **CITY**’s determination that the City and Borough of Sitka needs a premier healthcare provider system that can improve community health through the sustainable provision of a broad array of high-quality health care services; and

WHEREAS **CITY**, after obtaining input from the community over an extended period of time, recognizes that it is to the community’s benefit to structure the provision of health care services in a manner that is efficient, effective, maximizes available resources and avoids unnecessary duplication of services; and

WHEREAS, **SEARHC** is located within the Sitka community and operates health care facilities that serve the Sitka community, and submitted a proposal (“**Proposal**”) in response to the **RFP**; and

WHEREAS, **SEARHC** has facilities which draw patients from a larger service area and operates clinics in 27 communities throughout Southeast Alaska, the coordinated access to which will allow the Sitka community to access healthcare services, cost structures, and infrastructure scaled to the larger population of Southeast Alaska; and

WHEREAS, **CITY** accepted the **Proposal** submitted by **SEARHC**, so that it is now incumbent upon the **Parties** to negotiate towards implementation of the **SEARHC** **Proposal**;

NOW, THEREFORE, the **Parties** wish to enter into this **LOI** to negotiate toward entry into one or more agreements (“**Definitive Agreement(s)**”) that would more fully develop and implement the provisions of the **SEARHC** **Proposal** (the process established through this **LOI** is the “**Negotiation**.”)

Section 1. Purpose.

The Parties hereby agree that the purpose of the Negotiation is to prepare and execute Definitive Agreements whose goal is to achieve the following objectives (collectively referred to herein as the “Alignment Strategy”):

- Ensure equal access to care for all patients.
- Provide services tailored to the needs of patients and the community.
- Provide high-quality culturally appropriate care.
- Ensure equitable employment opportunities.
- Achieve the following goals:
 - Improve access to primary and specialty services close to home;
 - Attract and retain high-quality providers and staff;
 - Create a financially thriving enterprise that enables the expansion of services in the community;
 - Enhance and expand patient care, quality, experiences, and clinical outcomes;
 - Create a new healthcare campus to facilitate accomplishment of the above goals and objectives.
 - Mitigate the current and future liabilities of CITY with respect to: (i) the CITY’s PERS/pension liability, through payments to CITY negotiated pursuant to the SEARHC proposal and more fully described in the Definitive Agreements; and (ii) the provision of health care services through SEARHC’s assumption of financial risks attendant to the delivery of healthcare services to the City and Borough of Sitka, as spelled out in one of the three separate references at pages 21 and 22 in the Proposal (which Proposal was dated May 16, 2018) and which pages 21 and 22 are attached hereto as Appendix B.

Section 2. Description of the Transaction.

- A. The Negotiation.** This LOI summarizes, in general terms (and subject to further development during the Negotiation):
- i. The principal terms of SEARHC’s purchase of the SCH business—defined as employees, services and licenses, rental of real estate for the hospital and long-term care/skilled-nursing facility—and the assumption of certain specified liabilities of SCH; and
 - ii. The further actions to be taken consistent with the Alignment Strategy (jointly referred to as the “**Transaction**”). Refer to Pages 21 and 22 of

Appendix B of the Proposal, describing the transaction and three proposed options.

B. Definitive Agreements. As soon as reasonably practicable after the execution of this LOI, the Parties shall begin to negotiate Definitive Agreement(s) relating to the Transaction with a closing date for the Transaction (the “**Closing Date**”) on or before September 30, 2019. The Definitive Agreements shall initially be drafted by SEARHC counsel, subject to subsequent negotiation of its provisions by the Parties as required and appropriate. Subject to addition or deletion of any agreement as appropriate, it is currently anticipated that the Definitive Agreements will include the following and such other agreements as may be required to implement the SEARHC Proposal:

- i. An Asset Purchase Agreement;
- ii. Property Lease for the real property upon which SCH is located;
- iii. Escrow Agreement;
- iv. Bill of Sale; and
- v. Assignment and Assumption Agreement.

