



CITY & BOROUGH OF WRANGELL SPECIAL ASSEMBLY MEETING AGENDA

**Thursday, March 22, 2018
5:30 p.m.**

**Location: Assembly Chambers,
City Hall**

1. Call to Order
2. Roll Call
3. Conflict of Interest:
4. Persons to be Heard:
5. Item(s) of Business:
 - a. **EXECUTIVE SESSION:** Discuss with the Borough's legal counsel, Dorsey & Whitney LLP, a proposed Letter of Intent between the Borough and SEARHC regarding a possible future alignment of interests for the provision of health care services at the Wrangell Medical Center
 - b. Approval of a Non-Binding Letter of Intent and Confidentiality Agreement with the City & Borough of Wrangell and SEARHC
 - c. Approval of a sole source construction contract to O'Brien & Sons Construction LLC for the Roughing Filter Replacement Project
6. Adjournment

<p align="center">CITY & BOROUGH OF WRANGELL, ALASKA</p> <p align="center">BOROUGH ASSEMBLY AGENDA STATEMENT – SPECIAL MEETING</p>				
<u>AGENDA ITEM TITLE:</u>	<u>NO.</u>	5a	<u>Date</u>	March 22, 2018
<p>Discuss with the Borough’s legal counsel, Dorsey & Whitney LLP, a proposed Letter of Intent between the Borough and SEARHC regarding a possible future alignment of interests for the provision of health care services at the Wrangell Medical Center</p>				
<u>SUBMITTED BY:</u>				
Kim Lane, Borough Clerk				

RECOMMENDATION:

I move, pursuant to AS 44.62.310 (c)(1) and AS 44.62.310(c)(3), that we recess into executive session to discuss privileged and confidential attorney-client information with our legal counsel, Dorsey & Whitney LLP and the Borough Manager, as well as information the immediate knowledge of which would clearly have an adverse effect upon the finances of the Borough, regarding a proposed letter of intent between the Borough and SEARHC to consider a possible future alignment of interests for the provision of health care services at the Wrangell Medical Center.

CITY & BOROUGH OF WRANGELL, ALASKA				
BOROUGH ASSEMBLY AGENDA STATEMENT – SPECIAL MEETING				
<u>AGENDA ITEM TITLE:</u>	<u>NO.</u>	5b	<u>Date</u>	March 22, 2018
Approval of a Non-Binding Letter of Intent and Confidentiality Agreement with the City & Borough of Wrangell and SEARHC				
<u>SUBMITTED BY:</u>				
Lisa Von Bargen, Borough Manager				

RECOMMENDATION:

Move to approve a Non-Binding Letter of Intent and Confidentiality Agreement with the City & Borough of Wrangell and SEARHC.

SUMMARY STATEMENT:

The financial status of Wrangell Medical Center (WMC) requires the Hospital Board and the Borough Assembly to seek third party partnership opportunities. Medicare and Medicaid funded patients constitute the majority of business at WMC. Current reimbursement rates do not meet fully cover the cost of care. Frankly, WMC is hemorrhaging money. Additionally, the physical hospital structure is between 40-50 years old. It is potentially one system failure away from closure. A local critical access hospital is a fundamental component of Wrangell's quality of life. As one of Wrangell's largest employers, WMC is also a vital part of the local economy. Unfortunately, the Borough lacks the financial depth to underwrite the cost of hospital operations, or absorb the debt service on a new hospital facility. The time has come to explore community healthcare solution options with a third party.

Southeast Alaska Regional Health Consortium (SEARHC) has facilities which draw patients from a larger service area and operates clinics in 27 communities throughout Southeast Alaska, including Wrangell, the coordinated access to which would allow the Wrangell community to access healthcare services, cost structures, and infrastructure scaled to the larger population of Southeast Alaska.

