



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

MEMORANDUM

To: Mayor Paxton and Assembly Members

From: Jay Sweeney, Chief Finance and Administrative Officer

Reviewed: David Miller, Interim Administrator
Brian Hanson, Municipal Attorney

Date: August 30, 2019

Subject: Repairs of old Sitka Community Hospital Building Required by Facility Lease Agreement

The City and Borough of Sitka (CBS) and the Southeast Regional Health Consortium (SEARHC) entered into a Facility Lease Agreement (FLA) for the lease of the former Sitka Community Hospital Building, effective August 1, 2019.

Section 1.4 of the FLA, Lessor Repairs, states the following: *"Notwithstanding anything to the contrary in the Facility Lease, including without limitation, Section 1.3 above, Lessor hereby agrees to repair those conditions set forth on Exhibit D (collectively, the "Lessor's Work"), which is attached to and made a part of this Facility Lease, on or prior to the Effective Time (as defined in Section 1.5 (a) of the APA. Lessor's work shall be performed in a good and workmanlike manner, using new materials and in compliance with all applicable laws, codes, and regulations."*

Section 15.9 of the FLA, Specific Performance; Injunctive Relief, outlines what could occur if the CBS, as Lessor, does not meet its obligations under the FLA, as follows: *"The parties agree that irreparable damage may occur in the event any provisions of this Facility Lease were not performed in accordance with their specific terms or were otherwise breached or threatened to be breached and that an award of monetary damages may be inadequate in such an event. Accordingly, it is acknowledged that the parties, without proof of actual damages, may obtain relief, including an injunction or order for specific performance to prevent breaches of the provisions of this Facility Lease, and to enforce specifically the terms and provisions of this Facility lease, in addition to any other remedy to which they are entitled at law or in equity as a remedy for such breach or threatened breach."*

The essence of these two provisions of the FLA, as they pertain to agreed-upon repairs of the former SCH facility, is that the CBS is bound by its contractual to make the repairs. If the CBS were to not meet its obligations for whatever reason, SEARHC could seek a legal injunction to compel the CBS to make the promised repairs.

As the CBS could be legally compelled through a court order for specific performance to complete the repairs, an appropriation of funds is necessary to pay for the completion the repairs. The appropriate source of funds for the repairs is the General Fund, because the

former SCH building became a general fixes asset of the Municipality on August 1, 2019, no different than City Hall or the Library. This is the reason for, and rationale behind, the supplemental appropriation request for pay for the promised repairs.