C. Post-Closing Obligations. As described in the Proposal and subject to the Negotiation, whose outcome will be fully set forth in the Definitive Agreements, the Parties currently anticipate that, beginning at Closing Date:

- i. SEARHC will fund all necessary daily maintenance and capital expenditures in support of delivering healthcare services currently available at SCH, including maintaining the long-term care facility to comply with state licensure requirements. SEARHC is planning a new hospital campus, therefore, eliminating the need to improve the current SCH facilities.
- ii. The CITY will retain ownership of real property, as well as SCH balance sheet assets and liabilities as of the Closing Date.
- iii. SEARHC will provide equal access to healthcare services and facilities to all members of the community and ensure equal access to all services and programs.
- iv. SEARHC will continue to provide the community of Sitka with all services SCH currently provides for a minimum of two years after the Closing Date.
- v. SEARHC will integrate the acute care services of SCH into the Mt. Edgecumbe Hospital (“MEH”) campus in the short and long term following the Closing Date.

- vi. Long-term care services will continue to be provided at the SCH facility until a new facility is constructed.
- vii. All SCH employees who pass the necessary background checks will be offered positions in Sitka of a similar nature and compensation and benefit levels similar to those provided to current SEARHC employees in similar positions. These employment arrangements will be guaranteed for a reasonable period of time as negotiated in the Definitive Agreements, subject to SEARHC's job performance standards.
- viii. SEARHC will work with CITY to develop a governance structure that ensures appropriate input and participation from CITY. The nature, size and composition of the governance structure will be decided during the Negotiation and reflected in the Definitive Agreements.
- ix. SEARHC will build a new medical campus, including a hospital, medical office building and long-term care facility—in Sitka—with construction beginning three to five years from the Closing Date.
- x. SEARHC will develop in the City and Borough of Sitka enhanced and expanded medical expertise, specialties, and complementary resources for improved quality, patient outcomes and better patient care experiences.
- xi. SEARHC will endeavor to create a financially thriving enterprise with operational efficiencies that enable the expansion of services with the intent of optimizing patient care and enhancing access to capital.
- xii. SEARHC will facilitate the use of an IT platform that will maximize efficiency, patient safety, and quality of care while meeting the challenges of, and opportunities provided by, healthcare reform.
- xiii. The Definitive Agreements will contain assurances and accountabilities to ensure the terms/provisions of the LOI are met.
- xiv. Upon the Closing Date, SEARHC will engage in a collaborative transition process with representatives from CITY and SEARHC to ensure the best outcomes pursuant to the terms of the Definitive Agreements.

D. Mission, Philosophy, Values. Nothing in the Definitive Agreements shall require, or be interpreted to require, CITY or SEARHC to conduct any activity or take any action that could cause it to contravene or compromise its philosophy, mission, or values.

Section 3. Nonbinding LOI; Binding Provisions

A. Binding and Non-Binding Provisions. With the exception of the provisions in Section 3(B) though (G), Sections 4(B), 5(A), 5(B), 5(E) and 5(F), the provisions

of this LOI are not legally binding and do not create or constitute any legally binding obligations whatsoever between SEARHC and CITY, and except as set forth herein neither SEARHC nor CITY shall have any obligation or liability to the other Party with respect to the Transaction unless and until Definitive Agreements, in form and substance satisfactory to each Party and its respective counsel, are executed and delivered by and between the Parties. Upon expiration or termination of this LOI, neither Party will have any further obligations to the other, except as expressly provided herein and any other written agreement between the Parties.

- B.** Access Until the Termination Date. Subject to the provisions of the Confidentiality and Nondisclosure Agreement, (hereinafter referred to as the “**CNDA**”; attached hereto as APPENDIX A and incorporated herein by this reference), each of SEARHC and CITY will provide the other Party with reasonable access, consistent with the Transaction, to its respective facilities, books, and records (during normal business hours), and shall cause its respective directors, employees, accountants, attorneys, and other agents and representatives (collectively, the “**Representatives**”) to cooperate reasonably with the other Party in connection with such other Party’s due diligence investigation of the disclosing Party’ assets, contracts, liabilities, operations, records, and other aspects of its business.

Each Party shall, as part of the due diligence process, provide the other Party, and such other Party’s outside counsel and/or outside consultants, with such materials as may be required to complete the due diligence process. Certain of this information may be determined by the disclosing Party to be competitively sensitive. Such information will be disclosed in accordance with guidelines consistent with state and federal laws, patient confidentiality laws and binding contractual obligations of the Parties and their Representatives in accordance with the CNDA. Any delivery or exchange of competitively sensitive due diligence information must be made in compliance with the CNDA.

