

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-disclosure Agreement (“Agreement”) is entered into effective July \_\_\_, 2021 (“Effective Date”), by and between SouthEast Alaska Regional Health Consortium, a tribal organization with its principal offices at 3100 Channel Drive, Suite 300, Juneau, Alaska 99801 (“SEARHC”), the Municipality of Skagway, Alaska, whose address is 700 Spring Street, Skagway, Alaska 99840 (the “Borough”) and the Board of the DAHL Memorial Clinic whose address is P.O. Box 537, Skagway, Alaska 99840 (the “Board”). The Borough and the Clinic are referred to herein jointly as “the Skagway Parties”. SEARHC and the Skagway Parties are referred to herein each, individually as a “Party” and collectively as the “Parties”. However, as provided in section 7, below, any obligation of SEARHC to the Board (including any notice required under this agreement) shall be attorned solely to the Borough, and shall be enforced, waived and compromised solely by the Borough acting on behalf of the Board.

### **RECITALS**

**WHEREAS**, SEARHC possesses certain proprietary financial, economic, and business information relating to SEARHC’s operations; and

**WHEREAS**, pursuant to Skagway Municipal Code Chapter 3.17 the Borough constituted and authorized the Board and delegated to the Board the authority to operate the Dahl Memorial Clinic (“Clinic”), subject to the ordinances of the municipality of Skagway; and

**WHEREAS**, the Borough and the Board each possess certain proprietary financial, economic, and business information relating to the Clinic’s operations, financial records, policies, procedures, real property records, insurance records, utility records, tax records, and lease records; and

**WHEREAS**, SEARHC and the Skagway Parties would like to exchange such information for the purpose of evaluation and analysis in order to permit SEARHC and the Borough to evaluate the potential acquisition of the Clinic by SEARHC.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth below, the undersigned Parties agree as follows:

### **AGREEMENT**

**1. The Skagway Parties.** Except as otherwise required by the Alaska Public Records Act, A.S. 40.25.100 – 40.25.295 or any other law, ordinance, or regulation (hereafter “Public Records Disclosure Laws”), the Skagway Parties agree to keep any information concerning SEARHC that is furnished by or on behalf of SEARHC, whether furnished before, at the time of, or after the date of this Agreement (collectively, “SEARHC Information”) in strict confidence and not to disclose or otherwise use SEARHC Information for any purpose other than for the performance of the evaluation described herein. Further, except as otherwise required by Public Records Disclosure Laws, the Skagway Parties hereby agree they will not disclose or otherwise transmit SEARHC Information or any portion of it to any individual or entity or disclose the contents of any future letter of intent between the Parties, except to those of the Skagway Parties’ employees, attorneys, agents, accountants, financial advisors, sources of financing, and others having a reasonable need to know. Accordingly, the Skagway Parties agree to treat SEARHC Information that it receives as it would their own proprietary information and to take reasonable precautions to prevent the unauthorized disclosure of SEARHC Information to any third party.

**2. SEARHC.** SEARHC agrees to keep any information concerning the Clinic and its clinical practice that is furnished by or on behalf of the Skagway Parties, whether furnished before, at the time of, or after the date of this Agreement (collectively, the “Skagway Information” and together with the SEARHC Information, the “Information”) in strict confidence and not to disclose or otherwise use the Skagway Information for any purpose other than for the performance of the evaluation described herein. Further, SEARHC hereby agrees it will not disclose or otherwise transmit the Skagway Information or any portion to any individual or entity or disclose the contents of any future letter of intent between the Parties, except to those of SEARHC’s employees, attorneys, agents, accountants, financial advisors, sources of financing, and any others having a reasonable need to know. Accordingly, SEARHC agrees to treat the Skagway Information that it receives as it would its own proprietary information and to take all reasonable precautions to prevent the unauthorized disclosure of Skagway Information to any third party.

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

**4.** The Information provided by each Party for the purpose of this evaluations described herein remain the property of the Borough on the one hand and SEARHC on the other, and, if requested, will be returned promptly to the Borough or SEARHC, as appropriate; provided, however, that SEARHC will be entitled to retain, and shall not be obligated to destroy, any legal, financial, or other analyses and similar work product it independently produces in respect to its evaluation of the proposed transaction even if based upon Information provided by the Skagway Parties.

**5.** Except as otherwise required by the Public Records Disclosure Laws, unless a Party has obtained the prior written consent of the other Party, such Party will not, and will direct its directors, officers, employees, agents, attorneys, accountants, financial advisors, financing sources and others having a reasonable need to know not to disclose to any person the substance of ongoing negotiations between SEARHC and the Skagway Parties or any of the terms, conditions, or other facts with respect to any such possible transaction.

