

Bartlett Regional Hospital

Agenda

Governance Committee Meeting
Friday, September 20, 2019; 1:00 p.m.
Bartlett Regional Hospital - Boardroom

Mission Statement

Bartlett Regional Hospital provides its community with quality, patient-centered care in a sustainable manner.

- I. CALL TO ORDER**
- II. APPROVAL OF THE MINUTES – August 12, 2019 Governance Committee (Page 2)**
- III. AFFILIATION ANALYSIS RFP – (Page 3)**
- IV. COMMENTS**
- V. ADJOURN**

Bartlett Regional Hospital

3260 Hospital Drive, Juneau, Alaska 99801

907.796.8900

www.bartletthospital.org

**Governance Committee Meeting
Minutes
Monday, August 12, 2019; 12:30 p.m.
Bartlett Regional Hospital - Boardroom**

Called to order at 12:29 p.m. by Brenda Knapp, Committee Chair

Attendance:

Committee Members: Brenda Knapp, Rosemary Hagevig and Kenny Solomon-Gross

BRH Staff: Chuck Bill, CEO, Kevin Benson, CFO, Rose Lawhorne, CNO, Megan Costello, CLO, and Suzette Nelson, Executive Assistant

Also present: Deborah Johnston, Board Member and Michelle Hale, Assembly Liaison

Ms. Hagevig made a MOTION to approve the minutes from July 16, 2019.

Mr. Solomon - Gross seconded and they were approved with no objections.

Affiliation Analysis RFP: Mr. Bill presented a preparatory document to the committee for review. He has connected with Rory Watt and they agree that the assembly needs to be aware that we are going to request this analysis, assuring them that this is a fact finding mission and we do not want to alarm the community.

In the structuring of what we ask, this will go back to the board, publicly noticed and possibly communicated with the Chief of Staff to communicate with the medical community if they have any comments. This may take 90-100 days.

A discussion was held about having this and the campus plan ready for the Board Strategic Planning retreat. We are looking at March for that.

Mr. Bill stated he suspects the costs for this can be anywhere from 80k-100k.

Mr. Benson shared his positive experiences regarding affiliations in his previous employments.

Ms. Knapp requested Mr. Bill provide a current update with Central Penn and their affiliations.

Mr. Solomon - Gross made a MOTION to approve the language for the Affiliation Analysis RFP to present to the board for consideration and actioned. Ms. Hagevig seconded and the motion was approved with no objections.

Adjourned at 12:59 p.m.



REQUEST FOR PROPOSALS

RFP No. 20-109 Bartlett Regional Hospital Affiliation Options Analysis

Issued by: Shelly Klawonn Senior Buyer, Purchasing Division
Date of Issue: xxxxxx, xx, 2018
Pre-Proposal Meeting: xxxxxx, xx, 2018at 9:00 a.m., AK Time
Deadline for Questions: xxxxxx, xx, 2018
Deadline for Proposals: **xxxxxx, xx, 2018 prior to 2:00 p.m., AK Time**

QUESTIONS: Will be handled by the Purchasing Officer or the designated Buyer for this RFP.

SUBMITTALS: Proposals may be mailed or hand-delivered to the CBJ Purchasing Division prior to the deadline. **Late, faxed or emailed, proposals are not accepted and are returned unopened.**

PHYSICAL LOCATION for courier or hand deliveries: City and Borough of Juneau, Purchasing Division, 105 Municipal Way, Room 300, Juneau, AK 99801

MAILING ADDRESS for USPS, FedEx, UPS etc.: City and Borough of Juneau, Purchasing Division, 155 South Seward Street Juneau, AK 99801 **Delivery to AK takes longer than normal to arrive.*

Please affix the label below to outer envelope in the lower left hand corner.

IMPORTANT NOTICE TO BIDDER/PROPOSER		
To submit your bid/proposal:		
1. Print your company name and address on the upper left corner of your envelope.		
2. Complete this label and place it on the lower left corner of your envelope.		
S E A L E D	BID/PROPOSAL NUMBER: RFP No. 20-109	B I D P R O P O S A L
	SUBJECT: BRH Affiliation Options Analysis	
	DEADLINE DATE:	
	PRIOR TO 2:00PM ALASKA TIME	

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SECTION I - GENERAL INFORMATION

- 1.1 **Intent.** The City and Borough of Juneau (City or CBJ) Bartlett Regional Hospital (BRH or Hospital) seeks proposals from qualified firms to analyze affiliation options and the feasibility of operating independently. It is the intent of the City and BRH to enter into a contract with this successful Proposer to provide an analysis to help guide the BRH board of directors and management staff in preparing for the best possible future for BRH.
- 1.2 **Funding.** The Hospital is funding this contract with General Operating Funds. Operational funding beyond the current fiscal year is dependent upon BRH Board appropriations. If funds are not appropriated, the Hospital may terminate the contract effective June 30th of the then current fiscal year.
- 1.3 **Contract Period.** The initial contract period will be from Date of Award through the finalization of the project or until presentation of the final analysis and recommendations report. Any extensions past the expected due date of the project will be by mutual agreement. BRH and the Contractor agree that any holding over of the contract beyond the award period will be considered as a "month-to-month" extension. All terms and conditions as set forth in the contract shall remain in full force and effect.
- 1.4 **Contract Price & Price Adjustments.** The awarded contract price is to remain firm for the duration of the contract period including any extension or hold over periods. Written justification for any price adjustment must be provided to the Hospital no less than **thirty (30) days** prior to the expected price adjustment taking effect. If the Hospital agrees to the price adjustment request, a written contract amendment reflecting the change will be issued. If the scope of service changes during the term of the contract, the contract price may be renegotiated or BRH may choose to terminate the contract and rebid the project.
- 1.5 **Deadline for Proposals & Submission Requirements.** Proposals must be received by the Purchasing Division **prior to 2:00 p.m. Alaska time, on XXXX, XXXX, XX, 2019** or such later time as the Purchasing Officer may announce by addendum to planholders at any time prior to the submittal date. Upon delivery, CBJ Purchasing Division will establish the official time of receipt of proposals accepted by Time and Date stamping them. **Faxed or emailed proposals are not acceptable and all late proposals will not be accepted and will be returned unopened.**

In order for your RFP submission to be considered please include the following in one sealed envelope:

- a. One (1) complete electronic version (PDF) of the proposal on CD-ROM or Thumb-drive, **and**
 - b. One (1) complete hard copy of your proposals labeled with an original signature.
- 1.6 **RFP Review and Proposer Questions.** Proposers should carefully review this RFP for defects and questionable or objectionable material. Comments must be made in writing and received at least seven (7) days prior to proposal deadline. This will allow issuance of any necessary addenda, if appropriate. The Purchasing Officer will not uphold protests based on any omission or error, or on the content of the RFP, if these faults have not been brought to the attention of the Purchasing Officer as noted above.

The CBJ Purchasing Officer or her designated buyer is the sole point of contact for this RFP. Requests for an interpretation must be made in writing at least seven (7) days prior to proposal deadline. If requesting by Email or Fax, include the RFP name and number on the subject line. No oral interpretations concerning this RFP will be made.

The Buyer for this procurement is:

Shelly Klawonn, CBJ Senior Buyer
EMAIL: Purchasing@juneau.org
PHONE (907) 586-5258 // **FAX** (907) 586-4561

1.7 Pre-Proposal Meeting / Teleconference: A non-mandatory pre-proposal meeting and teleconference is scheduled for, **XXXXXX, XXXX, XX,201X,at XX:XX a. p..m. AK time in Room No. XXX located at BRH, Administrative Building, 3260 Hospital Drive,** Juneau, Alaska. Persons interested in submitting proposals are encouraged to attend or participate via teleconference by calling (800) 315-6338 passcode 86591. Please confirm participation by completing and returning the "Pre-proposal Sign Up Sheet" below, 24 hours prior to the meeting or by calling (907) 586-5258. Interested persons are encouraged to email or fax their questions in advance of the meeting. Reference RFP #20-109 on all correspondence.

To: CBJ Purchasing Division, City & Borough of Juneau
Email: purchasing@juneau.org
Fax: (907)586-4561

-
- We will participate in person.
 - We will participate via **Teleconference Call-in Number: (907) 789-2014**
(CBJ will not call Vendors: Please call number listed above at meeting start time.)

Business Name: _____

Representative's Name: _____

Phone No. _____ Cell No. _____

Email Address: _____

Please include any questions you have at this time on the form below or email them directly to CBJ Purchasing (attach additional sheets if needed):

Agenda for the Pre-Proposal Meeting/Teleconference. The meeting will be chaired by the buyer for the procurement or a member of the Purchasing Staff. It is useful to have your own copy of the *RFP* available for use as a reference during the meeting.

- The agenda for the pre-proposal meeting is as follows:
- a) **Introduction of Attendees: in person and on the teleconference**
 - b) **Purpose of the Meeting:**
 - c) **Review of the RFP:**
 - d) **Response to Questions:**
 - e) **Adjournment.**

SECTION 2 – PROJECT INFORMATION

2.1 Information about Juneau. The City and Borough of Juneau (CBJ or City) consists of 3,250 square miles and is located in the panhandle of southeastern Alaska. Juneau is part of the mainland; however it is remote and only accessible by airplane or boat. Juneau has a population of approximately 31,000 people and is the state capital. The coastal climate contributes to Juneau's significant amount of annual precipitation (up to 92 inches) and prolonged overcast conditions. Additional Juneau information is available at the following websites: CBJ <https://beta.juneau.org/> // Juneau Economic Development Council <http://www.jedc.org/> // NOAA <http://www.gc.noaa.gov/alaska-office.html> .

Bartlett Regional Hospital is an independent, sole community hospital owned and operated by the City and Borough of Juneau. Its primary facility is a seventy-three (73) bed, full-service acute care hospital.

2.2 Project Background. BRH board of directors and management believe BRH has a strong financial and market position. In light of changes in the hospital industry, BRH will proactively consider the potential for change.