- C.** Exclusive Dealing Until the Termination Date. Until the later of September 30, 2019 or the Termination Date (defined below), SEARHC and CITY agree that neither shall, directly or indirectly, solicit, respond to any inquiry or negotiate any potential merger, acquisition, consolidation, affiliation, sale, lease arrangement, partnership or other relationship with any other entity (collectively, a “Competitive Proposal”) that would be in competition with or lieu of the Transaction (a “Competitive Transaction”) provided that a Competitive Proposal shall not include arrangements in the ordinary course of business, and in the case of SEARHC this includes health care delivery provided or arranged by SEARHC and any Competitive Proposal or Competitive Transaction related to health care matters outside of the City and Borough of Sitka, Alaska). Each Party will immediately notify the other of any Competitive Proposal with respect to a potentially Competitive Transaction.
- D.** Costs. Except as otherwise provided herein, or in the Definitive Agreements, each Party will pay its own legal, accounting, out-of-pocket, and other expenses incident

to this LOI and any action taken by such Party in preparation for the evaluation and discussions regarding the Transaction.

E. Interim Operating Covenant. Between the Effective Date and the Closing Date, CITY agrees that, except as expressly provided in this LOI, as required by any applicable Federal or State of Alaska laws, or to the extent that SEARHC otherwise consents in writing, CITY shall:

- i. manage and operate SCH in the ordinary course of business consistent with past practices in all material respects (except as provided herein);
- ii. preserve and maintain all licenses and permits required to operate SCH or to own and use the assets of SCH;
- iii. pay the debts, taxes and other obligations of SCH when due;
- iv. maintain SCH's personal property in good operating condition and repair, subject only to ordinary wear and tear;
- v. not make or commit to make any capital expenditures or enter into any other transaction or contract (or series of transactions or contracts) involving SCH in an amount in excess of \$15,000;
- vi. with respect to SCH's business, not enter into or amend any employment agreement, increase the number of employees of SCH, replace open employee positions, or change the compensation or benefits of any current employee of SCH. For the avoidance of doubt, the Parties acknowledge and agree that to achieve the goals of the Transaction, to the greatest extent possible they will transfer or assign SEARHC employees to provide needed work in lieu of filling Hospital open employee positions on a pass-through cost basis; and
- vii. without limiting the foregoing, CITY shall consult with SEARHC regarding all significant developments, transactions, and proposals relating to SCH and its business, assets, employees, and operations.

F. Termination. Subject to the conditions of Section 3.G below, this LOI shall terminate on September 30, 2019, or such other date as follows:

- i. On the date determined upon by the mutual written consent of SEARHC and CITY;
- ii. By CITY upon thirty (30) days written notice to SEARHC; or
- iii. By SEARHC upon thirty (30) days written notice to CITY.

G. Break-up Fee. If the Transaction contemplated by this LOI is not consummated on or before the September 30, 2019 the Parties agree that each will have incurred considerable expenses (including the costs of staff, lawyers, accountants, obtaining regulatory approvals and third party consents), expended resources (time, money and personnel) with respect to the Transaction and will not enjoy the contemplated benefits of the Transaction, had it closed on such date. Therefore a Break-up Fee shall be paid as follows:

- i. If this LOI is terminated by CITY pursuant to Section 3(F)(ii), or expires in accordance with its terms, then CITY shall pay SEARHC, within thirty (30) days of such termination (or expiration, as the case may be) an amount equal to \$500,000 (five hundred thousand dollars), provided, that no Break-up Fee shall be paid under this Section 3(G)(i) if CITY terminates this LOI due to SEARHC's failure to substantially perform its duties under this LOI following notice from CITY to SEARHC and a reasonable opportunity for SEARHC to cure ("an Uncured SEARHC Breach") or the Transaction contemplated by this LOI is not consummated on or before the September 30, 2019 due to an Uncured SEARHC Breach;
- ii. If this LOI is terminated by SEARHC pursuant to Section 3(F)(iii), then SEARHC shall pay CITY, within thirty (30) days of such termination (or expiration, as the case may be), an amount equal to \$500,000 (five hundred thousand dollars), provided, that no Break-up Fee shall be paid under this Section 3(G)(ii) if SEARHC terminates this LOI due to CITY's failure to substantially perform its duties under this LOI following notice from SEARHC to CITY and a reasonable opportunity for CITY to cure ("an Uncured CITY Breach") or the Transaction contemplated by this LOI is not consummated on or before the September 30, 2019 due to an Uncured CITY Breach.