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

**6.1** Information that, at the time of disclosure, is published, known publicly, or is otherwise in the public domain;

**6.2** Information that, after disclosure, is published or becomes known publicly or otherwise becomes part of the public domain, through no fault of the Party to whom the Information was disclosed;

**6.3** Information that, prior to the time of disclosure, is known to the Party who received the Information, as evidenced by its written records;

**6.4** Information that has been or is disclosed in good faith by a third party who was not or is not under any obligation of confidence or secrecy to the disclosing Party at the time such third party disclosed such Information; and

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

**7.** The Board hereby designates the Borough to act as its sole and exclusive representative with full power and authority to represent the Board and its successors and individual Board members, with full power of substitution in the premises, with respect to obligations to and by SEARHC in all matters arising under this Agreement and in any other agreements, documents or certificates executed or delivered by the Parties pursuant to this Agreement, and to modify, waive and/or enforce all rights of the Board (and its successors and individual Board members) under this Agreement, and further all actions taken by the Borough under this Agreement will be binding upon the Board and its successors, individual Board members and assigns as if expressly ratified and confirmed in writing by the Board and such individuals and organizations.

**8.** If any Party is requested (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process) to disclose any of the information for which it holds an obligation of confidence under this Agreement (the “Disclosing Party”), then the Disclosing Party agrees to notify the Borough or SEARHC, as the case may be (the “Non-Disclosing Party”) promptly of such request and the documents requested thereby so that either SEARHC or the Borough, as the case may be may, shall seek an appropriate protective order or waive in writing the Disclosing Party’s non-compliance with the provisions of this Agreement. The Parties further agree that, if in the absence of a protective order or the receipt of a waiver hereunder, the Disclosing Party is nonetheless, in the opinion of the Disclosing Party’s counsel, such Party is compelled to disclose any of the Information for which it holds an obligation of confidence or else stand liable for contempt or suffer other penalty from any tribunal or governmental or similar authority, the Disclosing Party may disclose such information without liability hereunder; in such a case, the Disclosing Party shall give SEARHC or the Borough, as the case may be, written notice of the Information to be so disclosed as far in advance of its disclosure as is practicable and shall cooperate with SEARHC’s or the Borough’s (as the case may be) efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Information required to be disclosed.

**9.** Each Party shall immediately advise the other should a Party become aware that Information subject to this Agreement is disclosed by or to an unauthorized person or entity.

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

**11.** Except as otherwise provided herein, the disclosure of the Information pursuant to this Agreement shall not result in any obligation on the part of any Party to enter into any future agreement relating to such Information or to undertake any other obligation not specifically set for the in a written agreement signed by the Parties.

12. The term of this Agreement shall begin on the Effective Date and shall terminate 90-day past either the Parties reaching a written agreement for SEARHC to acquire the Clinic, or upon SEARHC notifying the Borough that it does not intend to enter any agreement to acquire the Clinic.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska applicable to contracts made and to be wholly performed within Alaska, without giving effect to the principles of conflict of laws thereof.

14. The Parties understand and agree that money damages would not be a sufficient remedy for any breach of this Agreement and that a non-breaching Party may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or equity. In any action between the Parties to enforce any terms or provisions of this Agreement, the prevailing Party in the action shall be entitled to reimbursement of its reasonable costs and attorney's fees in accordance with Alaska Rule of Civil Procedure 82.

15. This Agreement is the entire agreement between the Parties and supersedes any and all prior and contemporaneous understandings, negotiations and agreements between the Parties with respect to the subject matter of this Agreement.

16. This Agreement can be modified by a written amendment by SEARHC and the Borough. Amendments do not require the signature of the Board, because the Board shall be bound by any Amendments approved by the Borough.

17. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach; nor shall it be a waiver of any other underlying obligation. Except as specifically provided in this Agreement, no waiver shall be binding unless executed in writing by SEARHC and the Borough; provided, further, that the Borough and SEARHC may, in writing, waive any provisions of this Agreement, or excuse an act by the other Party. For the avoidance of doubt, a waiver does not require the signature of the Board, however the Board shall be bound by any waiver approved by the Borough.

18. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, which shall collectively comprise a single document. This agreement may be executed with multiple originals so each Party may have an agreement with original signatures.

**IN WITNESS WHEREOF**, SEARHC, the Board and the Borough, intending to be legally bound have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**SOUTHEAST ALASKA REGIONAL  
HEALTH CONSORTIUM**

**MUNICIPALITY OF SKAGWAY, AK**

By: \_\_\_\_\_  
Charles Clement  
President/CEO

By: \_\_\_\_\_  
Brad Ryan  
Borough Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BOARD OF THE DAHL  
MEMORIAL CLINIC**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

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