The Borough considered exploring potential interest from the full healthcare market in Alaska. However, several compelling reasons led the Assembly to determine it is in the best interest of the community to explore a community healthcare solution first, exclusively with SEARHC. Those reasons include: 1) SEARHC is already an established healthcare entity in the community; 2) SEARHC has expressed considerable interest in expanding their presence in Wrangell; 3) SEARHC is willing to provide financial resources to explore facility and operational healthcare options in the community – including covering the cost of an

architect to hold a 2-3 day feasibility workshop in Wrangell; 4) the contract with SEARHC for doctors at the hospital allows for a 4-physician need to be handled by a 1.5 FTE thus saving the hospital money; 5) SEARHC owns the clinic which has extra and common space that could be used in a “campus” type approach to a new facility, thus reducing the footprint and cost of a new hospital facility; 6) SEARHC organizational status provides for a higher reimbursement rate for services, thus increasing healthcare revenue; and 7) SEARHC currently purchases services from WMC in the amount of \$4 Million – a third of the hospital’s gross operating revenue.

Earlier this year the Assembly approved a Professional Services Agreement with Dorsey & Whitney LLP to provide legal assistance to the Borough as a healthcare solution is explored with SEARHC. At the March 13th meeting the Assembly approved the creation of a Steering Committee to guide the process with SEARHC.

SEARHC has asked the Borough to enter into a non-binding Letter of Intent (LOI). The LOI outlines the parameters under which the joint solution will be explored. The LOI is non-binding in that there is no mandated or expected outcome to which either the Borough or SEARHC must agree. Additionally, if either party determines it is the best alternative to disengage from the process - that may be done. There are two binding aspects to the agreement. The first is the exclusivity clause which requires the parties only negotiate with each other during the duration of this process and the agreement. The second binding aspect is the confidentiality agreement. Please keep in mind the Borough is a public entity and is therefore subject to disclose documents allowed for disclosure under a public records request.

The LOI in this packet for approval is the version agreed to by SEARHC following a series of reviews by both parties (SEARHC and the CBW). Prior to taking action on this document there will be an executive session where the Borough’s attorney on this matter will address the legal implications of aspects of the agreement.

LETTER OF INTENT

This letter of intent (“**Letter of Intent**”), which is effective as of March ____, 2018 (the “**Effective Date**”), sets forth a nonbinding agreement in principle between **SouthEast Alaska Regional Health Consortium** (hereinafter referred to as “**SEARHC**”), a nonprofit tribal organization comprised of federally-recognized Alaska Native tribes, and **the City and Borough of Wrangell, Alaska** (hereinafter referred to as “**CITY**”). Each of CITY and SEARHC is hereinafter individually termed a “**Party**,” and collectively they are termed the “**Parties**.”

Recitals.

WHEREAS, the community envisions enhanced healthcare services in Wrangell that rely on coordinating the Parties’ strengths and collaborating on the community’s healthcare priorities.

WHEREAS, the service area population is rapidly aging, and the community is unlikely to see meaningful population growth that is necessary to sustain the current scope of quality of services of the Parties in the current configurations.

WHEREAS, CITY operates an aging facility that requires replacement and CITY desires to explore the development of a joint healthcare campus with SEARHC.

WHEREAS, Medicare and Medicaid rate freezes, combined with Alaska’s state budget crisis and decreased oil prices, could result in decreased reimbursement and increased demands on local funding priorities.

WHEREAS, CITY desires Wrangell Medical Center to become less reliant on cash infusions, such as capital support and lines of credit from the City and Borough of Wrangell.

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 Wrangell community to access healthcare services, cost structures, and infrastructure scaled to the larger population of Southeast Alaska.

NOW, THEREFORE, the Parties wish to enter into a time-limited period of nonbinding, exclusive, confidential negotiations concerning a proposed affiliation.

Section 1. Purpose and Objectives for the Proposed Transaction.

Specific terms of any future alignment (hereinafter referred to as the “**Proposed Transaction**”) will be determined through joint negotiation. SEARHC and CITY are executing this Letter of Intent to set forth their mutual intent to further pursue an alignment strategy through detailed transaction planning and definitive document development. Excluding the binding provisions described in Section 2, this Letter of Intent is nonbinding on either Party. The Parties wish to (i) first develop, by June 30, 2018 (which date the Parties may extend by mutual agreement) a mutually acceptable term sheet (hereinafter referred to as the “**Term Sheet**”) describing the Parties’ more specific goals and intended key structures and approaches for the

Proposed Transaction and (ii) then reach agreement on the next steps to be taken before developing mutually acceptable, legally binding definitive agreements (hereinafter referred to as the “**Definitive Agreements**”).