The Break-up Fee is intended by the Parties to constitute liquidated damages, and not a penalty. The Parties acknowledge that it would be difficult to ascertain the specific amount of damages suffered by the CITY or SEARHC, as the case may be, in the event of the expiration and/or the termination of this LOI pursuant to either Section 3(F)(ii) or 3(F)(iii). The Break-up Fee represents the Parties' reasonable estimation of such damages to the CITY or SEARHC, taking into account: (i) the lost opportunity costs associated with a contract to deal exclusively with each other; (ii) the expenses incurred in negotiating the Transaction; (iii) the Parties' lost opportunity associated with the failure to consummate the Definitive Agreement envisioned by this LOI; and (iv) the size of the termination fees in other transactions.

Section 4. Miscellaneous

- A.** Publicity. Any public announcement concerning the Transaction or this LOI shall be discussed in advance by the Parties, it being the intention of the Parties that all such public announcements shall be issued jointly by the Parties, where possible.
- B.** No Assignment. Neither Party may assign any or all of its rights or obligations under this LOI.

Section 5. Other Provisions

- A.** Good Faith. SEARHC and CITY shall negotiate in good faith, and not hinder nor delay the process, in an attempt to reach agreement on the terms of the Definitive Agreement, consistent with this LOI, and use their best efforts to enter into a Definitive Agreement by February 1, 2019.
- B.** No Violation. Each Party has relied on the other Party's representation that it is not currently bound under any binding or enforceable contract or agreement with any third party which would materially interfere with or prohibit the Transaction; further, that this LOI, and the Transaction, will not violate any contract, agreement, or commitment binding on or applicable to such Party.
- C.** Effect. SEARHC and CITY understand that the detailed terms of the Transaction and the Definitive Agreements remain to be negotiated, developed and agreed upon. Effecting the Transaction is contingent upon the final negotiation of those terms and the Definitive Agreements, satisfactory due diligence, regulatory approvals, formal approval by the SEARHC board of directors and the CBS Assembly, and the execution of satisfactory Definitive Agreements, each step to be conducted at the discretion of each Party.
- D.** No Waiver. No failure or delay by a Party in exercising its rights under this LOI shall operate as a waiver hereof, nor shall a waiver of any single right or remedy preclude exercise thereof or of any other right or remedy. The Parties agree to expressly provide appropriate limited waivers of any sovereign immunity each may enjoy with respect to any and all controversies, claims and/or causes of action whether legal or equitable, arising out of or related to the Definitive Agreements for the limited purposes of enforcing the terms of and resolving disputes between the Parties thereunder, but not with respect to any civil action or proceeding brought by any third party; or any action, proceeding or claim between the Parties that does not arise out of or is not related to the performance of the Definitive Agreements or this LOI.
- E.** Governing Law; Violation of Law. This Letter of Intent shall be governed by and construed and enforced in accordance with the laws of the State of Alaska, without giving effect to the principles of conflict of laws thereof. In the event any provision of this LOI is determined by counsel of any Party to result in a violation of state or federal law, then such Party may, immediately upon written notice to the other Party

specifying the grounds therefor, suspend performance of all noncomplying obligations under this LOI. Immediately thereafter, the Parties shall confer in good faith and attempt to modify this LOI to comply with applicable law, and performance of all noncomplying obligations hereunder shall be suspended until such modifications have been completed. In the event that said modification is not mutually agreeable between the Parties, either Party may immediately terminate this LOI upon written notice to the other Party and the provisions of Section 3.G. of this LOI shall not apply.

- F.** Entire Agreement; Amendment. This LOI (including its Appendices) constitutes the entire arrangement between the Parties and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties on the subject matter thereof. This LOI may be amended or modified only by a document executed by each Party. Subject to Section 5.E. above, if any provision of this LOI shall be determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- G.** Notices. Any notices delivered under this LOI shall be deemed delivered when personally delivered, or five days after they are deposited with the United States Postal Service, certified mail, return receipt requested, or upon delivery by reputable overnight carrier with signature upon receipt required, addressed to the Parties at their addresses set forth below, however, either Party may change the address to which notices are to be sent by mailing written notice thereof to the other Party as provided in this LOI.