2.3 Scope of Work. Bartlett Regional Hospital (BRH) is seeking to retain an advisor to assist its board and management in considering its situation, the feasibility of remaining independent, and available strategic alternatives. In that regard, we would like to develop an enhanced understanding of BRH's business, medical, and market circumstance, and the range of options, involving ownership change and no ownership change, which might be available. The following requirements shall be required in the performance of this contract, and in achieving the City's project objectives:

- a. Describe the most relevant commercial and organizational factors necessary to understanding BRH's situation.
- b. Detail the role of BRH's medical staff in your analysis and any anticipated changes.
- c. Present an implementation option for each scenario presented in the final analysis.
- d. Detail any economic tradeoffs or financial variables and their impact both short and long term.
- e. Detailed SWOT (Strength, Weakness Opportunities, and Threats) analysis in comparison to other hospitals throughout the State.
- f. Present a comparison of hospitals of similar size, independent vs operated by management firms.
- g. Provide analysis of proposed partnerships vs projections of independent operations.
- h. Provide an analysis of financial viability (operating margin, days cash on hand and debt-to-capitalization ratio) and community essentiality.
- i. Detail the impact of market developments in Alaska and nationally and how BRH will benefit.

When presenting an analysis for proposed partnerships, possible sale or some form of business combination provide the following input:

- j. Detail all relevant transactions forms to consider.
- k. Describe the economic and cash flow implication of each.
- l. Describe all types of possible sale processes that exist, and the pros and cons of each.
- m. Detail the process steps for possible sale or partnership include services provided by your

firm.

- n. Describe all the financial and non-financial issues associated with a sale or partnership process.
- o. Detail the economical tradeoffs between the different types of sale or partnership processes.
- p. Describe any of the likely financial variables in these tradeoffs.
- q. Detail the typical risk exchange trade-offs in sale or partnership transactions.
- r. Describe where the largest risk elements exist in this type of transaction.
- s. Detail the process for retaining management during the pendency of a potential transaction.
- t. Detail the appropriate guidelines for granting severance arrangements.

2.4 Information provided by the City. Include any information that the CBJ has available for Proposers, e.g reports, websites, maps, data, other departmental assistance, etc.

Comment [sk1]: Any financial reports etc.. that we will provide the awarded proposer??

Include any informational materials, services, equipment, reports, websites, access, etc. that will be given to the **Consultant** in the performance of this contract.

**2.5 Deliverables and Deadlines. The following deliverables and schedules shall be required in the performance of this contract, and in achieving the City's project objectives:
The final analysis report and presentation will be provided by the end of January 2020.**

Comment [sk2]: Anything need to be added?

Consider including things such as reports, executive summaries, how many copies, if electronic what software should they submit it in, giving presentations, etc.

2.6 Additional Information. This is for any other project related information which the Consultant may need to know.

SECTION 3 - PROPOSAL CONTENT REQUIREMENTS

3.1 Submittal, Title Page and Letter of Transmittal. Proposals are to be prepared in such a way as to provide a concise delineation of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness. The clarity of content should be identified by a table of contents that includes page numbers and follows a defined sequence for deliverables as requested in the RFP. *The page limit for this **RFP is 35 pages; the page limit *excludes CV's or resumes and copies of required business or professional licenses.***

Limit to three pages or less, include the following information:

- a. The RFP number and name
- b. Proposer's name (legal name of entity)
- c. Mailing address
- d. Telephone number(s) and Fax number(s)
- e. Email address
- f. Web site address (if available)
- g. Briefly describe your understanding of project and summarize qualifications and capabilities to meet RFP requirements.
- h. Identify person(s) who will be authorized to represent the company during contract negotiations and term of contract. Include their title(s), address(es), and telephone.

- i. Acknowledge receipt of addenda issued for this RFP, if any.
- j. Provide notice that you qualify as a “Juneau Proposer”.
- k. The transmittal letter must be signed by the person who has authority to bind the company. The name and title of the individual signing the proposal must be clearly shown immediately below the signature.

3.2 Understanding of the Project. Provide a comprehensive narrative that illustrates your understanding of the purpose of the scope, objectives and requirements of the project, including the project schedule and deliverables. Identify any challenges associated with implementing the work.

3.3 Methodology to be Used for the Project. Provide a detailed, comprehensive narrative that sets out the methodology you intend to employ, and demonstrate how your methodology will serve to accomplish the scope of work and achieve the City’s objectives. Discuss any operational plan, problem solving approaches, techniques, standards or creative methods to be used for getting the job done. Include the proposed project schedule and time line, which identifies major tasks and project milestones.

- a. Describe your approach to BRH’s needs and objectives and the process you would recommend in order to achieve the desired results.
- b. Detail the information BRH would need to provide for the analysis.
- c. Describe the anticipated interaction with BRH Board of Directors, Management Staff, etc. needed to complete the analysis.
- d. Describe the most relevant commercial and organizational factors necessary to understanding BRH’s situation.
- e. Estimate the amount of time involved for each phase of your proposed advisory work. What time commitment on the part of board members and management, would you expect?
- f. Describe how this project will be communicated to the Medical Staff, employees and public to minimize unwarranted anxiety.

Comment [sk3]: SOW?

3.4 Management Plan for the Project. Provide a management plan you intend to follow, and demonstrate how the plan will serve to accomplish the scope of work and achieve the City’s objectives. Include the following as part of your plan:

- a. Organizational chart specific to personnel assigned to accomplish the work, including any subconsultants; include personnel’s backgrounds and relevant experience;
 - Include the length of time this group has worked together.
 - Include any referenced projects this team has completed.
 - Describe the role this team occupies within your organization.
 - Describe individual specialties in management or acquisitions.
- b. Lines of authority.
- c. Individual responsible for decision-making and accountable for the completion of work (project manager), and the extent to which this individual will be available to BRH. Provide his/her level of authority.
- d. Discuss how this project fits into your overall organizational structure and the current work load.
- e. Describe your approach to project monitoring, control, risk assessment and management (e.g. predicating potential problems, problem escalation, taking corrective action, identifying variances from the project management plan, resolving project problems or contractual disputes).

Comment [sk4]: Is this correct?

Describe how other departments within your organization will support the team assigned to this project

- 3.5 Experience and Qualifications.** Provide your proposed project team's specialized experience, capabilities, and unique qualifications for the performance of the work. Include the following:
- a. A list of projects (of similar size & complexity) and previous work experience within the past five (5) years that demonstrate your ability to administer or complete this project successfully; Describe several comparable engagements with similar systems, including clients in Alaska.
 - b. References (name, phone and project) for each completed project listed above; Verify that the contacts will be available to provide references during the evaluation period;
 - References need to include clients that elected to seek a partner; and clients that elected to remain independent
 - Include references from physicians who were not board members.
 - c. Resumes for all personnel identified in your organizational chart provided in Section 3.6 a) above.
 - d. Provide an overview of your firm, its history, ownership, industries served, and product offerings.
 - e. Describe any comparable assignments completed. Of these, how many clients elected to remain independent and how many sought a partner.
 - f. Review your experience in advising local-government-owned hospitals in business combination transactions. These would include hospitals whose assets or business, or both, are owned by either counties, boroughs, parishes, cities, or districts.
 - g. Describe a creative example of a hospital partnership or affiliation agreement developed by your firm.
 - h. Describe any existing engagements or on-going roles with potential partners for BRH, including investor-owned companies as well as tribally-run or affiliated hospital or healthcare entities.
 - i. Include any experience working with special committees.
 - j. Include any experience with the State Attorneys General.
 - k. Describe any challenges experienced with a regulatory agency.
 - l. Include any advised transactions where a letter of intent was signed and failed to close, include any extenuating circumstances.
- 3.6 Juneau Proposer Preference.** Submit a statement as to how you qualify for Juneau Proposer status in order to be eligible for preference points (City Ordinance 53.50.010 and 53.50.050). **You must be qualified by CBJ at the time of submittal of your proposal to receive preference points.** The Ordinance is available at:
https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=TIT53PRACDI_PT_IOTPR_CH53.50PUSUSE_53.50.010DE
- 3.7 Price Proposal.** Provide a price proposal for the compensation that you expect to receive for the performance of the contract. This shall include individual hourly pricing for all members of the assigned team and their estimated hours of work on the project.

SECTION 4 – RULES GOVERNING COMPETITION

- 4.1 Evaluation.** An evaluation committee will review, evaluate, score and rank proposals, in accordance with criteria identified below and the Proposal Evaluation Form (ATTACHMENT B). Clarification of submitted material may be requested during the evaluation process. Interviews by telephone with top ranked Proposers may also be conducted at the discretion of the evaluation committee. If necessary, in-person interviews will be conducted. Finalists will be notified and informed of interview requirements. In the event of a tie in the ranking totals, only the raw scores of the Proposers who are tied will be totaled to determine the appropriate ranking.
- 4.2 Criteria.** The committee will use the following criteria for determining the most advantageous proposal to the City:
- a. Understanding of the Project. (Weight XX%)** Points will be awarded based on how well you:
 - i) demonstrate a thorough understanding of the purpose, objectives & scope of the project;
 - ii) identify pertinent issues and potential problems related to the project;
 - iii) demonstrate an understanding of the deliverables the City expects you to provide;
 - iv) demonstrate an understanding of the City's schedule.
 - b. Methodology Used for the Project. (Weight XX%)** Points will be awarded based on how well your methodology:
 - 1) demonstrates a complete, practical, logical and feasible approach in carrying out the scope of work and fulfilling the project requirements;
 - 2) addresses challenges or problems related to the project;
 - 3) achieves the project objectives;
 - 4) interfaces with the deliverables and schedule for major tasks and project milestones.
 - c. Management Plan for the Project. (Weight XX%)** Points will be awarded based on how well your management plan:
 - 1) supports the scope of work and effectively leads to deliverables required;
 - 2) outlines the organization of your project team;
 - 3) demonstrates your accountability;
 - 4) illustrates the lines of authority and communication;
 - 5) exceeds the minimum needed to achieve the project objectives;
 - 6) meets the schedule.
 - d. Experience and Qualifications. (Weight XX%)** Points will be awarded based on how well your firm and personnel you assigned to this project:
 - 1) demonstrate experience in completing similar projects on time and within budget;
 - 2) demonstrate skills and abilities desirable for work this project requires;
 - 3) measure up during any reference checks. This includes any other client references that the City may obtain for your firm or personnel, beyond those references listed in your proposal.

e. **Price proposal. (Weight XX%)** The method used will depend on your scope of work. TBD by Purchasing and Department upon review of scope. if formula is used:
$$\text{Points Awarded} = \frac{(\text{Lowest Price Proposal}) \times (\text{Maximum Points for Price})}{\text{Price of This Proposal}}$$

f. **Juneau Proposer Preference.** Points equal to 5% of the total evaluation points will be given to any Proposer who has demonstrated that they meet the criteria outlined in the City Ordinance 53.50.010 and 53.50.050.
[//](https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=TIT53PRACDI_PTIIOTPR_CH53.50PUSUS_E_53.50.010DE)
[\(04.20.18 MCJ\)](https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=TIT53PRACDI_PTIIOTPR_CH53.50PUSUS_E_53.50.050COAM)

4.3 Disclosure of Proposal Contents. The City and Borough of Juneau, a municipal corporation and political subdivision of the State of Alaska, is subject to the Alaska Public Records Act codified at AS 40.25.100-220, and the public records provisions in the CBJ Charter, section 15.7. The contents of proposals submitted in response to this RFP will be kept confidential until the top ranked proposer is announced. Immediately following announcement, all proposals become public information.

