



City and Borough of Sitka

LEGAL DEPARTMENT

100 Lincoln Street • Sitka, Alaska 99835

MEMORANDUM

To: Mayor Paxton and Assembly Members

From: Brian E. Hanson, Municipal Attorney

Reviewed: Keith Brady, Municipal Administrator

Date: June 6, 2019

Subject: Supplemental Appropriation for professional services re: SCH/SEARHC affiliation

Introduction

The purpose of this ordinance is to make a supplemental appropriation in FY 2019, pursuant to Charter Section 11.10, for consulting services, professional valuation services, and legal services necessary for the SCH affiliation with SEARHC (hereinafter referred to as the "Affiliation").

Background

A. Consulting Services

On March 26, 2018, CBS formally engaged Huebner/Cave consulting services for the Affiliation. A copy of that engagement agreement is attached. The consultants estimated the cost of their services through "Phase III" of the Affiliation (the signing of the "definitive agreement" - now known as the Asset Purchase Agreement or "APA") to be **\$103,100**. By ordinances passed February 27, 2018, and November 27, 2018, the Assembly appropriated a total of **\$250,000.00** for those estimated consulting services (and "due diligence" expenses).

Phase III was completed when the APA was signed in April 2019. In the months prior to the APA being signed, CBS encountered unforeseen complications with the transaction that were outside the scope of consulting services provided for in the original engagement. CBS continues to encounter those unforeseen complications. An adjustment in the scope of services was necessary to ensure completion of the transaction and to comply with federal regulations such that CBS was protected from potentially extreme civil liability (and maybe even criminal culpability). The adjusted activities primarily involve due diligence and federal regulatory compliance issues, which required and continues to require immediate, intensive, and sustained work by the consultants. Prior to these adjustments, the consultants appeared on track with their estimate. However, as a result of these adjustments, the cost of consulting services have exceeded their estimate. As of their last billing in May 2019, the consultants billings totaled **\$197,066.99**, of which **\$1,925.00** is unpaid. Note, without the adjustments, it is believed the consultants would have been under their estimate.

Additional work by the consultants for Phase IV of the Affiliation is necessary. The Affiliation is now scheduled to close on or about July 31, 2019. The consultants have estimated their fees and expenses for the remaining work to be **\$66,000.00**. A copy of the consultants fee proposal for future work, dated May 5, 2019, is attached.

In Summary, for consulting services, the supplemental appropriation requested is **\$67,925.00** (for unpaid fees of \$1,925.00 plus future estimated fees of \$66,000)

B. Professional Valuation Services

As a result of the above described adjustment for federal regulatory compliance issues, it was necessary to hire professional services for valuation and analysis of physician contracts and other federal regulatory compliance issues. For that purpose, Strategic Value Group, Inc. ("SVG") was retained by CBS. It was necessary to immediately retain SVG to perform intensive and sustained work which required extensive collaboration with SCH finance staff, all essential to identifying, analyzing, valuing and reporting federal regulatory non-compliance.

By the above mentioned ordinances, the Assembly appropriated money for due diligence expenses, without identifying the specific services necessary as they were unforeseen at the time. As of their last billing in May 2019, SVG's billings totaled **\$127,186.59**, of which **\$56,147.29** has been paid and **\$71,039.30** is unpaid.

Additional work by SVG is necessary. SVG has estimated their fees for the remaining work to be **\$24,000.00**.

In summary, for professional valuation services, the supplemental appropriation requested is **\$95,039.30** (for unpaid fees of \$71,039.30 plus future estimated fees of \$24,000).

C. Legal Services

On September 27, 2018, CBS formally engaged Sandy Johnson, of Schwabe Williamson & Wyatt, for the Affiliation. A copy of that engagement agreement, dated September 24, 2018, is attached. Sandy estimated the cost of her services through "Phase III" of the Affiliation to be **\$150,000.00**. By ordinance passed September 27, 2018, the Assembly appropriated **\$150,000.00** for those estimated legal services.

Phase III was completed when the APA was signed in April 2019. In the months prior to the APA being signed, CBS encountered unforeseen complications with the transaction that were outside the scope of legal services provided for in the original engagement. CBS continues to encounter those unforeseen complications. An adjustment in the scope of services was necessary to ensure completion of the transaction and to comply with federal regulations such that CBS was protected from potentially extreme civil liability (and maybe even criminal culpability). The adjusted activities primarily involve due diligence and federal regulatory compliance issues, which required and continue to require immediate, intensive, and sustained work by Sandy. Prior to these adjustments, Sandy appeared on track with her estimate. However, as a result of these adjustments, the cost of legal services have significantly exceeded her estimate. As of her last billing in May 2019, Sandy's billings totaled **\$350,018.06**. Accordingly, the cost of adjustments to date which are unpaid is **\$200,018.06** (the total billings of \$350,018.06 minus the initial appropriation of \$150,000.00). Note, without the adjustments, it is believed Sandy would have been under her estimate. A copy of Sandy's explanatory letter dated April 14, 2019, is attached.

Additional work by Sandy for Phase IV of the Affiliation is necessary. The Affiliation is now scheduled to close on or about July 31, 2019. Sandy has estimated her fees and expenses for the remaining work to be **\$58,500.00**. A copy of Sandy's supplemental explanatory letter dated June 4, 2019, is attached.

In summary, for legal services, the supplemental appropriation requested is **\$258,518.06** (for unpaid fees of \$200,018.06 plus future estimated fees of \$58,500.00).

Summary

The requested supplemental appropriation (rounded to the nearest thousands) is as follows:

Consulting Services (Huebner/Cave)	\$ 68,000.00
Professional Valuation Services (SVG)	\$ 95,000.00
Legal Services (Johnson)	<u>\$259,000.00</u>
TOTAL	<u>\$422,000.00</u>