If to CITY:

Keith Brady
Municipal Administrator
Sitka, Alaska
E-mail address: _____

If to SEARHC:

Dan Neumeister
Senior Executive Vice President
SouthEast Alaska Regional Health Consortium
3100 Channel Drive, Suite 300
Juneau, Alaska 99801-7837 Dan Neumeister
E-mail address: _____

- H.** Counterparts. This LOI may be executed in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same instrument. Executed versions of this LOI may be

delivered by the Parties via facsimile or email, either or both of which shall constitute delivery of an original.

The Parties hereby execute this LOI as of the Effective Date.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURES FOLLOW ON NEXT PAGE.]

SouthEast Alaska Regional Health Consortium

City and Borough of Sitka

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A
Confidentiality and
Nondisclosure Agreement

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (hereinafter referred to as the “Agreement”) is by and between SouthEast Alaska Regional Health Consortium (hereinafter referred to as “SEARHC”) and City and Borough of Sitka (hereinafter referred to as “CITY”).

Recitals.

WHEREAS, SEARHC possesses certain proprietary financial, economic, and business information relating to SEARHC’s practice, operations, policies, procedures, and methodologies; and

WHEREAS, CITY possesses certain proprietary financial, economic, and business information relating to CITY’s practices, operations, policies, procedures, and methodologies; and

WHEREAS, SEARHC and CITY would like to exchange such information for the purpose of evaluation and analysis in order to determine whether SEARHC and CITY would like to enter into a Transaction (defined in the LOI).

1. **NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the Parties do hereby agree as follows: Except as otherwise required by the Alaska Public Records Act, AS 40.25100 - 40.25.295 or any other law, CITY ordinance, or regulation (hereafter “Public Records Disclosure Laws”), CITY agrees to keep any proprietary financial, economic, and business information relating to SEARHC’s practice, operations, policies, procedures, and methodologies that is furnished by or on behalf of SEARHC, whether furnished before, at the time of, or after the execution date of this Agreement (collectively, the “SEARHC Information”) in strict confidence and not to disclose or otherwise use the SEARHC Information for any purpose other than for the performance of the evaluation herein described. Further, except as otherwise required by Public Records Disclosures Laws, CITY hereby agrees it will not disclose or otherwise transmit SEARHC Information (or any portion) to any individual or entity, except to those of CITY’s officials, employees, attorneys, agents, accountants, financial advisers, sources of financing, and any others having a reasonable need to know. Accordingly, CITY agrees to treat the SEARHC Information that it receives as it would its own proprietary information and to take all reasonable precautions to prevent the unauthorized disclosure to any third party of the SEARHC Information. If CITY receives a request under any Public Records Disclosures Law for disclosure of any SEARHC Information, CITY will promptly forward the request to SEARHC. Not later than five calendar days after receiving the request, SEARHC shall notify CITY in writing whether SEARHC objects to release of the SEARHC Information, setting out the specific facts and legal authority supporting nondisclosure. If CITY determines that nondisclosure is warranted and so informs the person or entity making the request, CITY will notify SEARHC if judicial relief is sought regarding CITY’s determination not to release the information. Further, the provisions of Paragraph 6 of this Agreement apply to any request for disclosure of SEARHC Information as if they were fully set forth herein.

2. SEARHC agrees to keep any proprietary financial, economic, and business information relating to CITY's practice, operations, policies, procedures, and methodologies that is furnished by or on behalf of CITY, whether furnished before, at the time of, or after the date of this Agreement (collectively, the "CITY Information" and together with the SEARHC Information, the "Information") in strict confidence and not to disclose or otherwise use CITY Information for any purpose other than for the performance of the evaluation herein described. Further, SEARHC hereby agrees it will not disclose or otherwise transmit CITY Information (or any portion) to any individual or entity, except to those of SEARHC's officials, employees, agents, attorneys, accountants, financial advisers, sources of financing, and any others having a reasonable need to know. Accordingly, SEARHC agrees to treat CITY Information that it receives as it would its own proprietary information and to take all reasonable precautions to prevent the unauthorized disclosure to any third party of CITY Information.

3. Each Party agrees that the Information may be disclosed to such Party's directors, board members, officers, employees, agents, attorneys, accountants, financial advisers, sources of financing and others having a reasonable need to know such Information for the purposes of performing the evaluation herein described (it being agreed that such directors, board members, officers, employees, agents, attorneys, accountants, and other advisers shall be informed by such Party of the confidential nature of the Information and that by receiving such Information, such Parties are agreeing to be bound by the terms of this Agreement).