It is at the discretion of the CBJ Purchasing Officer that upon prior written request from a proposer, which trade secrets and other proprietary data contained in a proposal, may be held confidential, to the extent allowed by law.

If there is proposal material to be considered as confidential (*i.e. a page, or a section, etc.*) it must be clearly identified and plainly marked by the proposer and be it must be highly visible to the reader. In addition the proposer must include a brief statement that sets out the reasons for confidentiality. Marking the entire proposal confidential is not acceptable and may be cause for the CBJ to reject your proposal as non-responsive.

4.4 Irrevocability. All proposals must be irrevocable for 90 days from submission date.

4.5 Costs. All costs incurred by the proposer in preparation of the proposal, including any interview costs, shall be the responsibility of the Proposer.

4.6 Right to Waive. The Purchasing Officer may waive any informality or minor irregularity in the proposals or proposal process. Informalities or minor irregularities:

- a. Do not affect responsiveness;
- b. Are merely a matter of form or format;
- c. Do not change the relative standing or otherwise prejudice other proposals;
- d. Do not change the meaning or scope of the RFP; or
- e. Do not constitute a substantial reservation against a requirement or provision.

4.7 Rejection of Proposals. Only responsive and responsible Proposers will be considered for evaluation. The Purchasing Officer may reject any proposal that does not comply with all the material and substantial, terms, conditions and performance requirements of the RFP. Proposers may not qualify the proposal nor restrict the rights of the City. If a Proposer does so, the Purchasing Officer may determine that proposal to be a non-responsive counter-offer and the proposal may be rejected.

- 4.8 Cancellation.** The City may decide to cancel the solicitation at any time prior to award if it is its best interest, in which case no award will be made.
- 4.9 Selection.** The City will post a notice of evaluation results and the apparent successful Proposer as soon after the deadline as possible. The notice will be sent to all Proposers.
- 4.10 Protests.** The protest period begins following the posting of the notice. Protests will be executed in accordance with CBJ Ordinance 53.50.062 "Protests", and 53.50.080 "Administration of Protest", available from the CBJ Purchasing Division or online at: https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=TIT53PRACDI_PTIIOTPR_CH53.50PUSUSE_53.50.080ADPR
- 4.11 Negotiations.** Following the posting of evaluations, the successful Proposer may be invited to enter into contract negotiations with the City. If held, negotiations shall be within the scope of the RFP and limited to those items which would not have an effect on the ranking of proposals. If an agreement cannot be reached during the negotiation process, the City will notify the Proposer and terminate the negotiations. Negotiations may then be conducted with the next Proposer in the order of its respective ranking.
- 4.12 Award.** Upon conclusion of successful negotiations and compliance with any pre-award obligations, award will be made in the form of a contract and a purchase order which will be sent to the Consultant.

SECTION 5 – TERMS & CONDITIONS

- 5.1 Insurance Requirements.** Prior to award, insurance must be secured and maintained for the risks and in the amounts specified in (ATTACHMENT A). The Consultant and its insurance carrier waive subrogation against the City.
- 5.2 Review of Contract.** Attached to this RFP is BRH's standard agreement (ATTACHMENT C) which should be carefully reviewed by you, as it is the form of agreement that BRH intends that you sign in the event of acceptance of your proposal.
- 5.3 HIPAA Business Associate Agreement.** The City has designated certain health care components as covered by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The successful vendor will be designated a business associate of those agencies identified as health care components of the City, upon award of contract. The successful vendor will be required to execute the BRH's Business Associate Agreement (ATTACHMENT D) and must adhere to all relevant federal, state and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement.
- 5.4 Nondisclosure and Confidentiality.** Contractor agrees that all confidential information to which it has access in performing this contract shall be used only for purposes of providing the deliverables and performing the services specified herein. Contractor shall not disseminate or allow dissemination of confidential information to third parties unless authorized in writing by the City. Contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential

information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. Contractor must promptly notify the City in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, includes but is not limited to financial data, bank account data and information, user lists, passwords, technology infrastructure, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

- 5.5 Contractor's Good Standing with CBJ Finance Department:** Contractors must be in good standing with the CBJ prior to award, and prior to any contract renewals, and in any event no later than seven business days following notification by the CBJ of intent to award. Good standing means: all amounts owed to the CBJ are current and the Contractor is not delinquent with respect to any taxes, fees, assessment, or other monies due and owed the CBJ, or a Confession of Judgment has been executed and the Contractor is in compliance with the terms of any stipulation associated with the Confession of Judgment, including being current as to any installment payments due; and Contractor is current in all CBJ reporting obligations (such as sales tax registration and reporting and business personal property declarations). Failure to meet these requirements may be cause for rejection of your bid. To determine if your business is in good standing, or for further information, contact the CBJ Finance Department's Sales Tax Division at (907) 586-5265 for sales tax issues, Assessor's Office at (907)586-0930 for business personal property issues, or Collections Division at (907) 586-5268 for all other accounts. (MJ 10/13)
- 5.6 Licensing Requirements.** Vendor is responsible for obtaining and maintaining all appropriate licenses as required by federal, state or local laws. An Alaska Business License is required to perform services in the State of Alaska. The business license can be obtained online at <https://www.commerce.alaska.gov/web/cbpl/BusinessLicensing.aspx>. Other licensing information may be required prior to award, if requested by the City. Professional or occupational licensing information is available online at <https://www.commerce.alaska.gov/web/cbpl/BusinessLicensing.aspx>.
- 5.7 Compensation.** As full compensation for all services and obligations in connection with this contract, the CBJ will pay according to the following fee schedule: **Define method of compensation for original contract period & any renewal periods. TBD by Purchasing and Department upon review of scope of work.**
- 5.8 Performance Bond. TBD by Purchasing & Department if necessary.** Prior to award (or within xx days of NOITA), the Contractor shall obtain and maintain a Performance Bond in the amount of the contract. The bond must be issued from a surety company licensed to transact business in the State of Alaska.
- 5.9 Surety Deposit. TBD by Purchasing and Department if necessary.** In lieu of a performance bond, an irrevocable letter of credit, cash, certified check, or Certificate of Deposit (CD) may be substituted in the amount of the contract. The CD must be made to the City and Borough of Juneau, "in trust for" the Contractor.

The City will release the deposit to the Contractor after the following events have occurred: whichever occurs later: (a) upon successful completion of the contract, and (b) maturation of the CD (if applicable).

- 5.10 Additional Services.** If the City anticipates additional work pertaining to the development of this project during the contract period, the City may amend the work according to the CHANGES provision of the attached contract (ATTACHMENT C).
- 5.11 Substitutions.** Substitutions for professional staff or for subconsultants or their professional staff during the course of the contract can only be made with the prior written consent of the Project Manager.
- 5.12 Definitions.** the following terms used in this RFP shall be defined as:
- “**City**” or “**CBJ**” means the City and Borough of Juneau, Alaska.
- “**Consultant**” or “**Contractor**” or “**Vendor**” means the successful Proposer; the firm or individual to be awarded the contract for this project.
- “**Person**” means a natural person, partnership, corporation, association, or other legal entity.
- “**Project**” or “**Work**” means the entire body of work to be performed, including the scope of service and requirements of the RFP.
- “**Proposer**” or “**You**” means the person or any authorized representatives who have submitted a proposal in response to this RFP.
- “**Planholder**” means a person who has been listed with City by name and address for purposes of notification on all City communications concerning this RFP.
- “**Project Manager**” means the City official, or his/her designee, responsible for planning, controlling and administering this project to achieve its goals.
- “**Qualified Proposer**” means a Proposer or firm submitting a responsive and responsible proposal.
- “**Responsive Proposer**” means a Proposer who conforms in all material respects to the requirements stated in the RFP.
- “**Responsible Proposer**” means a Proposer which has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

STATEMENT OF NO PROPOSAL

NOTE: If you DO NOT intend to bid on this service, please complete and return this form immediately. Your response will assist us in evaluating all responses for this project and improve our bid solicitation process.

The Purchasing Department of the City and Borough of Juneau wishes to keep its bidder's list up-to-date. If, for any reason you cannot supply the commodity/service noted in this bid solicitation, this form must be completed and returned in order for your firm to remain on the bid list for future projects of this type. Please indicate the reason(s) your firm does not choose to submit a bid for this project:

- _____ We do not offer this service.
- _____ We are unable to meet specifications.
- _____ We don't have sufficient time to respond to the Invitation of Proposal.
- _____ We are unable to meet bonding requirements.
- _____ We are unable to meet insurance requirements.
- _____ Our schedule would not permit us to perform, if the bid was awarded to our firm.
- _____ Specifications are unclear. (Please explain below).
- _____ Remove us from your bidders list for this service.
- _____ Other (Please specify below)

REMARKS:

COMPANY NAME: _____ DATE: _____

SIGNATURE & TITLE: _____

PHONE: _____ FAX: _____ E-MAIL: _____

Thank you for your reply.

Please email or fax your reply to
purchasing@juneau.org or (907) 586-4561

INSURANCE REQUIREMENTS updated 2-20-18 via Jen/np The Contractor's insurance shall be primary and any insurance maintained by the CBJ shall be non- contributory. If the Contractor maintains higher limits than shown below, the CBJ shall be entitled to coverage for the higher limits maintained by the Contractor. Contractor agrees to maintain insurance as follows at all times while this contract is in effect, including during any periods of renewal.

Commercial General Liability Insurance. The Contractor must maintain Commercial General Liability Insurance in an amount it deems reasonably sufficient to cover any suit that may be brought against the Contractor. This amount must be at least one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. **The City and Borough of Juneau shall be named as additional insured for this policy.**

Comprehensive Automobile Liability Insurance. The coverage shall include all owned, hired, and non-owned vehicles to a one million dollar (\$1,000,000.00) combined single limit coverage.