The purpose of the Proposed Transaction will be to create a healthcare campus and become the premier healthcare provider in Wrangell, improving community health through the sustainable provision of a broad array of high-quality clinical services. The Parties desire for the Proposed Transaction to achieve the enumerated objectives stated below (hereinafter referred to as the “**Objectives**”).

- 1.1 Enable capital investments for new and improved healthcare facilities and equipment that are currently not financially and operationally possible.
- 1.2 Improve quality and safety throughout the continuum of care and reduce the cost of providing such care by integrating clinical and administrative systems.
- 1.3 Develop enhanced medical expertise, specialties, and complementary resources for improved patient outcomes and better patient care experiences.
- 1.4 Preserve and enhance the quality of healthcare provided to patients.
- 1.5 Create a financially thriving enterprise with operational efficiencies that enables the expansion of services with the intent of optimizing patient care and enhancing access to capital.
- 1.6 Enhance access to a broad array of healthcare services for the patients in Wrangell and the surrounding communities.
- 1.7 Enhance the long-term ability of the Parties to secure capital and operational funding for the provision and expansion of services for patients.
- 1.8 Ensure equitable employment opportunities to attract and retain high-quality providers and staff to meet patient healthcare needs.
- 1.9 Facilitate an IT platform that will maximize efficiency, patient safety, and quality of care while meeting the challenges of, and opportunities provided by, healthcare reform.
- 1.10 Preserve equal access to healthcare services for all individuals in the communities and provide high-quality, culturally appropriate care.
- 1.11 Create operational efficiencies with the intent of optimizing patient care, realizing economies of scale, and reducing costs for patients and purchasers of healthcare services.

- 1.12 Enable the new healthcare entity to meet SEARHC's Indian Health Service legal and funding obligations as well as allow for community input for the maintenance or provision of services within Wrangell.
- 1.13 No terms of the Proposed Transaction, and 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 2. Nonbinding Letter of Intent; Binding Provisions

With the exception of the provisions in this Section 2 (hereinafter referred to as the “**Binding Provisions**”), all other provisions of this Letter of Intent are not legally binding and do not create or constitute any legally binding obligations whatsoever between SEARHC and CITY, and neither SEARHC nor CITY shall have any obligation or liability to the other Party with respect to the Proposed 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.

- 2.1 Access Until the Termination Date. Subject to the confidentiality provisions the Parties may enter pursuant to the Confidentiality and Nondisclosure Agreement, (hereinafter referred to as the “**CNDA**”; see APPENDIX A), each of SEARHC and CITY will provide the other Party with reasonable access consistent with this 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 Party's due diligence investigation of its assets, contracts, liabilities, operations, records, and other aspects of its business.

Each Party may, as part of the due diligence process, provide the other Party, and such other Party's outside counsel and/or outside consultant, with various due diligence materials. 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 antitrust laws, patient confidentiality laws and binding contractual obligations of the Parties (collectively, the “**Restrictions on Disclosures**”), all of which as shall be identified and agreed upon by the Parties. Any delivery or exchange of competitively sensitive due diligence information must be made in compliance with the Restrictions on Disclosures.

- 2.2 Exclusive Dealing Until the Termination Date. Until the Termination Date, SEARHC and CITY agree that neither shall, directly or indirectly, solicit or negotiate any potential merger, acquisition, consolidation, affiliation, lease arrangement, partnership or other relationship with any other entity (collectively, a “**Transaction**”) that would be in lieu of the Proposed Transaction being pursued

by the Parties; provided that this shall not preclude the Parties from negotiating or undertaking arrangements in the ordinary course of business and, in the case of SEARHC, will not prohibit SEARHC from engaging in any Transaction outside of the City and Borough of Wrangell, Alaska. Each Party will immediately notify the other of any contact initiated by any other person regarding any such offer or proposal or any related inquiry.

2.3 Costs. Except as otherwise provided in the Definitive Agreements, each Party will pay its own legal, accounting, out-of-pocket, and other expenses incident to this Letter of Intent and to any action taken by such Party in preparation for the evaluation and discussions regarding the Proposed Transaction.