4. The Information provided by each Party for the purpose of this evaluation remains the property of the providing Party and, if requested, will be returned promptly; provided, however, that either Party will be entitled to retain, and shall not be obligated to destroy, any legal, financial, or other analyses and similar work product it independently produces in respect of its evaluation of a Transaction even if based upon Information provided by the other Party.

5. The above notwithstanding, each Party's obligation of confidence with respect to the Information disclosed hereunder (including items described in Section 3 above) shall not include:

- i. Information that, at the time of disclosure, is published, known publicly, or is otherwise in the public domain;
- ii. Information that, after disclosure, is published or becomes known publicly or otherwise becomes part of the public domain, through no fault of the Party to whom the Information was disclosed;
- iii. Information that, prior to the time of disclosure, is known to the Party who received the Information, as evidenced by its written records;
- iv. Information that has been or is disclosed in good faith by a third party who was not or is not under any obligation of confidence or secrecy to the disclosing Party at the time such third party disclosed such Information; and

- v. Information that is required to be disclosed in compliance with applicable laws or regulations or by order of a court or other regulatory body of competent jurisdiction.

6. If either Party is requested (through a public records request in accordance with Public Disclosure Laws, or by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, similar process, or required by court order to disclose any of the Information (the “Disclosing Party”) to which it owes an obligation of confidence, then the Disclosing Party agrees to notify the other Party (the “Non-Disclosing Party”) promptly of such request(s) and the documents requested thereby so that the Non-Disclosing Party may seek an appropriate protective order and/or waive in writing the Disclosing Party’s compliance with the provisions of this Agreement. It is further agreed that, if in the absence of a protective order or the receipt of a waiver hereunder, the Disclosing Party is nonetheless, in the opinion of the Disclosing Party’s legal counsel, compelled to disclose any of the Information to which it owes an obligation of confidence, the Disclosing Party may disclose such information without liability to the Non-disclosing Party under this Agreement or otherwise, and the Non-Disclosing Party agrees not to seek any remedy, damages, injunctive or other relief against the Disclosing Party. However, in such a case, the Disclosing Party shall give the Non Disclosing Party written notice of the Information to be so disclosed as far in advance of its disclosure as is practicable and shall cooperate with the Non-Disclosing Party’s efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Information required to be disclosed.

7. At any time upon a Party’s request, the other Party shall promptly redeliver all Information whether in such Party’s possession or the possession of such Party’s directors, officers, employees, agents, attorneys, accountants, financial advisers, financing sources or others that have a reasonable need to know; provided, however, that either Party will be entitled to retain, and shall not be obligated to destroy, any legal, financial, or other analyses and similar work product it independently produces in respect of its evaluation of a Transaction even if based upon Information provided by the other Party. Except as provided in the foregoing sentence, all documents, memoranda, notes, and other writings whatsoever (including all copies, extracts, or other reproductions) prepared by a Party or such Party’s advisers based on the Information shall be destroyed upon the request of the other Party. The redelivery of such material shall not relieve a Party of its obligation of confidentiality or other obligations hereunder.

8. The disclosure of the Information pursuant to this Agreement shall not result in any obligation on the part of either Party to enter into any future agreement relating to such Information or to undertake any other obligation not specifically set forth in a written agreement signed by the Parties.

9. It is understood and agreed that no failure or delay by either Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege.

10. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and that the non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or equity. In any action between the Parties to enforce any terms or provisions of this Agreement, the prevailing Party in the action shall be entitled to reimbursement of its reasonable costs and expenses, including, without limitation, costs, expenses, and reasonable attorneys' fees.

11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Alaska, without giving effect to the principles of conflict of laws thereof.

12. This Agreement shall be terminated upon the earlier of (1) a written notification from either Party in accordance with the terms of that certain LOI executed by the Parties that the terminating Party has terminated the LOI, or (2) expiration of twelve (12) months from the date of the last Party signature to this Agreement. Within five (5) days of the termination of this Agreement, all Information in the custody of any Party and those to whom any Party has disclosed such Information, shall be delivered to the Party that produced the Information. In lieu of returning Information, the returning Party may certify to the other Party that all Information has been destroyed unless required to be retained by the Party in accordance with document retention or other applicable laws.

13. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon one instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties intending to be legally bound have caused this
LOI to be executed by their duly authorized representatives as of the last date written below.

**SouthEast Alaska Regional Health
Consortium**

City and Borough of Sitka

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____