Workers Compensation Insurance.
If required by Alaska Statute (see Alaska Statute 23.30), the Contractor must maintain Workers Compensation Insurance to protect the Contractor from any claims or damages for any bodily or personal injury or death which may arise from services performed under this contract. This requirement applies to the Contractor's firm, the Contractor's subcontractors and assignees, and anyone directly or indirectly employed to perform work under this contract. The Contractor must notify the City as well as the State Division of Workers Compensation immediately when changes in the Contractor's business operation affect the Contractor's insurance status. Statutory limits apply to Workers Compensation Insurance. The policy must include employer's liability coverage of one hundred thousand dollars (\$100,000) per injury and illness, and five hundred thousand dollars (\$500,000) aggregate. Contractor also agrees to provide evidence of Longshore and Harbor Worker's Insurance and Jones Act coverage if applicable to the work required. If the Contractor is exempt from Alaska Statutory Requirements, the Contractor will provide written confirmation of this status in order for the CBJ to waive this requirement. **The policy shall be endorsed to waive subrogation rights against the CBJ.**

A Certificate of Insurance, along with all required amendatory policy endorsements, must be provided within five (5) working days of notice of *Intent to Award*.

- We have discussed price and availability of the required insurance coverage with our insurance representative
- We already carry this coverage.

Authorized Signature

Printed Name

Company Name

INCLUDE THIS PAGE WITH YOUR BID

PROPOSAL EVALUATION FORM

PROPOSER: _____

CRITERIA Per SECTION 4.2 of RFP	Weight (%)	Out Standing (10 points)	Adequate To Good (6 to 8 points)	Marginally Acceptable (3 or 4 points)	Unacceptable (0 or 1 points)	Sub- Total
Understanding of the Project	?					
Methodology of the Project	?					
Management Plan	?					
Experience and Qualifications	?					
Price proposal (or use formula)	?					
Juneau Proposer Preference	5					
Grand Total						

Scoring:
 Outstanding = 10
 Adequate to Good = 6, 7 or 8
 Marginally Acceptable = 3 or 4
 Unacceptable = 0
 Unacceptable = 0 or 1
 No scores using 2, 5 or 9

Maximum Score Achievable = 1,000 points

RANK: _____

Evaluator: _____

Date: _____

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

This Consulting and Professional Services Agreement is entered into by and between **insert name here** the City and Borough of Juneau and Bartlett Regional Hospital (“BRH”), an enterprise fund and administrative division of the municipality in Alaska (“Customer”), and **insert name here**, with a place of business at **insert address here**, (“Consultant”) an **insert type of company or corporation here**, effective the **___ day of insert date here** (“Effective Date”) for Consultant to provide consulting and professional services (“Services”) to Customer as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to those terms as hereinafter set forth:

(a) “Affiliate” means an entity in which Customer: (1) is the sole corporate member; (2) has more than a twenty percent (20%) ownership interest; (3) has voting control of membership/ownership interests; (4) has the ability to elect a majority of the voting control of the governing board; or (5) has an agreement to manage the entity’s operations.

(b) “Agreement” means this Consulting and Professional Service Agreement, all Exhibits attached to this Agreement, and any future Statement(s) of Work, amendments or Change Orders thereto.

(c) “Customer Property” means (i) software, documentation, contracts, summaries, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Customer or its Affiliates makes, develops, conceives or reduces to practice, whether alone or jointly with others, either prior to, contemporaneously with, or subsequent to, the term of this Agreement, and (ii) all enhancements, modifications, improvements and derivative works of any software and of each and any of the foregoing.

(d) “Consultant Property” means any work, inventions, discoveries, processes and improvements, computer processes, specifications, operating instructions, notes, and any other documentation (whether or not patentable) created by Consultant prior to its engagement with Customer, which Consultant uses to satisfy its obligations under a Statement of Work and which Consultant has clearly identified in writing to Customer, prior to its use, as “Consultant Property.”

(e) “HIPAA” means the Health Insurance and Portability and Accountability Act of 1996, as amended, and implementing regulations, including but not limited to 45 C.F.R. Parts 160 and 164, as amended from time to time.

2. Scope and Location of Services; Access; Customer Affiliates.

2.1 Scope of Services. The Services to be performed by Consultant shall be mutually agreed to in one or more written Statements of Work (“SOW”) in accordance with this Agreement. Each SOW shall specify in detail the Services to be rendered, including: (a) a description of the work product to be delivered, including, but not limited to, acceptance criteria and detailed design and functional specifications for the deliverables thereunder; (b) the proposed performance schedule; and (c) the cost and/or fees for such Services. Each SOW shall be written and signed by both parties, shall refer to this Agreement, and shall be substantially in the form of the attached Exhibit A (“Statement of Work” or “SOW”). A signed SOW may be modified only by a written Change Order signed by both parties, which refers both to this Agreement and to the associated

SOW, and which is substantially in the form of the attached Exhibit B (“Change Order”). In addition to the terms and conditions of this Agreement, the following provisions apply to all SOWs and Change Orders: (i) Customer shall approve in writing all project activities within the scope of this Agreement; (ii) all work shall be performed within the scope of this Agreement; (iii) all deliverable work is subject to review and acceptance by Customer; and (iv) upon request by Customer, Consultant will provide Customer with all materials related to the SOW and any associated Change Order, and a written status report of work accomplished, work in progress, and work planned. Consultant acknowledges that time is of the essence for all Services provided hereunder.

2.2 Location of Services. Services shall be performed at Customer’s location or facility, Consultant’s location or facility or other location as agreed by the parties and included in the SOW.

2.3 Access to Customer Property. In the event the Services require Consultant’s access to and/or use of any Customer Property, Consultant shall request such access from Customer only to the extent necessary for Consultant to perform the Services. In such event, Consultant shall abide by all restrictions relating to the use of or access to the Customer Property applicable to Customer and any policies of Customer related to such use.

2.4 Affiliate Participation. Affiliates may also purchase Services from Consultant and enter into a Statement of Work to be governed by this Agreement. To purchase Services pursuant to this Agreement, an Affiliate shall execute a SOW in the form attached. Upon execution of a SOW, the Affiliate shall be treated as Customer for purposes of this Agreement. Consultant shall only offer Services to Customer and each Affiliate pursuant to the terms and conditions of this Agreement. Any agreements entered into after the Effective Date by an Affiliate, other than pursuant to this Agreement, are voidable by Customer. In no event will Customer be responsible for the obligations, acts, or omissions of an Affiliate and in no event will an Affiliate be responsible for the obligations, acts, or omissions of Customer or any other Affiliate. Any and all payment obligations arising hereunder and any accompanying Statement of Work shall be the sole responsibility of the Affiliate and not Customer.

3. Invoices and Compensation. Customer shall pay to Consultant all invoiced amounts for undisputed and accepted Services rendered by Consultant to Customer in accordance with this Agreement, and reimbursement of reasonable and necessary out-of-pocket expenses actually incurred by Consultant that have been pre-approved in writing by Customer in connection with the Services, provided that: (i) all expenses related to travel and lodging shall comply with Customer’s corporate travel policies; and (ii) all non-travel related expenses are itemized on the SOW or pre-approved in writing by Customer. Consultant shall invoice Customer for Services and expenses monthly in arrears for all SOWs which specify that the work is to be performed on a time and materials basis. For SOWs specifying a fixed fee, Consultant shall invoice Customer in accordance with the payment schedule tied to the deliverables listed on the applicable SOW. All invoices shall be itemized and shall substantiate all charges therein set forth. Consultant shall maintain complete and accurate accounting records in accordance with generally accepted accounting practices to substantiate Consultant’s charges and expenses hereunder. Customer shall pay all undisputed invoices within sixty (60) days of Customer’s receipt thereof. All invoices will include a summary of services provided to each Customer by month and will be submitted to Customer as noted in the SOW or Change Order.

3.1 Taxes. Customer is exempt from sales, use, excise and similar taxes and will not be responsible for the payment of any such taxes to Consultant if it provides Consultant with a valid exemption certificate. Consultant shall cooperate with Customer as reasonably necessary to establish with a relevant taxing authority Customer's exemption from tax on the goods and services purchased under this Agreement. In the event such exemption is rejected, Customer shall pay for taxes imposed in conjunction with this Agreement, except that Consultant, and not Customer, shall be liable for federal, state and local taxes ordinarily assessed against Consultant for Services and based on Consultant's revenues, net income, employees, property, or corporate existence.

4. Personnel. Consultant shall provide all qualified personnel necessary to fulfill its obligations hereunder. Consultant is not permitted to utilize subcontractors for performance of any SOW unless prior written consent is first obtained from Customer and unless such subcontractors have executed a written agreement with Consultant which obligates any such subcontractor to substantially similar terms as is required of Consultant by this Agreement. Further, Consultant agrees to be fully responsible for all acts and omissions of any subcontractor used by Consultant. Customer may, in its discretion, require removal from performance of Services under this Agreement any personnel of Consultant for any reason, effective upon written notice from Customer of such request for removal. During the course of each SOW, Consultant shall permit Customer to be present, when reasonable, as an observer of all work performed pursuant to the terms of the SOW and to consult with Consultant's personnel regarding the SOW. Consultant shall, at Customer's sole discretion, perform the Services at Consultant's offices, Customer's offices, or elsewhere, and the times during which Services are rendered shall be at Customer's discretion when required to be performed at Customer's offices. Consultant shall be fully and solely responsible for the compensation and performance of all of its employees hereunder and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, state and local wage tax, or employment related taxes. The status of Consultant, its employees and subcontractors shall be that of independent contractor and no such personnel shall, at any time or for any purpose, be deemed employees or agents of Customer. Neither Consultant nor any employee of Consultant shall be entitled to participate in any Customer employee benefit plan. Consultant warrants that it has enforceable written agreements with all of its employees and all subcontractors permitted hereunder that (i) assign to Consultant ownership of all patents, copyrights, and other proprietary rights created in the course of their employment or engagement; and (ii) obligate such employees and permitted subcontractors, upon terms and conditions no less restrictive than contained herein, not to use or disclose any confidential information, proprietary rights or information learned or acquired during the course of such employment or engagement, including, without limitation, any Work Product (as defined below) hereunder.