2.4 Termination. This Letter of Intent shall terminate on the “**Termination Date,**” which date shall be the earliest of (i) June 30, 2018 (unless mutually extended by the Parties hereafter in writing), (ii) the date on which this Letter of Intent is terminated by the Parties’ mutual agreement, and (iii) the date the Parties execute the Definitive Agreements.

Upon termination of the Letter of Intent, each Party will have no further obligations hereunder, except as expressly provided in any binding written agreement that each Party may enter into in the future, which will survive any such termination.

2.5 Publicity. Any public announcement concerning the Proposed Transaction and/or this Letter of Intent 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.

2.6 No Assignment. Neither Party may assign any or all of its rights or obligations under this Letter of Intent.

2.7 Survival. The terms and provisions of the following Sections of this Letter of Intent shall survive the termination or expiration of this Letter of Intent: 2.3, 2.4, 2.5, 2.6, and 3.5.

Section 3. Other Provisions

3.1 Good Faith. SEARHC and CITY shall negotiate in good faith in an attempt to (i) first reach agreement on the Term Sheet and then reach agreement on and finalize the terms of the Definitive Agreements, in forms consistent with and in furtherance of the Objectives, and consistent with this Letter of Intent, and (ii) then submit them for approval by, in the case of SEARHC, the SEARHC board of directors and, in the case of CITY, the Assembly of the City and Borough of Wrangell (hereafter “Wrangell Borough Assembly”).

- 3.2** 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 transactions contemplated hereby. This Letter of Intent, and the transactions contemplated hereby, will not violate any contract, agreement, or commitment binding on either Party.
- 3.3** Effect. SEARHC and CITY understand that the detailed terms of the transaction and the preparation of Definitive Agreements remain to be developed and agreed upon. Effecting the Proposed 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 Wrangell Borough Assembly, and the execution of satisfactory Definitive Agreements, at the discretion of each.
- 3.4** No Waiver. No failure or delay by a Party in exercising its rights under this Letter of Intent 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.
- 3.5** Governing 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.
- 3.6** Entire Agreement; Amendment; Notices. This Letter of Intent constitutes the entire agreement 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 Letter of Intent may be amended or modified only by a document executed by each Party. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Any notices delivered under this Letter of Intent 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. 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 Letter of Intent.

If to CITY: Lisa Von Barga
City Manager
Wrangell, Alaska

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

3.7 Counterparts. This Letter of Intent may be executed in one or more counterparts, each of which will be deemed an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same instrument. Executed versions of this Letter of Intent 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 Letter of Intent to be effective as of the Effective Date.

SouthEast Alaska Regional Health Consortium

City and Borough of Wrangell

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 Wrangell (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 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 Proposed Transaction (defined in the Letter of Intent).

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 the 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 the 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 the 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 Proposed 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:

- (a) Information that, at the time of disclosure, is published, known publicly, or is otherwise in the public domain;
- (b) 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;
- (c) Information that, prior to the time of disclosure, is known to the Party who received the Information, as evidenced by its written records;
- (d) 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
- (e) 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 Proposed 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 that it no longer intends to negotiate terms concerning the Proposed Transaction, 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.

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

SouthEast Alaska Regional Health Consortium

City and Borough of Wrangell

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CITY & BOROUGH OF WRANGELL, ALASKA				
BOROUGH ASSEMBLY AGENDA STATEMENT – SPECIAL MEETING				
<u>AGENDA ITEM TITLE:</u>	<u>NO.</u>	5c	<u>Date</u>	March 22, 2018
Approval of a sole source construction contract to O’Brien & Sons Construction LLC for the Roughing Filter Replacement Project				
<u>SUBMITTED BY:</u>				
Amber Al-Haddad, Public Works Director				

RECOMMENDATION:

Move to approve a sole source construction contract to O’Brien & Sons Construction LLC for the Roughing Filter Replacement Project.

SUMMARY STATEMENT:

During the Assembly’s March 27, 2018 regular meeting, Assembly members discussed the Roughing Filter Completion Schedule options and had no objections to the recommendation by Manager Von Barga to expedite the project by sole sourcing the construction contractor based on the emergent need for this project ahead of Wrangell’s peak seasonal demand.