4.1 Customer Policies and Procedures. Without limiting any other provision herein, Consultant acknowledges Customer's obligations to comply with certain laws and regulations as well as the need for Consultant's personnel to comply with reasonable requests, standard rules, and regulations of Customer regarding personal and professional conduct (including the use of an identification badge or personal protective equipment and the adherence to health care facility laws or regulations, including in some instances, but not limited to, criminal background checks, credit checks, health and/or drug screening, vaccinations and testing, and general safety practices or procedures) generally applicable to such facilities. Consultant shall provide Customer with reasonable assistance and documentation in ensuring Consultant's personnel complies with (i) laws and regulations affecting Customer's facility and (ii) Customer's facility rules and regulations.

Consultant acknowledges that Consultant's employees and subcontractors cannot work at Customer's facility without provision of the documentation.

5. Acceptance of Services. Each deliverable for each SOW shall be subject to acceptance and/or acceptance testing by Customer at Customer's sole option, to verify that the deliverable satisfies the scope of services and acceptance criteria, if any, of the SOW and all requirements of the deliverable conveyed by Consultant to Customer. At Customer's request, Consultant will provide sufficient evidence to demonstrate the adequate testing of the deliverables to meet the foregoing requirements. The documentation provided by Consultant shall represent the minimum functionality of the deliverables as determined by Customer. If Customer discovers non-conformity within ninety (90) days following delivery of a deliverable and Customer notifies Consultant of the non-conformity, Consultant shall correct the non-conformity at no additional charge in a timely, professional manner. In the event Consultant cannot correct the non-conformity within a timely and professional manner, Customer may request a refund of amounts paid for the non-conforming Services.

6. Confidential Information. Each Party acknowledges that other Party may disclose (the "Disclosing Party") certain of its valuable trade secrets and other confidential information, as well as other like information that is licensed from third parties. The Party receiving such confidential information (the "Receiving Party") shall treat such information as strictly confidential and shall not use such information for its own purposes or for third parties, or divulge or permit to be divulged to, or examined or copied by others, any information or data obtained by Receiving Party, or to which Receiving Party is otherwise exposed, in connection with this Agreement or otherwise (a) which is confidential or proprietary to Disclosing Party or its Affiliates, including, without limitation, all patient and demographic information; (b) which relates to the trade secrets, methods, intellectual property, research, products, operations, policies, procedures, techniques, accounts or personnel of Disclosing Party; (c) which is confidential or proprietary to a third party and in the possession, custody or control of Disclosing Party; or (d) consists of Work Product (as defined below). In the event of a breach or threatened breach of the provisions of this Section, Disclosing Party shall be entitled to seek an injunction restraining such breach or threatened breach without having to prove actual damages. Such injunctive relief as Disclosing Party may obtain shall be in addition to any other rights and remedies available at law and in equity.

6.1 Data Breach. In the event of an unauthorized use or disclosure by Consultant, its employees, agents or subcontractors of personally identifiable information held by Customer on its own, or for or on behalf of any Affiliates ("Personal Information"), Consultant shall take the following action with respect to such unauthorized use or disclosure: (a) promptly communicate the nature of the unauthorized use or disclosure to Customer's Privacy Officer who will authorize Consultant to notify those persons whose Personal Information was or likely was involved in an unauthorized use or disclosure ("Affected Individuals") via written correspondence approved by Customer's Chief Legal Officer; (b) if the unauthorized use or disclosure of Personal Information could lead to identity theft or related financial risk to the individual subject[s] of such Personal Information, purchase identity theft monitoring services from a major credit reporting service for each Affected Individual offered such service by Customer, for a period of time mutually agreed to by Customer and Consultant, but not less than three (3) years; (c) comply with any and all laws, regulations, governmental orders or other governmental requirements ("Laws") applicable to such unauthorized use or disclosure of Personal Information; and (d) take all action commercially reasonable to mitigate any damages of Customer relating to the unauthorized use or disclosure of Personal Information.

7. Property and Proprietary Rights.

7.1 Work Product. Consultant agrees to fully and promptly disclose in writing to Customer all work, ideas, inventions, discoveries, processes and improvements, computer programs, specifications, operating instructions, notes, and all other documentation (whether or not patentable) created, conceived or reduced to practice by Consultant, alone or with others, in connection with Services rendered for Customer hereunder or which derive from information or materials Consultant has received from Customer (the "Work Product"). The parties agree that Work Product shall not include Consultant Property. Consultant also agrees that the Work Product is the exclusive property of Customer and, as a result, Consultant agrees to assign and hereby assigns its entire right, title, and interest in the Work Product to Customer. Further, Consultant will, during the term of this Agreement and thereafter, execute all papers and do all things reasonably necessary to ensure that Customer obtains full title to such Work Product, including all intellectual property thereto.

7.2 Written, Graphic, or Recorded Material. All written, graphic, or recorded material (excluding Consultant Property) generated by Consultant or its agents for Customer in the past or in connection with this Agreement is owned by Customer and shall be subject to inspection by Customer and shall be delivered to Customer or otherwise disposed of by Consultant only as directed by Customer. Upon termination of this Agreement or applicable SOW, Consultant will provide to Customer all copies of such written, graphic, or recorded material and Customer will have the exclusive ownership of the copyright to such material, excluding Consultant Property. Therefore, Consultant agrees to assign and hereby assigns its entire right, title, and interest in such written, graphic, or recorded material (excluding Consultant Property) to Customer. Consultant agrees that all such copyrightable work and all portions thereof (excluding Consultant Property) created for Customer under this Agreement, including any work related to the business of the products or services of Customer shall be deemed to be a "work made for hire," as such term is defined in the Copyright Laws of the United States. If, for any reason, any such copyrightable work created by Consultant is excluded from the definition of a "work made for hire," Consultant hereby assigns and conveys to Customer the entire right, title, and interest in and to such work including work created prior to the date of execution of this Agreement, including the copyright therein and any copyright renewal thereof. Unless alternative licensing terms for Consultant Property are set forth in the SOW, Consultant grants Customer a non-exclusive, perpetual license to use, copy, and distribute within Customer and Affiliates (including to employees, agents, and consultants) for Customer's business purposes, all Consultant Property provided to Customer hereunder.

7.3 Cooperation. Consultant shall cooperate with Customer or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Customer, and take other necessary actions as reasonably directed by Customer to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to this Agreement. Customer shall reimburse Consultant for reasonable out-of-pocket expenses incurred by Consultant in performing the foregoing at the specific request of Customer; however, Consultant will not charge Customer additional Service fees for such assistance.

8. Exchange of Information and Technical Assistance. Upon execution of this Agreement and thereafter during the term hereof, Consultant shall disclose and deliver to Customer the Work Product and related documentation and other deliverables. Consultant shall disclose certain Consultant Property solely to the extent necessary for Customer to adapt, modify, enhance,

develop, and install the Work Product and other deliverables. Consultant shall provide Customer, from time to time as requested by Customer, with complete copies of all then-current documentation and other deliverables relating to the Work Product. Consultant warrants that the technical assistance to be rendered under this Agreement shall be adequate to familiarize Customer with the Work Product, documentation, and other deliverables under each individual SOW, and to enable Customer to: (a) acquire components of deliverables developed and/or delivered hereunder; (b) develop, modify, and improve the Work Product, documentation, and deliverables; and (c) manufacture and test prototype and/or commercial deliverables developed and/or delivered hereunder.

9. Use of Name and Publicity. Consultant agrees that it shall not, without prior written consent of Customer's Chief Legal Officer in each instance, (a) use the name of Customer or any Affiliate, partner or employee of Customer, or any trade name, trademark, trade device or simulation thereof owned by Customer in advertising, publicity or otherwise, or (b) represent, directly or indirectly, that any product or any service provided by Consultant has been approved, recommended, certified, or endorsed by Customer.

10. Recruitment of Personnel. During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall solicit the employment of any employee of the other Party whom Consultant has had contact in connection with the relationship arising under this Agreement. This Section shall not apply to an employee who independently responds to indirect solicitations (such as general newspaper advertisements, employment agency referrals and internet postings) not targeting such employee.

11. Indemnification. Consultant shall defend, indemnify, and hold Customer harmless from and against any and all claims, losses, damages, suits, fees, judgments, costs and expenses (including attorneys' fees) (collectively, the "Damages") which Customer may suffer or incur arising out of or in connection with: (a) injuries to persons (including death) or loss of, or damage to, property, caused by Consultant, or by Consultant's personnel, subcontractors, or agents (hereinafter "Person"), (b) any Person filing any lien against any property of Customer, or any claim or lawsuit against Customer in which the Person claims payment from Customer for Services provided under this Agreement to Customer as a permitted agent or subcontractor of Consultant; (c) any claims or liability for wages, workers' compensation, unemployment compensation or employee benefits owed to Consultant's employees and/or subcontractors, or payroll or related taxes or other governmental charges related to the performance of Services to be provided hereunder; (d) any claims or liabilities for breach of the confidentiality requirements herein; and (e) any claim that Customer's use, copying, or distribution of the Work Product, Consultant Property, or any portion thereof infringes or violates any patent, copyright, trade secret, trademark, or other third party intellectual property right. In the event that Customer is in any way enjoined from using the Work Product, Consultant Property, or any portion thereof, Consultant shall promptly, at its expense (including, but not limited to the payment of any royalties occasioned by the following) either: (i) provide to Customer non-infringing means of using the Work Product and/or Consultant Property; (ii) negotiate and procure for Customer the right to use the Work Product and/or Consultant Property without restriction; or (iii) if neither (i) nor (ii) can be accomplished within a reasonable time period and at no cost to Customer, then refund to Customer all monies paid under the applicable SOW(s).

12. Insurance. During the Term of this Agreement, Consultant shall carry and maintain at its own cost, with companies that are rated a minimum of "A-" in Best's Insurance Guide or are

otherwise reasonably acceptable to Customer, the following insurance coverage types with the following minimum primary limits:

12.1 Professional Services Errors & Omissions Liability insurance with a limit of not less than *[to be determined by CBJ Risk Management]* per claim and *[to be determined by CBJ Risk Management]* in the annual aggregate;

12.2 Commercial General Liability insurance, insuring against bodily injury, property damage, contractors' completed operations and contractual liability with a combined single limit of not less than *[to be determined by CBJ Risk Management]* per claim and *[to be determined by CBJ Risk Management]* in the annual aggregate. Customer shall be named as an additional insured on this policy;

12.3 Worker's Compensation and Employer's Liability insurance in amounts required in accordance with laws within the state where work is being performed;

12.4 Automotive liability covering all vehicles owned, non-owned, hired and leased while used on Customer business with minimum automotive liability insurance limits of *[to be determined by CBJ Risk Management]* per claim and in the annual aggregate;

12.5 Network liability (privacy and cyber liability) insurance in an amount of *[to be determined by CBJ Risk Management]* single limit to cover civil, regulatory and statutory damages as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information. Customer shall be named as an additional insured on this policy. Customer shall be named as an additional insured on this policy

12.6 Umbrella liability in an amount of *[to be determined by CBJ Risk Management]* in the annual aggregate, relative to the policies described in sub-sections 12.1.1, 12.1.2, and 12.1.4 of this section.

13. Proof of Insurance. Consultant shall provide Customer with a copy of the certificates of insurance and amendatory endorsement(s) required under this section no later than the Effective Date of this Agreement. Consultant shall provide Customer with updated certificates of insurance and amendatory endorsement(s) annually if the SOW requires work that exceeds twelve months and upon request to evidence Consultant's continued compliance with the terms of this Agreement. Said insurance policies shall not be materially amended or cancelled without thirty (30) days prior written notice to Customer.

13.1 "Tail Coverage." In the event that any of the above-described insurance policies are written on a claims-made basis, then such policy or policies shall be maintained during the Term of this Agreement and for a period of not less than three (3) years following the termination or expiration of this Agreement.

13.2 No Limit of Liability. The provisions of this Section shall not be deemed to limit the liability of Consultant hereunder or limit any right that Customer or an Affiliate may have including rights of indemnity or contribution. The insurance obligations under this Section are mandatory; failure of Customer or its Affiliates to request certificates of insurance or insurance policies shall not constitute a waiver of Consultant's obligations and requirements to maintain the minimal coverage specified. Consultant shall ensure and be solely responsible for ensuring that its

subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in the relevant industry.

13.3 No Reduction or Limit of Obligation. By requiring insurance, Customer does not represent that coverage and limits will necessarily be adequate to protect either or both Parties. Insurance procured by either Party will not reduce or limit both Parties contractual obligation to indemnify and defend the other Party for claims or suits as described in this Agreement.

14. Limitation of Liability. Notwithstanding the terms of any other provision, the total liability of Consultant and its subsidiaries, officers, employees and agents for all claims of any kind arising out of this engagement, whether in contract, tort or otherwise, shall be limited to the greater of \$3,000,000 or four times the total fees paid to Consultant under the SOW that gave rise to the claim. Neither Consultant nor Customer shall in any event be liable for any indirect, consequential or punitive damages, even if they have been advised of the possibility of such damages. No action, regardless of form, arising out of or relating to this engagement, may be brought by either party more than three (3) years after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one (1) year following the date of the last payment due to such party under the Agreement.

15. Warranties. Consultant represents and warrants that all deliverables and/or Work Product produced under this Agreement (a) will perform in accordance with all documentation provided by Consultant and (b) along with all Consultant Property, shall be of original development or licensable by Consultant, as the case may be. Consultant represents and warrants that all deliverables, Work Product and Consultant Property licensed or owned by Consultant and used in the performance of any SOW shall not infringe or violate any patent, copyright, trade secret, trademark, or other third party intellectual property right. Consultant represents and warrants that the deliverables and/or Work Product is not the subject of a lien, a security interest, claim, cause of action or otherwise hypothecated to a third party. Consultant also represents and warrants that, to the best of its knowledge, the deliverables, Work Product and Consultant Property do not contain and will not receive from Consultant's transmission via modem or any other Consultant medium any time bomb, virus, worm, trap door, back door, timer, clock, counter or other limiting routine, dangle key, instruction, or design that would erase data or programming or otherwise cause the deliverables, Work Product, Consultant Property, or Customer's software or equipment to become inoperable or incapable of being used in the full manner for which it was designed and created (a "Disabling Code"). If any Disabling Code is identified by Customer or Consultant, and if the Disabling Code resulted from the negligent, willful, or reckless acts or omissions of Consultant, Consultant shall take all reasonable steps necessary at no additional cost to Customer, to: (i) restore any and all data lost by Customer as a result of such Disabling Code to the extent that such recovery is technically feasible; (ii) test a new copy of the subject matter containing such Disabling Code for the presence of Disabling Codes; (iii) furnish to Customer a new copy of the subject matter without the presence of Disabling Codes; and (iv) install and implement such new copy on Customer equipment. Consultant represents and warrants that Work Product and Consultant Property provided hereunder shall be in conformance with HIPAA and all applicable federal, state and local rules and regulations, and, where applicable, standard accounting procedures. Consultant shall perform all Services under this Agreement in a professional manner, consistent with the best practices in the industry and in a diligent, workmanlike, and expeditious manner. Consultant represents and warrants that in the provision of goods and Services, it will limit the flow of all Customer data and information (inclusive of patient information, Confidential Information,

Personal Information, and Customer Property) to the geographic limits of the United States of America.

16. Cooperation. As part of the Services, Consultant shall cooperate with Customer and Customer's other contractors, vendors and suppliers to allow the proper performance of any services being provided internally by Customer or by such third party contractors, vendors or suppliers. Consultant acknowledges that Customer is now and will be, during the term of this Agreement working with third parties in developing, installing, maintaining, and supporting the Customer systems, including working with auditors and application developers, and that the Services may involve the use of one or more Consultant resources to cooperate in these matters. Such cooperation shall include provision of: (i) written requirements, standards and procedures for Customer systems and operations maintained by Consultant; (ii) assistance and support services to such third party; and (iii) access to the technology environment used by Consultant to provide the Services (subject to reasonable confidentiality and security restrictions) as necessary for such third parties to perform their services for Customer.

17. Term and Termination. Subject to the termination rights below, this Agreement shall commence on the Effective Date first stated above and shall end on **insert date here** (the "Term"). Each Party shall have the right, upon written notice, to terminate any SOW or this Agreement, whether or not the other Party is in default or in breach. If the non-terminating Party has not breached the Agreement or a SOW hereunder, the non-terminating Party shall be entitled to delivery of the Work Product to date or accrued and undisputed payment hereunder, as the case may be. Upon termination of any SOW or this Agreement for any cause or for no cause, or at any earlier time upon the demand of Customer, Consultant shall, without cost to Customer, (a) deliver to Customer in an orderly and expeditious manner all data, records, documentation, and other property belonging to Customer then in the possession of Consultant, including, but not limited to, the Work Product and Consultant Property and all copies, extracts, summaries, and portions thereof, on whatever media rendered; (b) purge from its computer systems any Work Product and all copies, extracts, summaries, and portions thereof; and (c) upon request of Customer, certify in writing that it has complied with these requirements. Sections 4 through 20 and 23 shall survive the expiration or termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Consultant breaches any term or condition of this Agreement, Customer may, at its option, exercise any one or more of the following remedies: (i) terminate this Agreement, effective immediately upon written notice to Consultant; (ii) terminate the applicable SOW, effective immediately upon written notice to Consultant, (iii) withhold any further payments otherwise due to Consultant hereunder; or (iv) exercise any other rights and remedies available at law or in equity.

18. Audit Provision. Consultant shall maintain complete and accurate books, records, and data as necessary to determine compliance with the terms of this Agreement, to support the charges and expenses invoiced hereunder and to permit Customer or its designee to verify the accuracy of such amounts during the Term and during a four (4) year period thereafter. In furtherance of the foregoing, Consultant shall permit Customer, upon reasonable notice and at reasonable times, to: i) inspect Consultant's records, invoices, processes and procedures as they relate to the Services furnished pursuant to this Agreement and any use of Customer or Affiliate data; and ii) interview all Consultant personnel, employees, agents and contractors. Such audits shall be limited to once per calendar year unless there is reasonable cause for additional audits and shall be conducted upon reasonable advance notice during regular business hours and in such a manner as not to unduly interfere with Consultant's operations.

19. Regulatory Requirements.

19.1 Compliance. The parties intend that this Agreement comply at all times with all existing and future applicable laws, including state and federal anti-kickback laws, the Medicare/Medicaid Anti-Fraud and Abuse Statutes, the restrictions on Customer and its Affiliates by virtue of its tax exempt status and the federal law relating to physician referrals. If at any time, as the result of the enactment of a new statute, the issuance of regulations, or otherwise, either party receives a written opinion of counsel that there is a substantial risk that, as a result of this Agreement, either party does not comply with applicable law, then the parties shall use good faith efforts to reform this Agreement in such a manner so that it complies with applicable law. If, after the exercise of such good faith efforts for a period of at least thirty (30) business days, the parties have not agreed on amendment(s) to this Agreement that resolve legal issues referred to above, then the party(s) whose receipt of a legal opinion triggered renegotiation may terminate this Agreement upon at least sixty (60) calendar days written notice to the other party.

19.2 HIPAA Compliance. Consultant agrees that any products or Services provided under this Agreement will comply with all federal and state regulations, rules or orders applicable to Customer and its Affiliates, including but not limited to regulations promulgated under Section 264 of the Health Insurance Portability and Accountability Act (Public Law 104-91 – “HIPAA”). Consultant agrees to the terms of the Business Associate Addendum attached hereto as Exhibit **insert exhibit here** and further agrees to execute any amendments thereto reasonably requested by Customer to meet Customer's regulatory obligations.

19.3 Recordkeeping. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the “Act”) and the regulations promulgated thereunder are applicable to this Agreement, Consultant and the organizations related to it, if any, performing any of the duties pursuant to this Agreement valued at Ten Thousand Dollars (\$10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Services pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contract or agreement between Consultant and Customer for Services and to any contract or agreement between Consultant and such related organizations, as well as the books, documents and records of Consultant and its related organizations, if any, which are necessary to verify the cost of the Services provided.