Amber Al-Haddad, Public Works Director explained the two different options for ordering the Roughing Filters:

- 1st option: For an estimated August 1st project completion date, we would need to waive the competitive construction bidding procurement method and negotiate with a contractor. This would save an estimated two months’ time for the completion of the project. Further, there is the added benefit of being able to have the Contractor’s input on the project through a portion of the design phase. This is similar to a design-build construction delivery method, whereby the Owner benefits by having the designer and the contractor work together, which can save valuable time and money as changes are made during the design phase rather than more costly change orders required in the field during construction.
- 2nd option: Maintain the competitive bidding procurement method for an estimated October 5th project completion date.

To consider the sole source of the construction contract, the Assembly is referred to the Wrangell Municipal Code, Section 5.10.050 - When competitive bidding or quotations are not required.

Subsection G. addresses public improvements that are required based on an emergency situation. The critical nature of our existing water system, due to recent reduced reservoir levels and problems with our treatment system, are the basis for the emergent situation in which Wrangell is continually challenged toward meeting water demand.

Von Bargaen stated that barring any objection from the Assembly, Staff would move forward with forgoing the procurement procedure and waive the bid process by going with a sole-source contractor to order the roughing filters. There were no objections from the Assembly. The Assembly gave unanimous consensus by a show of hands.

Consideration was given to Contractors both locally in Wrangell and throughout the Southeast Alaska region to determine a Contractor who is well versed in the installation of water and wastewater systems.

O'Brien & Sons Construction LLC has been constructing, primarily, water and wastewater related projects for many years. They have performed many successful projects in Wrangell, with the most recent being the HDPE-fused water mains' replacement in the Wood Street Improvements Project and the Sewer Pump Stations Replacement project, both in 2016. They were also instrumental in the success of the water mains' replacement in the Front Street Rehabilitation project in 2011.

Other water systems related projects that O'Brien & Sons is now, or has recently been, involved in are:

- Juneau Salmon Creek Water Treatment Plant, with Miller Construction, constructed all the piping work for new water filter plant.
- Sitka Water Treatment UV Disinfection Plant, with McGraw Construction, performed all of the interior work (2013).
- Process piping for fish processors and hatcheries: currently working on an intricate siphoning projects for the Aketa Armstrong Hatchery in Port Armstrong. Recently performed a design-build for a hatchery rebuild in Kake, with NSRRA. They are currently working under a design-build project with the Hidden Falls hatchery.

O'Brien & Sons has reviewed our proposed expedited schedule and has committed to the in-field construction work schedule of mid-June through July 2018.

The estimated project cost for the Roughing Filter Replacement project is \$458,000 for which there is \$250,000 in our current Water Department CIP budget. At the March 13th Assembly meeting it was discussed that a budget amendment, to move the balance of the project cost needs from Water reserves to the CIP account, would be necessary and forthcoming to the Assembly for approval.

Following the March 13th meeting, we were contacted by ADEC to discuss the possibility of using a \$450,000 loan that Wrangell had earlier applied to for the DAF water treatment project to help with any of our critical water system needs. Given the amount of EDA loan funding expected for the DAF Plant project, it will not be necessary to use the ADEC loan for the DAF project. However, staff did not think approval of the loan for the roughing filter project could happen timely enough to meet our expedited schedule. DEC staff are committed to helping Wrangell with our water system needs and are willing to fast track the loan process so that money can be used toward the Roughing Filter Replacement project. Documentation of the Wrangell Assembly's approval to waive the competitive

bidding for construction is required as part of the loan eligibility review. At the last meeting the Assembly gave concurrence for the expedited procurement process only by a show of hands. An official vote is required. That is why this issue is back before the Assembly for an official vote at this meeting.

Given the Assembly's March 13th approval to move forward with the expedited schedule and the sole source, O'Brien & Sons is currently reviewing the project and plans a site visit in the coming days. This will allow O'Brien & Sons to develop their price proposal for the design consulting and construction tasks. Once fully developed and reviewed by staff, the proposed contract will be brought before the Borough Assembly for approval. This may happen as soon as the first regular Assembly meeting in April.

If the Roughing Filter Replacement project is found eligible for the \$450,000 DEC loan, a Resolution accepting the loan for this purpose would be required for approval by the Borough Assembly. The estimated annual debt service to the Water Fund (based on a 20-year amortization) is \$26,211.