19.4 Exclusion. Consultant represents and warrants that neither it nor any of its employees or other contract staff (collectively referred to in this paragraph as “employees”) has been nor is it about to be excluded from participation in any Federal Healthcare Program (as defined herein). Consultant agrees to notify Customer within five (5) business days of Consultant's receipt of notice of intent to exclude or actual notice of exclusion from any such program. The listing of Consultant or any of its employees on the Office of Inspector General's exclusion list (OIG website), the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA website) for excluded individuals and entities, any state Medicaid exclusion list, or the Office of Foreign Assets Control's (OFAC's) blocked list shall constitute "exclusion" for purposes of this paragraph. In the event that Consultant or any of its employees is excluded from any Federal Healthcare Program or placed on the OFAC's blocked list, this Agreement shall immediately terminate without penalty to Customer, unless Customer elects in writing to continue this Agreement. For the purpose of this paragraph, the term “Federal

Healthcare Program” means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veteran Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children's health insurance program, or any similar program.

20. Corporate Responsibility. Customer has a Compliance Program (“Program”) which has standards for vendor relations. Consultant acknowledges Customer’s commitment to the Program and agrees to conduct all Services and business transactions which occur pursuant to this Agreement in accordance with the Program. Consultant shall ensure that its personnel comply and cooperate with, and participate in, the Program as applicable to the performance of Services and business transactions under this Agreement.

21. Entire Agreement. This Agreement and the attached exhibits referenced herein and any SOW created pursuant hereto, constitutes the entire agreement between Customer, and Consultant with respect to the subject matter hereof; and supersedes all proposals, oral or written, and all other communications between the parties with respect to such subject matter. The headings of sections of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement in any way.

22. Priority. The terms and conditions of this Agreement may not be amended or modified, except in writing signed by Customer and Consultant. The terms of this Agreement shall be given priority over any conflicting terms in an SOW or Change Order. In the event of a conflict between the terms of an SOW and Change Order, the terms of the Change Order shall be given priority.

23. No Waiver. No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof.

24. Non-Assignable. Consultant may not assign any of its rights or delegate any of its duties pursuant to this Agreement without the prior written consent of Customer and any attempted assignment without such consent shall be void.

23. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska excluding all choice of law provisions, and all proceedings relating to the subject matter hereof shall be maintained exclusively in the state courts situated in Juneau, Alaska and Consultant hereby consents to personal jurisdiction and venue therein and hereby waives any right to object to personal jurisdiction or venue.

24. Severability. In the event that a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable in any circumstances, the remainder of this Agreement, and the application of such provision in any other circumstances, shall not be affected thereby.

27. Notice. All notices required hereunder shall be given in writing and addressed or delivered to the persons specified in this Agreement. Any such notice shall be effective upon depositing the notice in first-class mail or certified mail, return receipt requested, at the addresses below or upon actual receipt. Each Party and Affiliate may change the persons designated to receive notice hereunder by written notice.

If to Customer:

If to Consultant:

Name:
Title:
Address 1: 3260 Hospital Drive
Address 2:
City, State, ZIP: Juneau, Alaska 99801

Name:
Title:
Address 1:
Address 2:
City, State, ZIP:

IN WITNESS WHEREOF, Customer and Consultant have caused their duly authorized representatives to execute this Agreement on the date(s) set forth below.

CUSTOMER

CONSULTANT

BY: _____

BY: _____

Its: _____

Its: _____

Date

Date

SAMPLE

EXHIBIT A - Statement of Work Form

Statement of Work No. 1

This Statement of Work is entered into as of the **insert date here** ("Statement of Work Effective Date") by and between Customer and Consultant pursuant to the Consulting and Professional Services Agreement between Customer and Consultant ("Agreement"), and is subject to the terms and conditions of the Agreement. Capitalized terms used in this SOW but not defined herein shall have the meanings assigned to them in the Agreement. Notwithstanding anything to the contrary in the Agreement, the parties agree and acknowledge that there are no third party beneficiaries to this SOW. In the event an Affiliate of Customer is entering into this Statement of Work, such Affiliate shall be considered the "Customer" for purposes of the Agreement, this Statement of Work and any change orders thereto.

I. Description of Services and Milestones

The attached Description of Services and Milestones is based on the **insert name here** RFP Response for insert RFP name here dated **insert date here** ("Response"), as modified by the insert name here Cost Clarification Worksheet ("Worksheet"), and this Exhibit A.

Deliverables

Start Date: **insert date here**

Projected End Date: **insert date here**

II. Fees (indicate all that apply)

Fixed Price of \$insert cost here for

- The above Fixed Price includes Materials and Expenses.
- The above Fixed Price does not include Materials and Expenses.

Time, Materials and Expenses (subject to the "not-to-exceed amount")

Estimated _____ Labor Hours Required to Complete the Work: _____

Labor Rate: Per Agreement Exhibit C, Rate Card

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Estimated _____ Labor Hours Required to Complete the Work: _____

Labor Rate: Per Agreement Exhibit C, Rate Card

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Estimated Other Labor Hours Required to Complete the Work: _____

Labor Rate: \$ _____ per _____

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Total Pre-authorized Fees: _____ (Sum of each category)

III. Materials/Expenses

List of Materials and Expenses Required to Complete the Work:

Maximum Pre-authorized Materials and Expenses: \$ _____

IV. Not-to-Exceed Amount

Under no circumstances shall the amounts payable under this Statement of Work (including fees, materials and expenses) exceed \$_____ (the "not-to-exceed amount").

V. Additional Terms and Conditions

Consultant may not increase the hourly labor rates quoted above in Section II during the duration of this Statement of Work or remediation, if contracted.

IN WITNESS WHEREOF, Customer and Consultant have caused duly authorized representatives of the respective parties to execute this Statement of Work as of the Statement of Work Effective Date.

CUSTOMER

CONSULTANT

BY: _____

BY: _____

Its: _____

Its: _____

Date

Date

SAMPLE

DESCRIPTION OF PHASE 1 SERVICES AND MILESTONES

Services	Scope	Milestones

SAMPLE

EXHIBIT B - Change Order Form

Change Order No. _____

This Change Order is entered into as of _____, 20__ (“Change Order Effective Date”) by and between Customer and Consultant, pursuant to the Agreement between the Consultant and Customer, Statement of Work No.____ (“Statement of Work”), and previously issued Change Order Nos. _____ (“Change Orders”), and is subject to the terms and conditions of the Agreement, the Statement of Work, and the Change Orders unless otherwise noted herein.

I. Description of Changes to Services and Milestones

[INCLUDE THE IDENTITY OF THE PARTY REQUESTING THE CHANGES, THE REASON FOR THE CHANGES, THE BENEFIT OF THE CHANGES, AND A DETAILED DESCRIPTION OF THE CHANGES TO THE SERVICES TO BE RENDERED. INCLUDE A NEW PROJECT SCHEDULE IDENTIFYING ALL CRITICAL MILESTONES.]

Description of Changes to Deliverables

[LIST AND DESCRIBE THE CHANGES TO ALL DELIVERABLES FROM THE STATEMENT OF WORK (AS AMENDED BY ANY CHANGE ORDERS) TO BE GENERATED AND PROVIDED TO CUSTOMER]

New Projected End Date: _____

II. Changes to Fees (indicate all that apply)

___ **New Fixed Price of \$** _____.

___ The above Fixed Price includes Materials and Expenses.

___ The above Fixed Price does not include Materials and Expenses.

___ **New Time, Materials and Expenses (subject to the “not-to-exceed amount”)**

Estimated _____ Labor Hours Required to Complete the Work: _____

Labor Rate: Per Agreement Exhibit C, Rate Card

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Estimated _____ Labor Hours Required to Complete the Work:

Labor Rate: \$ _____

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Estimated Other Labor Hours Required to Complete the Work: _____

Labor Rate: \$ _____ per _____

Maximum Pre-authorized Fees: \$ _____ (Estimated Labor Hours x Hourly Rate)

Total Pre-authorized Fees: _____ (sum of each category)

III. Additional Materials/Expenses

List of Additional Materials and Expenses Required to Complete the Work:

Revised Maximum Pre-authorized Materials and Expenses: \$_____

IV. Revised Not-to-Exceed Amount

Under no circumstances shall the amounts payable under the Statement of Work (including fees, materials and expenses) exceed \$_____ ("not-to-exceed amount").

V. Additional Terms and Conditions

[LIST ANY ADDITIONAL TERMS AND CONDITIONS TO APPLY ONLY TO THIS CHANGE ORDER]

IN WITNESS WHEREOF, Customer and Consultant have caused duly authorized representatives of the respective parties to execute this Change Order as of the Change Order Effective Date.

CUSTOMER

CONSULTANT

BY: _____

BY: _____

Its:

Its: _____

Date

Date

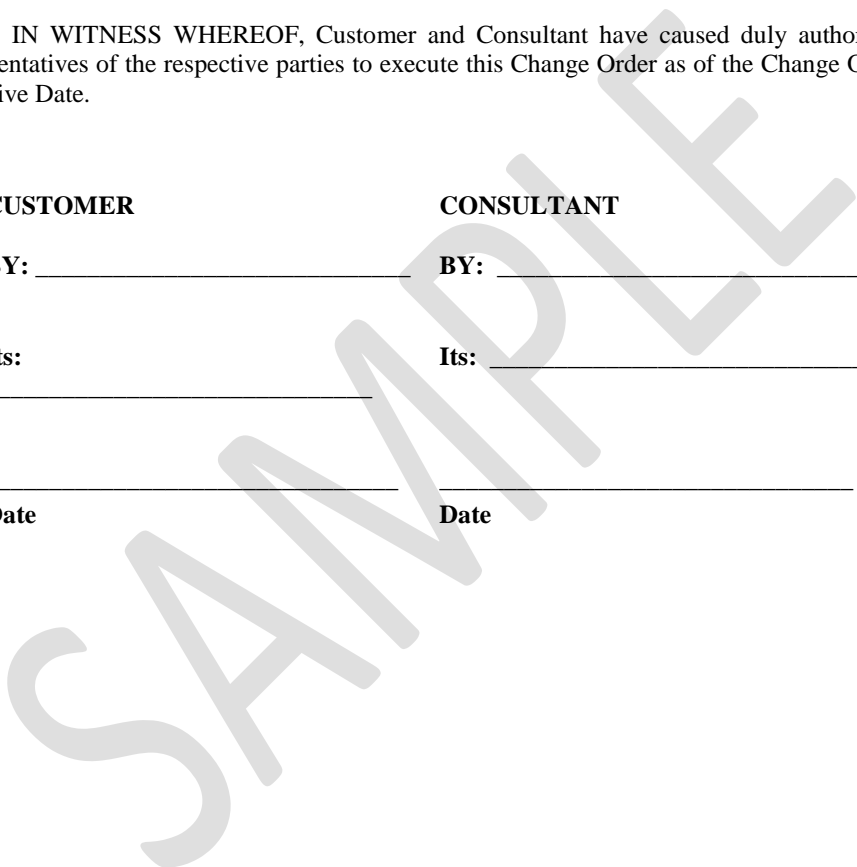


EXHIBIT C – Rate Card

The parties agree that for the duration of this Agreement, Customer will be entitled to discount on professional services fees from the Rate Card below as follows:

The hourly rates outlined below represent ___% of **[ENTER NAME OF CONSULTANT LEGAL ENTITY / CHANGE TITLES BELOW AS APPROPRIATE]** Standard rates.

Managing Partner	\$__
Project Director	\$__
Subject Matter Expert	\$__
Project Manager	\$__
Consultant	\$__
Analyst	\$__

SAMPLE

EXHIBIT C – HIPAA Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into as of the ____, 2017 (“Effective Date”), by and between the City and Borough of Juneau by and through Bartlett Regional Hospital (“BRH”), an enterprise fund and administrative division of the municipality, each considered a Covered Entity as defined in HIPAA and hereinafter referred to as “Covered Entity,” and _____, also identified as “Consultant” (“Business Associate”).

RECITALS

WHEREAS, the Business Associate and the Covered Entity have entered into a Consulting and Professional Services Agreement (the “Agreement”) wherein the Business Associate creates, receives, maintains or transmits Protected Health Information (“PHI”) on behalf of the Covered Entity and to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and implementing regulations which are codified at 45 C.F.R. Parts 160 and 164, as amended from time to time (collectively the “HIPAA Standards”), the parties agree to the terms herein.

1. Permitted Uses and Disclosures by Business Associate

- a) The Business Associate’s use and disclosure of PHI shall comply in all respects with the HIPAA Standards.
- b) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity. Business Associate shall not use or disclose PHI other than permitted or required by this Business Associate Agreement or as required by law. The Business Associate shall limit the use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure of the PHI or as required pursuant to the Agreement. All such uses and disclosures shall be consistent with the Covered Entity’s minimum necessary policies and procedures.
- c) Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (i) the disclosure is required by law and timely notice is provided to Covered Entity prior to the disclosure, or (ii) Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and used or further disclosed only as required by law for the purposes for which it was disclosed to the recipient, and the recipient promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- d) Unless requested in writing by the Covered Entity, Business Associate may not use PHI to provide Data Aggregation services.

- e) Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity

2. Obligations and Activities of Business Associate

- a) Business Associate shall ensure, through a written agreement, that any subcontractors of Business Associate that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI, including without limitation, the restrictions, conditions, and requirements of this Business Associate Agreement and the HIPAA Standards.
- b) Business Associate shall immediately report to Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement, any Breach, or any Security Incident involving the PHI of which the Business Associate, or a subcontractor of the Business Associate, becomes aware (each, an “Incident”). The Business Associate shall identify each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during an Incident. Notice shall be made to the Covered Entity no later than five (5) calendar days after discovery of the Incident by Business Associate or a subcontractor of the Business Associate, whichever is earlier, except that in the event urgent notice may be required due to the possible imminent misuse of PHI, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than two (2) calendar days. Business Associate accepts the burden of demonstrating that such notice was timely, proper and in accordance with HIPAA Standards. Business Associate shall, at its expense, take any action necessary or requested by the Covered Entity to mitigate, to the extent practicable, any harmful effect of an Incident. Business Associate shall, at its expense, provide all information and take all action requested by Covered Entity and consistent with the HIPAA Standards to assist Covered Entity in providing notice of an Incident.
- c) Business Associate shall restrict disclosures or communicate confidentially with Individuals as required by the HIPAA Standards and as requested by the Covered Entity.
- d) If the Business Associate maintains PHI in a Designated Record Set, the Business Associate shall:
 - (1) provide access (including inspection, obtaining a copy or both), in the time and manner designated by Covered Entity, and Business Associate shall not charge any fee greater than the lesser of the amount permitted by State Law or the Business Associate’s actual cost of postage, labor and supplies for complying with the request;
 - (2) make available PHI for amendment and incorporate any amendment(s) in the time and manner designated by Covered Entity; and
 - (3) provide access to PHI that is in electronic format in the form and format requested

by the Individual or Covered Entity, if not readily producible in such form or format, in a readable electronic form and format agreed to by the Covered Entity and the Individual, and transmit such copy directly to an entity or person designated by the Individual or Covered Entity. Business Associate shall not charge any fee greater than the lesser of the amount permitted by State law or the Business Associate's actual cost of postage, labor, and supplies for complying with the request.

- e) Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI available to the Covered Entity or the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary investigating or determining Covered Entity's or Business Associate's compliance with the HIPAA Standards.
- f) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate under the HIPAA Standards to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate shall provide, in the time and manner designated by Covered Entity, an accounting of disclosures required by the HIPAA Standards made by the Business Associate.
- g) Business Associate shall prevent the use or disclosure of the PHI other than as provided for in this Business Associate Agreement and shall comply, where applicable, with the HIPAA Standards with respect to electronic PHI, including Subpart C of 45 C.F.R. Part 164 ("Security Rule"). The Business Associate shall implement and maintain safeguards as necessary to ensure that all PHI is used or disclosed only as authorized under the HIPAA Standards and this Business Associate Agreement. Without limiting Business Associate's obligations under the HIPAA Standards, the Business Associate agrees to assess potential risks and vulnerabilities to PHI in its possession and develop, implement and maintain appropriate administrative, physical and technical safeguards set forth in the HIPAA Standards to protect the confidentiality, availability and integrity of the PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity. These measures must be documented and kept current, and must include, at a minimum, those measures that fulfill the requirements outlined in the HIPAA Standards and all guidance issued by the Secretary.
- h) Business Associate recognizes that violation of any HIPAA Standard by Business Associate may subject Business Associate to civil and criminal penalties, including those set forth in 42 U.S.C. § 1320d-5 and 1320d-6 and Subparts C-E of 45 C.F.R. Part 160 ("Enforcement Rule").
- i) Business Associate shall not, and shall ensure that its subcontractors do not, directly or indirectly receive any remuneration in exchange for any PHI unless approved in advance in writing by the Covered Entity in accordance with the HIPAA Standards.
- j) Business Associate shall not, and shall ensure that its subcontractors do not, engage in any marketing or fundraising that uses or discloses PHI.

- k) Business Associate shall respond to and shall assist the Covered Entity with responding to an investigation or compliance audit by the Secretary, or an action by an attorney general having jurisdiction involving PHI subject to this Agreement.
- l) To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R Part 164 ("Privacy Rule"), Business Associate shall comply with such requirements that apply to Covered Entity in the performance of such obligations.
- m) Business Associate shall not create, receive, maintain, or transmit PHI outside of the United States or its Territories.

3. Term and Termination

- a) Term. The Term of this Business Associate Agreement shall be effective as of the effective date of the Agreement and shall terminate when all of the PHI maintained by Business Associate on behalf of Covered Entity is properly and completely destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.
- b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Business Associate Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, and Covered Entity shall terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate the Agreement if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible, as determined by the Covered Entity in its reasonable discretion.
- c) Effect of Termination.
 - (1) Except as provided in subparagraph (2) of this subsection (c), upon termination of the Agreement or this Business Associate Agreement, for any reason, Business Associate shall return or if authorized by Covered Entity, destroy all PHI maintained by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. The Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible. Business Associate shall not use or disclose such PHI and shall maintain its security pursuant to this Business Associate Agreement for so long as Business Associate maintains such PHI.

- (3) The parties hereto understand and agree that the terms of this Business Associate Agreement are reasonable and necessary to protect the interests of the Covered Entity and the Business Associate. The parties further agree that the Covered Entity would suffer irreparable harm if the Business Associate breached this Business Associate Agreement. Thus, in addition to any other rights or remedies, all of which shall be deemed cumulative, the Covered Entity shall be entitled to obtain injunctive relief to enforce the terms of this Business Associate Agreement.

4. Miscellaneous

- a) Survival. The respective rights and obligations of Business Associate under Section 4(c) of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.
- b) Indemnification. Business Associate agrees to indemnify, defend, and hold harmless the Covered Entity from any and all loss, liability, damage, cost, and expense, including without limitation civil monetary penalties, monetary settlements, fines, damages as a result of attorney general enforcement, and attorneys' fees resulting or arising from use or disclosure of PHI; breach of this Business Associate Agreement, or violation of the HIPAA Standards by Business Associate or its subcontractors, agents or employees made on the advice, request, or direction of Covered Entity, provided that Business Associate shall not indemnify Covered Entity for any act or omission made on advice, request or discretion of Covered Entity. This section 4(b) shall survive termination of this Business Associate Agreement.
- c) Insurance. Business Associate shall maintain insurance on a claims-made basis (with tail coverage for no less than three (3) years) with coverage in an amount equal to at least one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) in the aggregate covering claims subject to indemnification pursuant to Section 4(b) above.
- d) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Standards.
- e) No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state or federal law or regulation relating to privacy or security.
- f) Amendment. In the event that any law or regulation is enacted or promulgated regarding the protection of health information that is in any way inconsistent with the terms of this Business Associate Agreement or that interferes with Covered Entity's obligations with respect to the protection of health information so as to warrant a modification to this Business Associate Agreement or in the event any HIPAA Standard is amended or modified, the Covered Entity shall have the right to amend this Business Associate Agreement to effectuate such change by providing notice thereof to Business Associate but without having to obtain Business Associate's consent thereto. Except as set forth

above in this Section 5(f), this Business Associate Agreement shall only be amended or modified upon written consent of the parties.

- g) Application of State Law. Where any applicable provision of State law relates to the privacy or security of health information and is not preempted by HIPAA, as determined by application of the HIPAA Standards, the parties shall comply with the applicable provisions of State law.
- h) Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect.
- i) Governing Law. This Business Associate Agreement shall be interpreted, construed, and governed according to the laws of the State in which the Covered Entity maintains its principal place of business. The parties agree that venue shall lie in state courts in the State in which the Covered Entity maintains its principal place of business, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.
- j) Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, or (c) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.

IN WITNESS WHEREOF, the undersigned have executed this Business Associate Agreement as of the Effective Date.

Name Here: _____

By: _____

Printed Name:

Title:

BARTLETT REGIONAL HOSPITAL

By: _____

Printed Name:

Title: