



Juneau Youth Services and
Southeast Alaska Regional Health Consortium

Legal Issues in Developing a Business Framework
for the
Montana Creek Residential Facility/Program

July 24, 2007

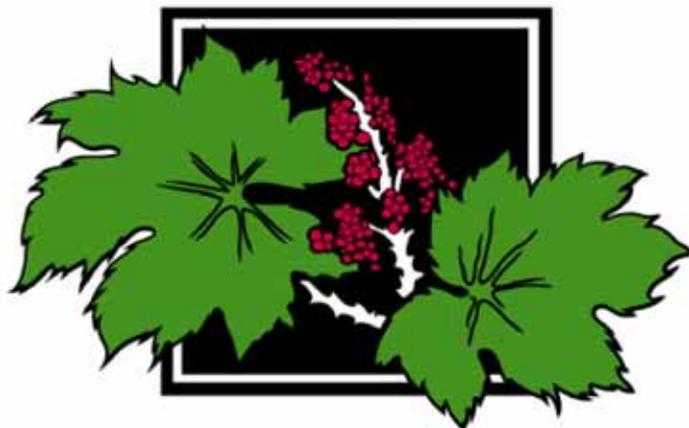


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I. Introduction

Background

During the fall of 2004, Juneau Youth Services (JYS) and the Southeast Alaska Regional Health Consortium (SEARHC) began preliminary discussions regarding a possible collaborative effort to build and operate a residential treatment facility as part of the state's "Bring the Kids Home" Initiative. It was immediately apparent that this would be a highly complex endeavor and would take considerable effort on the part of both agencies. As a result, the agencies sought funds to assist in the planning, program development, and legal aspects of this effort. Funds were received from the State of Alaska, Department of Health and Social Services and the Denali Commission to support these activities. This is the final report on the legal issues involved in developing a business framework between JYS and SEARHC for the Montana Creek facility/program.

Purpose

While both agencies agreed that we would provide the Denali Commission and the State of Alaska with documents and interim reports of our activities, we also agreed that our final report would include information that other agencies might find useful if they were considering collaboration on a similar project. This report focuses specifically on the development of a "joint venture" agreement between a Native health corporation and a non-Native provider in the area of children's behavioral health.

Please note that these documents reflect the unique legal and business relationship between Juneau Youth Services and SEARHC. While the documents and corresponding narrative can provide guidance to others who are considering similar activities, they are in no way intended to substitute for an independent legal review to be conducted by any parties considering a joint venture of this nature. The information contained herein should therefore be considered educational in nature and must be supplemented with a legal review and analysis that is specific to the unique features of any new joint venture relationship.

Format

This report will highlight critical information about the documents we developed, as well as provide observations which may be useful to other organizations considering jointly developing and operating a children's residential facility/program. The report is divided into chapters that correspond to the various legal documents that were developed as part of the collaborative project. Each chapter begins with a narrative description of the document, followed by the document itself. The "observation" sections of this report are specifically designed to provide information that may be of special interest to those who are considering a similar collaborative project.

II. Memorandum of Agreement (November 24, 2004)

During the initial phase of exploring this joint venture we became aware that we needed to formalize and establish a framework to explore our collaborative options. We therefore decided to sign an initial Memorandum of Agreement (MOA) to establish workgroups with staff from both agencies who would explore and make recommendations on 1) facility issues, 2) program development, 3) program operations and 4) legal/structural issues. The signing of the MOA formalized our intent and provided clear directions to staff from both agencies to move from a “discussion” phase to a “workgroup” phase of developing this project.

Observations

1. The MOA provided structure to the workgroups and for the first time signaled to program staff in both agencies that we were moving forward with this project and that they would now be involved in activities outside of their more normal duties.
2. Because the workgroups now had the responsibility to report back to the top administration of both agencies, they developed detailed work plans with scheduled deadlines. The MOA thus served as an institutional tool to lend credibility to activities which now were required of staff to move the project forward.
3. The MOA was also useful as a mechanism to inform and involve the governing bodies for the two organizations. The MOA was shared with the governing bodies and updates were provided on an ongoing basis. We were also able to solicit input from our governing bodies regarding the project.
4. Because the MOA included the formation of workgroups with staff from both agencies it was during this phase of the project that we were able to make some determinations about the differing “cultures” of both agencies and we were able to make some key determinations about the relative “strengths and weaknesses” within the two agencies. This information served us well later as we laid out specific tasks that needed to be accomplished as we tended to assign some specific tasks to the agency which had more experience or more strength in certain areas. It was also during this phase that we gained trust and understanding which was critical to the success of the project.
5. The MOA also served as a formal document to demonstrate to the State of Alaska that we were serious in our intent to move the project forward, and it opened doors to us to discuss the project with state officials.

Memorandum of Agreement (MOA)
Between
Juneau Youth Services and SEARHC
Regarding
Residential Treatment Facility and Program Development
November 24, 2004

Purpose of Agreement

The purpose of this agreement is to establish a framework to explore collaboration options and models between Juneau Youth Services (JYS) and Southeast Alaska Regional Health Consortium (SEARHC) regarding the residential treatment facility currently being developed by JYS.

Background

Both SEARHC and JYS are concerned about the increasing number of children and youth who are leaving the state to receive behavioral health services, including children and youth from Southeast Alaska. Both JYS and SEARHC are committed to work collaboratively to better meet the behavioral health needs of the youth and families that we mutually serve. Specifically, both agencies are committed to providing comprehensive behavioral health services to youth and families that are: culturally appropriate, in least restrictive environments and as close to home as possible.

Agreement Terms

1. This memorandum applies exclusively to collaboration regarding the level 4/level 5 residential treatment facility and program that JYS is currently developing. SEARHC and JYS will work to define collaboration efforts and maintain a focus consistent with each organization's mission, vision and values.
2. JYS and SEARHC have established and will maintain a work group, composed of staff from both agencies, to explore collaboration options in the following areas regarding the above-noted residential facility and program:
 - a. Facility Issues
 - b. Program Development
 - c. Program Operations
 - d. Legal/Structural Issues
3. The Work Group will report back to back to JYS and SEARHC leadership with specific recommendations regarding the final collaborative framework between the two agencies. In consideration of these recommendations, the leadership of the two agencies will make the determination regarding the final collaboration framework.

Signatures:

For SEARHC:



Ken Brewer, CEO

For Juneau Youth Services



Walter Majoros, Executive Director

III. Structural Options for the Facility (April 25, 2005)

The legal issues surrounding this collaborative effort were substantial. We were essentially starting with a "blank sheet of paper", and there were multiple questions that needed to be addressed, including the following: What would the structure look like for this business? Would it be a separate non-profit or somehow be integrated structurally within the two separate organizations? What factors needed to be considered to comply with federal law and to maximize federal Medicaid reimbursement? How would we address liability and risk issues? What would the payment and business practices look like? Who would own the building?

A legal analysis was conducted by Sonosky, Chambers, Sachse, Miller and Munson to address several of the above-noted issues. The analysis reviewed the federal Anti-kickback Statute and its repercussions on the collaborative project. The analysis also reviewed "safe harbor" criteria that provide protections within contractual agreements that are impacted by the Anti-kickback Law. The analysis also reviewed the conditions under which 100% federal Medicaid reimbursement would be possible under a collaborative agreement. The analysis also identified the structural options available to JYS and SEARHC for the proposed project.

Observations

1. Due to the complexity of the legal issues, any organization considering a collaborative business model to provide children's residential services should plan on spending substantial time and resources to thoroughly review business and service model options. Both JYS and SEARHC spent far more time addressing legal issues than was originally envisioned.
2. The legal review provided both agencies with significant direction and clarity. The review clarified the legal framework surrounding joint ventures of this nature and identified key decision points that would meet our business objectives and comply with pertinent federal law.
3. Other agencies considering a collaborative effort of this nature may find other business models and structural arrangements which may suit their unique needs and circumstances. An independent legal analysis is strongly urged before any final business agreements are developed.

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April 25, 2005

MEMORANDUM NO. 7J-2005

MARVIN J. SONOSKY (1909-1997)

**TO: Ken Brewer, President
Southeast Alaska Regional Health Consortium**

**Walter Majoros, Executive Director
Juneau Youth Services**

FROM: Sonosky, Chambers, Sachse, Miller & Munson, LLP

RE: Structural Options for RPTC Facility

The purpose of this memorandum is to set forth the legal background and options for structuring your organizations' proposed Juneau residential treatment facility in a manner that both complies with the federal laws applicable to health care services and, if possible, achieves the State of Alaska's goal of receiving 100% FMAP reimbursement for Medicaid-eligible services provided at the RPTC.

1.0 Background

As we understand the situation, Juneau Youth Services (JYS) and Southeast Alaska Regional Health Corporation (SEARHC) are jointly developing a residential facility to be located

at the JYS campus on Black Bear Road, Juneau. Construction costs will be paid through a combination of funding sources, including funds from the Denali Commission, the Rasmusson Foundation, JYS and other sources. Services at the facility will be provided to clients of both JYS and SEARHC. Whether the facility will be owned and operated by one or the other organization, by both organizations, or by some third entity such as a joint venture is yet to be determined. The level of services to be provided has also yet to be determined.^{1/}

Construction of the residential facility is part of the State of Alaska's "Bring the Kids Home" initiative. Presently, most Alaska youth in need of residential behavioral health services are sent out-of-state for treatment. This facility is part of the State's effort to provide in-state facilities for those youth. The Alaska Department of Health and Social Services is firmly behind this project. Most services at the residential facility will be provided to Medicaid-eligible youth. DHSS strongly prefers that these services qualify for 100% FMAP reimbursement.

2.0 Summary of Options

We have identified three principal options for structuring the parties' arrangement. These are listed here in descending order of likelihood that services would qualify for 100% FMAP reimbursement:^{2/}

1. SEARHC owns the residential facility, lists the facility in SEARHC's IHS funding agreement, and operates the facility, providing treatment for JYS's clients on a contractual basis (billings would be under SEARHC's provider number) (lowest risk).
2. JYS owns the residential facility, SEARHC leases the facility from JYS, SEARHC lists the leased facility in SEARHC's IHS funding agreement, and SEARHC provides treatment or contracts with JYS to provide treatment (billings would be under SEARHC's provider number) (low risk).
3. JYS owns the residential facility, and operates the facility, providing treatment for SEARHC's clients on a contractual basis (billings would be under JYS's provider number) (most risk).

3.0 Legal Issues

We identified two principal areas of legal inquiry. First, both JYS and SEARHC will have financial interests in the residential facility and will also be referring clients to the facility for

1/ We note that if the residential facility is to be a Residential Psychiatric Treatment Center (RPTC), a certificate of need may be required. AS 18.07.030 *et seq.* This memorandum does not address the issues associated with obtaining a certificate of need.

2/ Please note, whether the facility is eligible for 100% FMAP does not affect the parties' business relationship. *See* Section 3.2 *infra*.

treatment. This implicates the federal Anti-kickback Statute, 42 USC § 1320a-7b(b). Second, in order for services provided to qualify for 100% FMAP reimbursement, the services must be provided in “an Indian Health Service facility.”^{3/} As we discussed at last week’s meeting, the Eighth Circuit Court of Appeals recently interpreted this statutory requirement in a manner that poses some challenges for your project.^{4/}

3.1 The Anti-kickback Statute

The Anti-kickback Statute establishes both civil and criminal penalties with respect to any person or entity, including physicians, other health care providers and laypersons, who knowingly and willfully:

- (1) offers, pays, solicits, or receives remuneration;
- (2) directly or indirectly;
- (3) in cash or in kind;
- (4) in exchange for referring an individual, or furnishing or arranging for the purchasing, leasing, or ordering of goods or services;
- (5) payable in whole or in part under federal health care programs.^{5/}

The Anti-kickback Statute applies, by its terms, to a wide range of economic activities. Read literally, it prohibits almost every transaction involving the referral of patients, an exchange of value and federal health care funds. Violation of the Anti-kickback Statute is a federal felony, punishable by fines of up to \$25,000 per incident and imprisonment for up to five years. Criminal conviction results in automatic exclusion of the convicted provider from Medicare, Medicaid and other federal and state health programs.^{6/} An arrangement may violate the statute even where the arrangement does not increase costs or create overutilization.^{7/}

3/ 42 U.S.C. § 1396d(b).

4/ *North Dakota v. CMS*, ___ F.3d ___, Case no. 03-3954 (8th Cir., 2005). A third area of intense concern in many medical arrangements, the federal Stark law prohibitions on physician referrals, should not be implicated in the JYS/SEARHC proposal, as we understand that the compensation of the physicians employed by SEARHC and JYS is not tied to or in any other manner dependent on the “volume or value” of the physicians’ referrals to the Residential facility. 42 U.S.C. § 1877; 42 C.F.R. § 411.354(c)(2)(ii).

5/ 42 USC § 1320a-7b(b). The U.S. Department of Health and Human Services’ Office of the Inspector General (OIG) is of the opinion that the Anti-kickback statute covers health programs that are funded by the Indian Health Service (IHS). *See* OIG Advisory Op. No. 01-05 (May 3, 2001).

6/ 42 USC § 1320a-7b.

7/ *See United States v. Greber*, 760 F.2d 68 (3d Cir.), *cert. denied*, 474 U.S. 988 (1985) (payment for actual services rendered may violate statute if “one purpose” of the payment was to induce referrals); *Hanlester Network v. Shalala*, 51 F.3d 1390 (9th Cir. 1995) (mandatory requirement of referrals in exchange for remuneration is unnecessary to violate the statute).

In addition, the Department of Health and Human Services' Office of the Inspector General (OIG) has independent authority to initiate administrative proceedings against an alleged violator. In those proceedings, the OIG may seek civil penalties of up to \$50,000 for "each act, and an assessment of not more than three times the amount of remuneration offered, paid, solicited or received," and exclusion of the violator from participation in federal and state health care programs, regardless of whether a criminal conviction was obtained.^{8/}

The residential facility project will involve the referral of clients by JYS or SEARHC to the facility for services that will be paid by federal health care funds. It will involve exchanges of value that could be regarded as an inducement or reward for those referrals between at least two entities (JYS and SEARHC) and potentially a third entity (a joint venture). The Anti-kickback Statute is inescapably implicated. We believe, however, that the project can be structured to avoid violating the statute or, at the very least, to minimize the potential for any adverse enforcement action against SEARHC and JYS. There are two approaches.

3.1.1 Safe Harbors

The first approach is through the "safe harbors." In response to criticism from health providers that the statute was much too broad, Congress adopted "safe harbors" for Anti-kickback purposes that somewhat mitigate the sweep of this statute.^{9/} The OIG has adopted additional safe harbors by regulation.^{10/} These safe harbors are "designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the Anti-kickback statute."^{11/}

We reviewed the various Anti-kickback Statute safe harbors and conclude that the "personal services and management contracts" safe harbor has the most potential to protect the Residential facility project. This safe harbor, as its name implies, covers contractual arrangements for provision of health care services. It could apply to protect, for example, a contract under which JYS provides clinical and billing services to SEARHC at the facility, or vice versa. There are seven elements of this safe harbor:

(d) Personal services and management contracts. As used in section 1128B of the Act, "remuneration" does not include any payment made by a principal to an agent as compensation for the services of the agent, as long as all of the following seven standards are met--

(1) The agency agreement is set out in writing and signed by the

8/ See, OIG Advisory Op. No. 01-03 (May 3, 2001).

9/ 42 USCA 1320a-7b(3)(A) - (G).

10/ The OIG has adopted twenty-one Anti-kickback "safe harbors" since 1991. 42 CFR Part 1001.

11/ 64 FR 63518: Nov. 19, 1999. The OIG safe harbor rules are at 42 CFR Part 1001.

parties.

(2) The agency agreement covers all of the services the agent provides to the principal for the term of the agreement and specifies the services to be provided by the agent.

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals.

(4) The term of the agreement is for not less than one year.

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.

(6) The services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

(7) The aggregate services contracted for do not exceed those which are reasonably necessary to accomplish the commercially reasonable business purpose of the services.

For purposes of paragraph (d) of this section, an agent of a principal is any person, other than a bona fide employee of the principal, who has an agreement to perform services for, or on behalf of, the principal.^{12/}

To take advantage of this safe harbor, the services provided at the facility should be provided pursuant to a written contractual arrangement between the parties that meets the requirements of 42 CFR § 1001.952(d).

3.1.2 Purpose and Effect

The second approach involves an analysis of the purpose and effect of the proposed Residential facility in light of the policies behind the Anti-kickback Statute. The purpose of the statute is to prevent unnecessary federal health care expenditures by making it unlawful to willfully

^{12/} 42 CFR § 1001.952(d).

and knowingly offer, pay, solicit, or receive remuneration for the referral or arrangement of business that may be paid for under a federal health program.^{13/}

Although the OIG and the federal courts have not yet followed the advice of legal commentators to formally adopt a “rule of reason” approach to Anti-kickback Statute cases,^{14/} the OIG has consistently analyzed Anti-kickback issues in the context of the purpose of the statute and the overall effect of the proposed activity on federal health care expenditures. The OIG recognizes that many arrangements between providers fall within technical parameters of the statute but are not abusive and, in fact, may be beneficial. Where a proposed arrangement does not fit entirely within a safe harbor, the OIG will “scrutinize the . . . [a]rrangement in its entirety to determine whether, based on a totality of the facts and circumstances presented, the potential risk of fraud and abuse is acceptably low.”^{15/}

The State of Alaska commissioned the law firm of Covington & Burling to analyze application of the Anti-kickback Statute to joint ventures involving Alaska tribal health providers.^{16/} Covington Burling advised caution, “since the OIG has ‘long expressed concern about health care joint ventures in which investors are sources of referrals for . . . the joint venture or other co-investors.’”^{17/} Nonetheless, Covington & Burling concluded that joint ventures between tribal health providers such as SEARHC and not-for-profit organizations such as JYS are unlikely to be challenged by the federal enforcement authorities, even if the arrangements do not fall squarely within a safe harbor.^{18/}

The factors cited by Covington & Burling in support of its conclusion can be easily applied to the proposed residential facility project :

- (1) the proposal is not designed to produce a profit for either provider referring clients to the joint venture^{19/};

13/ See 42 U.S.C. § 1320a-7b(b)(1)-(2).

14/ Aspinwall, T.J., “*The Anti-Kickback Statute Standard(s) of Intent: the Case for a Rule of Reason Analysis*,” 9 *Annals of Health Law J.* 155 (Loyola U., Chicago, 2000).

15/ OIG Advisory Opinion 03-12.

16/ Memorandum, Thomson to Weller (Alaska DHSS), April 23, 2004 (“Covington & Burling Memorandum”).

17/ Covington & Burling Memorandum, at 13, *quoting*, OIG Advisory Opinion 03-13.

18/ The Covington & Burling Memorandum examined, *inter alia*, “joint venture ownership of new facility to provide to the AI/AN population a new service already being furnished to the general population by a private provider, with the private provider furnishing services to referred AI/AN individuals pursuant to a contract with the tribal organization.” *Id.*, at 13 n. 8.

19/ Referrals to a health care provider in exchange for a share of the provider’s profits is a principal indicia of an Anti-Kickback Statute violation. *E.g., U.S. ex rel. Kneepkins v. Gambro*

(continued...)

- (2) while the proposal will be structured to allow the State to claim 100% FMAP for services provided to individuals eligible for SEARHC services, there is no fiscal benefit that would encourage SEARHC to make inappropriate referrals to the Residential facility;
- (3) the proposal serves a public purpose (“Bring the Kids Back Home”); is consistent with the federal policy of assuring “the highest possible health status for Indians”;^{20/} and is being constructed with federal funds earmarked for this purpose by Congress;
- (4) the proposal does not have any of the suspect indicia identified in the OIG’s April 2003 “Special Advisory Bulletin on Contractual Joint Ventures”;^{21/} and
- (5) SEARHC’s status as a payor of last resort for Alaska Native and American Indian clients will “provide a strong incentive to avoid unnecessary referrals for types of services that could be payable with IHS or other tribal funds if Medicaid coverage is denied.”^{22/}

3.1.3 Anti-kickback: Conclusion

We generally concur with Covington & Burling. To avoid Anti-kickback Statute problems, we recommend structuring the facility arrangement to maximize congruence with the “professional and management services” safe harbor identified above. We also recommend clearly documenting that the purpose and effect of the arrangement meets the factors identified in the Covington & Burling memorandum in case, for any reason, the federal authorities determine that the arrangement does not fall within the safe harbor.

3.2 100% FMAP Issues

The State of Alaska has expressed a strong interest that services provided to eligible beneficiaries at the facility be reimbursed at the 100% FMAP rate. Reimbursement at this level protects the State’s budget. The State is entitled to 100% FMAP recovery of Medicaid payments “for services which are received through an Indian Health Service facility whether operated by the

19/ (...continued)
Healthcare, Inc., 115 F.2d 35 (D.Mass, 2000).

20/ 25 U.S.C. § 1602(a).

21/ <http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html>

22/ Covington Burling Memorandum, at 23; *see also*, OIG Advisory Opinion 01-03 (describes “IHS policy of encouraging tribes to be prudent purchaser of CHS-covered services” as basis to allow tribal health providers’ arrangements greater flexibility under Anti-kickback Act).

Indian Health Service or by an Indian tribe or tribal organization.”^{23/} Services must be billed by a tribal health provider in order to qualify for 100% FMAP.

The Health Care Financing Administration (“HCFA,” now the Centers for Medicare and Medicaid Services, “CMS”) formerly allowed 100% FMAP for contract services provided to eligible American Indians and Native Alaskans in facilities that were not “IHS facilities” or owned by tribal health providers, so long as the services were provided “through” a contract with an ISDEAA tribal health provider.

CMS subsequently retreated, and now takes the position that services provided in contract providers’ facilities are not eligible for 100% FMAP. Recently, the Eighth Circuit Court of Appeals agreed, holding that the phrase “through an Indian Health Service facility” means “in an Indian Health Service facility.”^{24/} The Eighth Circuit looked to the statute’s legislative history, in particular to the report of the House of Representatives’ Interstate and Foreign Commerce Committee that stated the “Committee approved [the 100% FMAP] ... since the 100 percent matching is *limited to services in IHS facilities*, it is clearly being paid for Indians ...who are already eligible for full Federal funding of their services.”^{25/} The Eighth Circuit’s decision reversed decisions of the North and South Dakota District Courts against CMS.

The Eighth Circuit opinion is not binding in the Ninth Circuit. We understand that challenges to CMS’s position are percolating through the federal administrative process in the Ninth Circuit and in other Circuits. It may be that the other Circuits will disagree with the Eighth, and that CMS’s position will not prevail in those Circuits or, should it review the matter, in the United States Supreme Court. In the meantime, a conservative approach suggests conforming this project to the Eighth Circuit’s decision. We identify three options below.

3.2.1 SEARHC Ownership (lowest risk)

The structural option with the greatest certainty of achieving 100% FMAP would mandate SEARHC providing the services in a facility owned by SEARHC and listed in SEARHC’s IHS funding agreement. In that situation, the facility would indisputably be an “IHS facility.” Services provided in that facility to eligible beneficiaries would be billable at the 100% FMAP under the Eighth Circuit’s approach.

3.2.2 JYS or JV Ownership/SEARHC Lease (low risk)

Another low risk option would be for JYS to own the facility, SEARHC to lease the facility and add the leased facility to its IHS facility list, and SEARHC to either provide the services

23/ 42 U.S.C. § 1905(b).

24/ *North Dakota v. CMS*, ___ F.3d ___, case no. 03-3954 (8th Cir., 2005).

25/ *Id.*, slip op. at 5, *quoting*, H.R.Rep No. 94-1026, pt. 3, at 21, reprinted in 1976 U.S.C.C.A.N. at 2796 (emphasis added by court).

or contract with JYS to provide the services in the leased (and listed) facility.^{26/} This approach has the benefit of not disrupting the project's funding mechanisms.^{27/}

3.2.3 JYS Ownership (high risk)

The option with the least certainty of achieving 100% FMAP would be for JYS to provide the services in a facility owned by JYS, with services provided to beneficiaries under contract between JYS and SEARHC. This option is the scenario rejected by the Eighth Circuit in *North Dakota v. CMS*. Following this option requires confidence that the Ninth Circuit or the Supreme Court will disagree with the Eighth Circuit, or that Congress will act to clarify the law in a manner favorable to tribal health care providers.

3.3 100% FMAP: Conclusion

We note that expressly arranging the project to maximize the State of Alaska's Medicaid recovery by assuring that services provided in the facility are 100% FMAP reimbursable requires a significant amount of administrative and legal effort. The rewards will directly redound to the State's benefit, but will only indirectly benefit SEARHC and JYS — primarily by assuring the State's continued political support for the project.

Structuring the program to achieve 100% FMAP will result in a greater impact on the federal budget than would be the case if services provided in the facility were only eligible for the usual percentage recovery. This may result in the project's billings receiving close scrutiny from federal auditors. The principal risk is for the State. If 100% FMAP recovery is denied, the State will be obligated to repay CMS the difference between full recovery and the usual percentage recovery for the services provided, not JYS or SEARHC. Any additional audits, however, will undoubtedly entail administrative costs to the providers. There may also be political costs if the federal authorities conclude that the project was structured to provide for 100% FMAP in circumstances deemed inappropriate.

26/ *N.b.*, Covington & Burling indicates uncertainty as to whether CMS will consider a leased facility to be an "IHS facility" for 100% FMAP purposes. Covington & Burling Memorandum, at 7, n. 2 ("This memorandum does not analyze whether, in fact, CMS would regard a 638 organization's *partial* ownership or leasehold interest in the site of service as a basis for 100% FMAP for services furnished at the site by a contract provider.") (emphasis original). We note that the mandatory IHS lease-back provision of Title 25 should resolve this uncertainty, as it specifically allows leased facilities to be considered IHS facilities. *See*, 25 USC § 450j(l) ("Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a *leasehold interest in*, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this subchapter") (emphasis supplied).

27/ We are told that the Denali Commission views construction of this facility as a "JYS project" for funding purposes, and has advised that changing the ownership from JYS to SEARHC may pose problems to timely project funding.

Under these circumstances, it is appropriate for SEARHC and JYS to request the State's review and concurrence with the project structuring. In particular, we believe that the State should provide written assurances that (1) SEARHC is the appropriate provider for services rendered at the facility and (2) there will be adequate funding for the project regardless of whether it qualifies for 100% FMAP funding.

Please let us know if you have any questions or comments concerning these issues. We look forward to working with you as this project moves forward, and thank you again for the opportunity to be of service.

Sincerely,

SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON, LLP

/s/

By: Myra M. Munson
Richard D. Monkman

cc: Ken Truitt, Esq.
SEARHC General Counsel

IV. Memorandum of Agreement between SEARHC and JYS (July 18, 2005)

The primary purpose of the July 18, 2005 MOA was to document the decision points for the joint venture that would subsequently be imbedded within the actual business agreements. These decisions were made within the context of the April 25, 2005 legal analysis. These decision points included the following:

- We would not create a new business entity but would develop contractual agreements between our agencies that would emphasize our respective strengths.
- JYS would be the owner of the Montana Creek facility and the applicant for all capital grants and loans to build the facility.
- JYS would lease the facility to SEARHC at no or nominal cost.
- SEARHC would be the enrolled Medicaid provider for all behavioral health services provided in the facility.
- SEARHC would contract with JYS to be the operator of the facility.
- SEARHC would be responsible for Medicaid billing and quality assurance.
- SEARHC would reimburse JYS at the same rate that JYS receives for Medicaid-funded behavioral health services in comparable JYS residential facilities.

Observations

1. The development of a second MOA was essential to identify the central points of agreement prior to writing the actual business agreements. This allowed us to focus on core issues on the front end of the business agreement process and to resolve them prior to considering more detailed and subsidiary issues.
2. The second MOA allowed us to demonstrate incremental progress on the joint venture to both of our organizations and to the state.
3. The second MOA ensured continued “buy-in” and a common understanding among all parties about the core elements of the collaborative project.
4. Perhaps most importantly, the second MOA allowed the business agreement process to proceed on a collaborative rather than an adversarial basis. With the major issues resolved early on, this set the stage for consensus building in crafting the actual business agreement documents.

Memorandum of Agreement
between
SEARHC and Juneau Youth Services
regarding
The Montana Creek Residential Treatment Facility
July 18, 2005

The purpose of this agreement is to set forth the collaborative framework between SEARHC and Juneau Youth Services (JYS) regarding the development and operation of the Montana Creek Residential Treatment Facility.

Points of Contact

1. The main point of contact for JYS for this agreement will be Walter Majoros, Executive Director.
2. The main point of contact for SEARHC for this agreement will be Pat Hefley, Behavioral Health Director.

Facility Development and Ownership Issues

1. JYS will be owner of the facility and the applicant for all capital grants and loans to build the facility.
2. JYS will be responsible for all project management functions associated with the building of the facility.
3. JYS and SEARHC will collaboratively address all design and space utilization issues regarding the facility.
4. JYS will lease the facility to SEARHC upon completion at no cost.
5. JYS will be responsible for all facility maintenance, repairs and renovations.

Program Development

1. JYS and SEARHC will collaboratively address program development issues including: program philosophy; treatment models and approaches; program standards; and policies and procedures.
2. JYS will be responsible for developing the written documentation for all elements of program development.

Program Operations

1. SEARHC will be the enrolled Medicaid provider for all behavioral health services provided within the facility.
2. JYS will be the operator of the facility and will be responsible for all aspects of program operations.
3. SEARHC will reimburse JYS for services at the same rates that JYS receives for Medicaid-funded behavioral health services in comparable JYS residential facilities.
4. SEARHC will be responsible for Medicaid billing and quality assurance. These functions will be reimbursed through a continuing care agreement between SEARHC and the state Department of Health and Social Services.

V. Business Documents

A decision was made to develop several business framework documents for the collaboration project, instead of a single document. A team consisting of senior staff and legal representative for both organizations developed the business documents. These documents are included in this chapter are briefly described below, along with observations regarding each document.

Business Agreement (October 4, 2006)

This agreement sets forth the key points in the collaborative framework between JYS and SEARHC for the Montana Creek Residential Facility/Program. It addresses the following areas: points of contact; general information regarding the facility and program; facility development, ownership and liability issues; program development; program operations; and business agreement duration and effective date.

Observations

1. The business agreement is an umbrella document for the remaining business documents in this section. It provides background information on the collaborative effort and summarizes key points that are addressed in more detail in the remaining documents. This document acted as a guide or “checklist” in developing the other business documents.
2. The business agreement document was useful to present to senior management and the governing bodies of both organizations. These groups could find in a single document all the salient aspects of the business relationship.

**Business Agreement
between
SouthEast Alaska Regional Health Consortium and Juneau Youth Services
regarding
The Montana Creek Residential Program
October 4, 2006**

Purpose of Agreement

The purpose of this agreement is to set forth the collaborative framework between SouthEast Alaska Regional Health Consortium (SEARHC) and Juneau Youth Services (JYS) regarding the operation of the Montana Creek Residential Program at the Montana Creek Residential Program Facility (“facility”).

SEARHC is a tribal organization within the meaning of 25 USC § 450f(d) that provides health care services in Southeast Alaska to American Indians, Alaska Natives and other eligible individuals in a manner that is appropriate to their cultural values and traditions, under the Alaska Tribal Health Compact and funding agreement with the Indian Health Service (IHS) authorized by Sec. 325 of P.L. 105-83 and Title V of the Indian Self-Determination Act of 1975, 25 U.S.C. §§ 450, *et seq.*, Pub. L. No. 93-638, as amended. SEARHC is a consortium of federally-recognized tribes incorporated as a non-profit corporation under the laws of the State of Alaska.

JYS is a non-profit corporation incorporated under the laws of the State of Alaska to provide behavioral health services to Alaska youth in need of such services.

JYS and SEARHC have been working together to develop the new facility and program for the past two years at the behest of and in close collaboration with the State of Alaska’s Department of Health and Social Services, and with the support of the Denali Commission, the Rasmuson Foundation, and the Alaska Mental Health Trust Authority. This project responds directly to a significant unmet need in Southeast Alaska. Local and statewide community planning efforts have identified the need for increased residential treatment capacity in Southeast Alaska for youth with intensive behavioral health problems. Many of these youth -- both Native and non-Native -- have been referred by necessity to out-of-state facilities to receive intensive residential care due to its lack of availability in Southeast Alaska. Both SEARHC and JYS are committed to providing behavioral health services to youth that are as close as possible to their homes, communities, and natural support systems.

JYS and SEARHC place a high value on interagency collaboration and agree to cooperatively provide services to both Native and non-Native Alaska youth within the facility. To this end, SEARHC and JYS agree to utilize the training, skills, and experience of each agency to provide culturally-sensitive and age-appropriate treatment to the residents of the facility.

JYS and SEARHC will use their existing corporate structures to implement this agreement; this agreement and its attachments dictate the respective roles and

responsibilities for JYS and SEARHC regarding the facility and program. The agreement does not involve the creation of, or result in, any new legal entity such as a partnership, joint venture, or limited liability corporation.

Points of Contact

1. The main point of contact for JYS for this agreement will be the Executive Director.
2. The main point of contact for SEARHC for this agreement will be the Division Director for Behavioral Health.

General Information Regarding the Facility and Program

1. The facility is a 15-bed, level 4 treatment facility located at 10801 Black Bear Road in Juneau, Alaska (beside the Miller House). The name of the Montana Creek Residential Treatment Facility may change. If so, it would affect only the name of the facility, and no other aspect of this Business Agreement or the cooperative or operational relationship between JYS and SEARHC.
2. The facility has 7,212 square feet in the main facility and 2,119 in an attached gymnasium.
3. The program will be co-ed and serve youth ages 12 to 18.
4. The program is part of the "Bring the Kids Home Initiative". Its main purpose is to provide services to Southeast Alaskan youth who are currently in out-of-state treatment facilities, and to prevent others from needing to leave the state for care.
5. The program will be culturally-based and will target Native youth in Southeast Alaska. The program may also serve non-Native youth.
6. The program will specialize in treating youth with co-occurring mental health and substance abuse disorders. The program will weave together elements of mental health and substance abuse expertise from the two agencies.
7. The program will also explore the feasibility of developing specialized services for youth with Fetal Alcoholism Spectrum Disorders (FASD) and other cognitive impairments.

Facility Development, Ownership and Liability Issues

1. JYS and SEARHC have collaboratively addressed all major design and space utilization issues regarding the facility.
2. JYS is the owner of the facility, and as such is responsible for all costs, grants and loans associated with building the facility.
3. JYS is the lessor and SEARHC is the lessee for the facility. Details of the lessor/lessee relationship are set forth in the attached lease agreement, which is hereby incorporated by reference.
4. SEARHC is a party to the Alaska Tribal Health Compact with the Indian Health Service and has an Annual Funding Agreement with the IHS. Claims against SEARHC that fall within the scope of the Compact and SEARHC's Annual Funding Agreement are deemed to be claims against the United States that are covered by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346, 2401 and 2671-2680, pursuant to 42 U.S.C. § 233, 25 U.S.C. § 450f(d) and 25 U.S.C. § 1680c(d), § 314 of P.L. 101-512, as amended. SEARHC agrees that it will submit all such claims to the United States and use its best efforts to secure the United States' agreement to defend and indemnify SEARHC and JYS for such claims. Because of the nature of the FTCA,

SEARHC does not represent or warrant that any or every claim against JYS, or SEARHC, will be covered by the Federal Tort Claims Act or that the United States will agree to defend or indemnify JYS or SEARHC for any or every such claim. To address risk JYS will retain insurance coverage related to actions and inactions in relation to the new facility and its operations.

Program Development

1. JYS and SEARHC are collaboratively addressing program development issues including: program philosophy; treatment models and approaches; program standards; staff training; and policies and procedures.
2. JYS is responsible for developing the written documentation for all elements of program.

Program Operations

1. SEARHC will contract with JYS to be the operator of the facility. JYS will operate the facility and will be responsible for all aspects of program operations.
2. SEARHC will be the enrolled provider with all payers, including Medicaid, for all behavioral health services provided within the facility.
3. JYS will act as SEARHC's billing agent with all payers for the behavioral health services provided in the facility.
4. SEARHC will reimburse JYS on a monthly basis for all reimbursable behavioral health services provided within the facility, which have been billed under item #3 in this section.
5. In the event that any financial audit indicates that funds must be repaid to a payer, as set forth in the attached Professional Services Agreement, which is hereby incorporated by reference, JYS will fully reimburse SEARHC for any financial pay-back to the payer (including fines, penalties, and interest).
6. Both agencies will exercise quality assurance functions in accordance with governing law and the appended professional services agreement. SEARHC will have ultimate responsibility for quality assurance for client services provided within the facility.
7. Specific details regarding program operations are set forth in the attached professional services agreement between JYS and SEARHC.
8. Both parties will comply with all legal requirements regarding confidentiality of client information. Specific details regarding confidentiality are set forth in the attached HIPAA business agreements.
9. Neither JYS nor SEARHC has the actual or apparent authority to bind the other in any legal or equitable manner unless such authority is specified in a binding written contract between these parties.
10. SEARHC and JYS may expand the scope of this agreement, but any such expansion must be in writing, whether through another contract or through an amendment to this agreement.

Business Agreement Duration and Effective Date

1. This business agreement is effective upon the latest date for the signatures below.
2. Either party may terminate the agreement with or without cause with six months' advance written notice from the authorized representative to the other party, or

without prior notice in the event of willful negligence an/or actions by the other party that endanger clients or management.

3. This contract shall automatically terminate should either party have its Alaska Business license terminate for any reason, or should either party lose its eligibility to provide state and federally funded health care services, including Medicaid services, or should it lose any professional licensure required to perform this contract.
4. The expectation is for this to be a long term business agreement. Unless terminated as indicated under 2, this agreement shall remain in effect for 5 years from the effective date, and will be renewed in increments of 5 years.
5. The agreement may be modified with the signature of the authorized representatives listed below.

Authorized Representatives:

Kenneth Brewer 10/4/06
Kenneth Brewer date
President/CEO
SEARHC

Walter Majoros Oct 4, 2006
Walter Majoros date
Executive Director
Juneau Youth Services

Lease Agreement (October 4, 2006)

The lease agreement addresses standard facility lease issues including term, rent, utilities, lawful and unlawful uses, maintenance and repairs, indemnification, insurance, and compliance with applicable laws. JYS is the lessor and SEARHC is the lessee under the lease agreement and the term of the lease is five years.

Observations

1. The lease contains information regarding insurance coverage and indemnification in relation to the Federal Tort Claims Act. This is an issue that should be considered carefully when one of the collaborating agencies is a tribal health entity.
2. The agreement also states in Section 26 the intent for the lease to be fully compliant with the federal Anti-kickback Law. The agreement was crafted to meet the requirements of this federal law, including its safe harbor regulatory provisions. Once again, an individualized legal review of all business documents in the context of Anti-kickback Law is strongly urged for any collaborative venture of this nature.

4 October 2006 Version
LEASE AGREEMENT
(Montana Creek Residential Program)

This Lease Agreement (“Agreement”) is made with an effective date of 4 October 2006, by and between Juneau Youth Services, Inc. (“JYS” or “Lessor”) and the SouthEast Alaska Regional Health Consortium (“SEARHC” or “Lessee”).

RECITALS

A. Juneau Youth Services, Inc. (JYS) is an Alaska non-profit corporation providing services to young persons residing throughout Southeast Alaska. SouthEast Alaska Regional Health Corporation (SEARHC) is a consortium of federally-recognized tribes incorporated as an Alaska non-profit corporation. SEARHC is a tribal organization within the meaning of 25 U.S.C. § 450f(d), which provides health care services throughout Southeast Alaska to American Indians, Alaska natives and other eligible persons in a culturally appropriate manner, through the Alaska Tribal Health Compact and funding agreements with the Indian Health Service (IHS).

B. For many years JYS and SEARHC have recognized the critical need for an in-patient treatment center in Southeast Alaska to provide behavioral health services for resident children and adolescents, many of whom are eligible for SEARHC-provided health care services. Previously, those residents were required to travel out of their home communities and close support network in Southeast Alaska to obtain these level 4 treatment services, to the continuing detriment of those children and adolescents, and their families and home communities.

C. Construction of the Montana Creek Residential Program facility in Juneau,

JYS/SEARHC Lease Agreement, October 2006

Page 1 of 14

Alaska, is the culmination of many years of collaborative efforts by SEARHC and JYS in recognizing and responding to this critical need. The State of Alaska's Department of Health and Social Services and Alaska's Congressional delegation have strongly encouraged SEARHC and JYS to develop and jointly operate the Montana Creek Residential Program as part of the State's "Bring the Kids Back Home" initiative. The State of Alaska's Department of Health and Social Services, JYS and SEARHC agree that there is a great need for the services that will be provided at the now-constructed Montana Creek Residential Program, and that those services can be best provided through this joint effort. This collaborative endeavor is intended to serve the youth of Southeast Alaska, who will, for the first time, be able to receive critically needed services in a facility close to their home communities and families.

D. The Montana Creek Residential Program facility's construction is funded entirely through public, non-profit and foundation funding. The completion of this project was made possible only with the very generous financial support of the Denali Commission (which provided 1.5 million), the Rasmussen Foundation, the Alaska Mental Health Trust Authority (which provided \$300,000), and the State of Alaska's Department of Health and Social Services whose vision, direction, and action is responsible for SEARHC's participation in this collaborative project.

In furtherance of the important purposes served by this facility, and for and in consideration of the below-described mutual promises, covenants, and conditions, JYS and SEARHC agree as follows:

JYS/SEARHC Lease Agreement, October 2006
Page 2 of 14

1. **Property:** Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to lease from Lessor real property located in the Montana Creek area in Juneau, Alaska, which property is now known as the Montana Creek Residential Program, a behavioral health residential treatment center for Native and non-Native Alaska juveniles (“the Premises”), the structure of which is situated on a portion of property legally described as:

PARCEL NO. 1 United States Survey 2551; records of the Juneau Recording District, State of Alaska, except therefrom that portion deeded to the Territory of Alaska by Instrument recorded July 27, 1955; and except therefrom that portion deeded to the State of Alaska, Department of Transportation and Public Facilities by instrument recorded January 9, 1986, in Book 266 at page 340; and, except therefrom that portion deeded to the State of Alaska, Department of Transportation and Public Facilities by instrument recorded January 9, 1986, in Book 266 at page 346; and except therefrom that portion of U.S. Survey 2551, more particularly described as: Beginning at Corner 3, U.S. Survey 2551; thence S 89 degrees 58’00” W, 200.00 feet along line 3-4 of U.S. Survey 2551; thence S 0 degrees 00’32” E 1661.25 feet to line 1-2 of U.S. survey 2551; thence N 89 degrees 59’29” E, 200.00 feet to Corner 2, U.S. Survey 2551; thence N 0 degrees 00’32” W, 293.21 feet along line 2-3, U.S. Survey 2551 to the Westerly Bank of the Mendenhall River, the meander line having been established in 1983 by the City and Borough of Juneau Engineering Department; thence meandering along said Westerly bank of the Mendenhall River to the following courses: N 17 degrees 09’51” W, 70.39 feet; thence N 6 degrees 05’14” E, 84.14 feet, thence N 49 degrees 03’27” E, 15.65 feet to said line 2-3; thence N 0 degrees 00’32” W 1207.01 feet along said line 2-3, to Corner 3, U.S. Survey 2551 which is the point of beginning. Parcel No. 2, Lot 13, Block A, Tongass Park, according to Plat 250, Juneau Recording District, First Judicial District, State of Alaska.

2. **Reserved to Lessor:** Lessor reserves all air rights over the premises, the use of exterior walls, the roof, and the land below the premises in any manner not materially interfering with Lessee’s use of the premises. Lessee contracts, and has an annual funding agreement with, the Indian Health Service (IHS). As such, claims against Lessee and its employees, including its employees acting on behalf of Lessee as provided in 28 U.S.C. §2671,

and including any individual who provides health care services pursuant to a personal services contract with Lessee, are deemed to be claims against the United States that are covered by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346, 2401 and 2671-2680, pursuant to 42 U.S.C. § 233, 25 U.S.C. § 450f(d) and 25 U.S.C. § 1680c(d), § 314 of P.L. 101-512, as amended. As partial consideration for this lease, the Lessee agrees that it will submit all such claims to the United States and use its best efforts to secure the United States' agreement to defend and indemnify SEARHC and JYS for such claims.

3. **Partial Consideration:** Lessee provides health care services, including behavioral health care services, to Alaska Natives and American Indians under the Alaska Tribal Health Compact and annual funding agreements with the Indian Health Service pursuant to the Indian Self Determination Education and Assistance Act, 25 U.S.C. § 450f(d). Claims against SEARHC that fall within the scope of the Compact and SEARHC's Annual Funding Agreement are deemed to be claims against the United States that are covered by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346, 2401 and 2671-2680, pursuant to 42 U.S.C. § 233, 25 U.S.C. § 450f(d) and 25 U.S.C. § 1680c(d), § 314 of P.L. 101-512, as amended. Because of the nature of the FTCA, Lessee does not represent or warrant that any or every claim against Lessor, or SEARHC, will be covered by the Federal Tort Claims Act or that the United States will agree to defend or indemnify Lessor or Lessee for any or every such claim. As partial consideration for this lease, the Lessee agrees that it will submit all such claims to the United States and use its best efforts to secure the United States' agreement to defend and indemnify JYS for such claims.

4. **Term.** This Lease is for a term of five (5) years, which term may be renewed by the parties for additional periods of five (5) years. Unless either party to this Lease provides written notice to the other party (as provided below) at least six (6) months in advance of the initial termination of this Lease, this Lease shall continue, as is, in continuing terms of five (5) years. If timely written notice is provided, the parties may either mutually agree to terminate this lease at the end of the next-specified period, or may, at their sole option, continue it for a period of time to then be mutually agreed.

5. **Rent:** Because the Facility in which services will be provided to youthful residents of Southeast Alaska is for a public purpose and was constructed with public funds (as detailed above) neither party to this Agreement has incurred capital costs in connection with the Facility's construction, the debt service on the Facility is nominal, possible coverage under the Federal Tort Claims Act, and in recognition of the unique and specialized nature of services provided by JYS on behalf of SEARCH in the Facility, the parties to this Lease agree to rent during the term of this Lease of One Dollar (\$1.00) per year, which amount is due on the anniversary date of the signing of this Lease Agreement, and on that date each year thereafter.

6. **Utility Charges:** Lessor shall be responsible for and pay when due all charges for utilities or public contract services, including connection hook-up and maintenance of all such services, used or consumed on or supplied to the premises.

7. **Licenses/Taxes:** Because SEARHC is a consortium of federally-recognized tribes organized as an Alaska non-profit corporation, and because the activities that will be undertaken pursuant to this Lease are on property belonging to JYS, an Alaska non-profit

corporation, are entirely for non-profit, charitable and public purposes, the parties to this Agreement do not believe any taxes are otherwise payable to the State of Alaska or any other governmental entity. If any such taxes are assessed and are ultimately and finally determined by a court of competent jurisdiction to be payable, Lessor agrees to set aside sufficient monies to pay any such taxes. Lessor further agrees to remain solely responsible for challenging and paying the costs of litigating the imposition of any such taxes. If determined to be payable, Lessor agrees, throughout the term of this Agreement, to pay all fees for licenses and other governmental impositions related to the business conducted on the premises and any property taxes levied with respect to all personal property located at the premises. If any governmental authority levies a tax or license fee (which is ultimately and finally determined by a court of competent jurisdiction as valid) on rents payable under this Lease Agreement or rents accruing from use of the premises or a tax or license fee in any form against the Lessor or Lessee because of or measured by or based upon income derived from the leasing or rental thereof, or a transaction privilege tax, such tax or license fee shall be paid by Lessee, either directly if required by law, or by reimbursing Lessor for the amount thereof upon demand. The uncertainty of this tax situation is further consideration for this Lease.

8. **Use:** Lessee may use the rented premises only in preparation for Behavioral Health Services/Treatment, but for no other purpose or business without the prior written consent of Lessor, which shall not unreasonably be withheld.

9. **Unlawful use:** Lessee shall not use or permit the premises or any part thereof to be used for any purpose in violation of any applicable law. If Lessee fails or refuses to

correct any violations within a reasonable time, Lessor shall have the right to enter onto the premises to effect corrections and to contract with any party to correct said violation at Lessee's sole expense, and Lessor may collect from Lessee all actual costs of said correction.

10. **Hazardous Substances:** Lessee shall not keep, use, emit, generate or sell any substances designed as or containing components designated as, hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law on or around the premises.

11. **Appearance of Premises:** Lessee shall maintain the premises in a clean, orderly and neat fashion, accessible and well lit to conform to all health and safety standards. Lessee shall permit no offensive odors to be emitted from the premises and shall neither commit nor permit any waste to be committed thereon. Any signs referring to the facility will recognize both SEARHC and JYS involvement and will be approved by both parties.

12. **Liens and Encumbrances of Lessee:** Lessee shall keep the premises free and clear of all liens and encumbrances arising for or out of its use and occupancy of the premises.

13. **Repairs by Lessor Maintenance and Repair Charges:** Except for maintenance attributable to Lessee's breach of its obligation under this Agreement or Lessee's negligence or intentional act omission, Lessor shall maintain and repair the roof, exterior walls, foundations and building structure of the premises in a good state of repair.

14. **Maintenance and Repair Obligations:**

a. Lessee acknowledges that it has inspected the premises prior to the execution of this agreement, is satisfied with the condition thereof, and accepts the Premises in its present condition as is without warrants by Lessor of any kind or nature.

b. Lessor shall ensure the premises are winterized at all times (including exterior doors and entrances, all windows and moldings and trim of all doors and windows) and all partitions, door surfaces, fixtures equipment and appurtenances thereof (including lighting, heating and plumbing fixtures) are in or are being brought to good order, condition and repair. Lessor shall replace any broken glass in the premises. Lessor shall make all necessary repairs to, or provide replacements of necessary parts at its sole expense (unless otherwise agreed in advance), all fixtures, equipment, appurtenances, mechanisms; keep the heating fixtures, lighting system and all plumbing clean and in a good state of repair. All such maintenance and repair responsibilities described within this section shall be performed, at Lessor's sole expense and responsibility.

c. Lessee shall at the expiration or termination of this Agreement, surrender the rented premises to Lessor in a clean condition, suitable for use for commercial purposes, and in as good a condition as when received, reasonable use and wear expected.

d. Lessor shall repair any damage to the premises occasioned by Lessee's use thereof, or by the removal of trade fixtures, furnishings and equipment installed by Lessee, which repair shall include the patching and filling of holes and repair of structural damage.

15. **Indemnification:** Should a claim arise from the alleged injury to any person, or for any loss of or damage to any property (including property of Lessee) occurring in or about

the premises, the parties agree as stated in paragraph 2, Lessee will submit all such claims to the United States and use its best efforts to secure the United States' agreement to defend and indemnify Lessee and Lessor for such claims. For those claims the United States denies coverage under the FTCA, Lessor agrees to indemnify, defend and hold Lessee harmless from all losses, damages, fines, penalties, liabilities and expenses (including personnel and overhead costs and actual attorney's fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss or damage to any property alleged to be attributed to Lessee's operation or occupation of the premises or caused by or resulting from any act or omission of Lessee or any licensee, assignee or of any officer, agent, employee, guest or invitee of any such person in or about the premises or Lessee's breach of its obligations hereunder. The conditional indemnification (conditional on non-coverage under the FTCA) provided for in this Agreement shall survive termination or expiration of this rental.

16. **Lessee Insurance:** As stated in paragraph 2, Lessee is eligible for FTCA protection for claims of loss against it. Throughout the term of this Lease, Lessee will submit all such claims to the United States and use its best efforts to secure the United States' agreement to defend and indemnify Lessee and Lessor for such claims. Throughout the term of this Lease, Lessor agrees to maintain commercial general liability insurance with broad form and stop gap (employer's liability) endorsements in minimum limits of \$1,000,000.00 per occurrence for damage or loss, per individual and per occurrence for personal injury, death, negligence or professional malpractice. It further agrees to provide proof of that coverage to Lessee upon

demand. Lessor agrees not to terminate such coverage without giving Lessee thirty (30) days' advance written notice.

17. **Partial / Complete Destruction:** If the Premises are rendered partially or completely uninhabitable by fire or other insured casualty Lessee's obligations herein shall be adjusted, or suspended, as circumstances then equitably dictate.

18. **Eminent Domain:** If the whole of the premises is taken by any public, governmental or other authority under the power of eminent domain or transferred under threat thereof, then this Agreement shall be paid up to that date. All damages awarded for such taking shall belong to and are the sole property of Lessor. The term "eminent domain" as used in this paragraph shall include the exercise of any similar governmental power and purchase, transfer or other acquisition in lieu thereof.

19. **Assignment of Lease Agreement:** Because this Lease Agreement is personal to Lessor and to Lessee, neither party to it may assign any of its rights under this Lease Agreement, nor shall it sublease the premises.

20. **Default by Lessee:**

- a. Lessee shall be deemed to be in default under this Lease agreement if:
 1. Lessee makes an assignment for the benefit of creditors;
 2. There is filing of a petition in bankruptcy by or against Lessee, which is not dismissed within (30) thirty days of filing;
 3. Lessee becomes insolvent;
 4. A receiver, trustee or liquidation officer is appointed for Lessee's business; or
 5. Lessee fails fully to perform the services provided for herein.

b. In the event Lessee shall violate or breach or fail to keep or perform any covenant, agreement, term or condition of this Lease Agreement at the time designed and fails to cure such default within a reasonable time, Lessor may re-enter the premises and repossess the premises, removing all persons therefrom in order to relet. Such re-entry and repossession shall not operate as limitation upon Lessor's rights and Lessor reserves all rights and all remedies available to it under the law.

21. **Surrender of Premises:** At the expiration of this Agreement, or sooner if Lessee fails to perform as agreed herein, and after the expiration of thirty days from written notice of an obligation to cure by performing the services agreed herein, Lessee shall return the premises to Lessor in the same condition in which received, reasonable wear and tear accepted. Lessee's obligation to perform this covenant shall survive the expiration or termination of this Lease Agreement.

22. **Holding Over:** Any holding over by Lessee after the expiration of the term hereof, or after expiration of the thirty days' cure period, as provided above, with Lessor's consent, shall be construed as a tenancy from month to month. In this event, the parties agree Lessee then owes rent at the fair market value of the leased premises, which shall be determined by then-existing information about such values for similarly situated facilities.

23. **Force Majeure:** Neither party shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including but not limited to acts of god, acts of civil

or military authorities, fire floods, windstorms, earthquake, mudslides, strikes or other labor disturbances, civil commotion or war.

24. **Notices:** Any notices required by this Agreement to be given to any party shall be in writing and shall be deemed given as of the earlier of the date of hand delivery or mailing (via postage paid, certified return receipt) to the parties at the following address (until changes by written notice given by one party to the other party).

TO: Juneau Youth Services, Inc.
c/o Walter Majoros, Executive Director
P.O. Box 32839
Juneau, AK 99801

TO: SouthEast Alaska Regional Health Consortium
c/o Kenneth Brewer, President/C.E.O.
3245 Hospital Drive
Juneau, Alaska 99801

Notices sent by mail shall be deemed to have been given (2) two days after the date mailed, and the postmark affixed shall be conclusive evidence of the date of mailing.

25. **Compliance With Environmental Law:** Both parties to this Agreement will comply with all local, state or federal laws relating to the environment in connection with the use of the Premises.

26. **Compliance With Anti-Kickback Law.** Lessor and Lessee intend to fully comply with 42 U.S.C. § 1320a-7b(b), commonly known as the federal Anti-Kickback Statute, with all federal and state law provisions governing fraud, abuse or referrals under the Medicaid program and other federal and state health care programs; intend that this professional services agreement comply with and is to be interpreted consistent with the Anti-Kickback Statute safe

harbors, including the safe harbor set forth in 42 C.F.R. 1001.952(b) (space rental), as those rules may be amended; and agree that in the event any court or administrative agency of competent jurisdiction determines that this professional services agreement violates any such statutes, rules or regulations or that the compensation under this professional services agreement exceeds reasonable compensation, that Lessor and Lessee shall take all actions necessary to comply with, and to conform this lease to those statutes, rules or regulations.

27. **Entire Agreement Amendment and/or Modification:** This Lease Agreement and any exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Lessor and Lessee concerning the leasing of the premises and supersede any other agreements of understanding, oral or written, between Lessor and Lessee. Neither this Lease Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by the parties hereto.

28. **Binding Effect:** All of the terms, conditions, covenants and agreements of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the respective parties, and successors.

29. **Costs and Attorney's Fees:** If either party hereto engages an attorney to enforce any of the terms of this Lease Agreement, the prevailing party shall have and recover from the other party in addition to all costs, its reasonable actual attorney's fees, including all such fees incurred in connection with litigation, whether at the trial or appellate level.

30. **Applicable Law:** This Lease Agreement shall be governed by and construed and enforced in accordance with Alaska law.

IN WITNESS WHEREOF, the parties have executed this rental as of the date first written above.

Lessor:

Walter Majoros
Walter Majoros, Executive Director
Juneau Youth Services, Inc.

Date: Oct. 4, 2006

Lessee:

Kenneth Brewer
Kenneth Brewer, President/C.E.O.
SouthEast Alaska Regional Health
Consortium

Date: 10/4/06

RECORD IN JUNEAU RECORDING DISTRICT

Return Recorded Document to:

Juneau Youth Services, Inc.
c/o Walter Majoros, Executive Director
P.O. Box 32839
Juneau, AK 99801

SouthEast Alaska Regional Health Consortium
c/o Kenneth Brewer, President/C.E.O.
3245 Hospital Drive
Juneau, Alaska 99801

JYS/SEARHC Lease Agreement, October 2006
Page 14 of 14

Professional Services Agreement

The professional services agreement specifies the specific conditions and terms under which SEARHC contracts with JYS to provide behavioral health services at the Montana Creek Residential Facility/Program. The agreement covers such issues as compensation, billing, quality assurance, liability insurance coverage, personnel, supplies and records/reports.

Observations

1. One area that needs to be carefully considered and set forth is how the collaborating entities will address financial risk. This can have an important impact on the financial viability of the joint venture agreement. This issue is discussed in more detail in *Chapter VI., Continuing Care Agreement*.
2. Like the lease, the professional services agreement addresses issues relevant to the Federal Tort Claims Act and Anti-Kickback Law, and seeks to be fully compliant with these federal laws.
3. One unique feature of the SEARHC/JYS agreement is that JYS acts as the billing agent for SEARHC for the behavioral health services provided in the Montana Creek facility. This arrangement applies to Medicaid and other third party payers. This type of arrangement may or may not be appropriate for other collaborating entities.
4. The professional services agreement was developed with program input from legal, administrative and program representatives from both agencies. We believe that this input resulted in greater clarity of function and purpose for all parties.

October 4, 2006 Version

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM

AND

JUNEAU YOUTH SERVICES, INC.

EFFECTIVE DATES

1 October 2006 THROUGH 1 October 2011

RE BEHAVIORAL HEALTH CARE SERVICES:

Montana Creek Residential Program in Juneau, Alaska

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JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 2 of 9

ARTICLE I -RECITALS

This professional services agreement is entered into between SouthEast Alaska Regional Health Consortium ("SEARHC"), a non-profit corporation incorporated in the State of Alaska, and the Contractor, Juneau Youth Services, Inc. ("JYS"), an Alaska and federal non-profit entity conducting business in the State of Alaska.

ARTICLE II -PERIOD OF PERFORMANCE

The performance period of this agreement shall be five years from 1 October 2006, or until 1 October 2011.

ARTICLE III -DEFINITIONS

- A. Alaska Native/American Indian: For the purpose of this agreement, these terms mean an Indian, Aleut or Eskimo whose eligibility as a beneficiary of the Indian Health Service (IHS) and residency in Alaska has been verified by SEARHC. Questions of eligibility for a particular person shall be resolved by the Contract Health Services Manager whose decision may be appealed to the Corporate Business Officer, for SEARHC.
- B. Juneau Youth Services, Inc.: A non-profit corporation incorporated in the State of Alaska and located at P.O. Box 32839, Juneau, Alaska 99803.
- C. JYS: Juneau Youth Services, Inc.
- D. SouthEast Alaska Regional Health Consortium: A consortium of federally-recognized tribes incorporated as a non-profit corporation in the State of Alaska and located at 3245 Hospital Drive in Juneau, Alaska, with a hospital facility, Mt. Edgecumbe Hospital located at 222 Tongass Drive, in Sitka, Alaska. SEARHC is a tribal organization within the meaning of 25 USC 450f(d) that provides health care services in Southeast Alaska to American Indians, Alaska Natives and other eligible individuals in a manner that is appropriate to their cultural values and traditions, under the Alaska Tribal Health Compact and funding agreement with the Indian Health Service (IHS) authorized by Sec. 325 of P.L. 105-83 and Title V of the Indian Self-Determination Act of 1975, 25 U.S.C. §§ 450, et seq., Pub. L. No. 93-638, as amended.
- E. SEARHC: SouthEast Alaska Regional Health Consortium. SEARHC is enrolled with the State of Alaska as a Medicaid provider.
- F. Project Officer/Contractor contact information: Unless otherwise stated, the Project Officer for this agreement will be the Behavioral Health Division Director of SEARHC. The Project Officer is responsible for

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 3 of 9

monitoring Agreement-related progress, and certifying the completion of satisfactory agreement performance, providing technical assistance if needed and assisting with the resolution of technical problems. The contact person for the Contractor will be the Executive Director of JYS.

- G. Facility: The 15-bed, level 4 treatment facility located at 10801 Black Bear Road in Juneau, Alaska (beside the Miller House). The name of the facility is the Montana Creek Residential Program.
- H. Public Purpose: Construction of the Montana Creek Residential Program facility was the culmination of collaborative efforts by SEARHC and JYS in recognizing and responding to the critical need for behavioral health services for children and adolescents in Southeast Alaska. The State of Alaska has strongly encouraged SEARHC and JYS to develop and jointly operate the Montana Creek Residential Program as part of the State's "Bring the Kids Back Home" initiative. The State of Alaska, JYS and SEARHC agree that there is a great need for the services that will be provided at the Montana Creek Residential Program, and that those services can be best provided through this joint effort. This collaborative endeavor is intended to serve the youth of Southeast Alaska, who will, for the first time, be able to receive critically needed services in a facility close to their home communities.
- I. Public, Nonprofit and Foundation Funding. The Montana Creek Residential Program facility's construction is funded entirely through public, non-profit and foundation funding. The completion of this project was made possible only with very generous grants from the Denali Commission and Rasmussen Foundation, whose vision and direction was responsible for SEARHC's participation in this collaborative project, and through the consistent and dedicated support of the State of Alaska and Alaska's Congressional Delegation.

ARTICLE IV -SCOPE OF WORK; COMPENSATION

JYS agrees to provide professional services to SEARHC on the following terms and conditions:

A. **Services Provided.** JYS agrees to provide residential behavioral services at the Montana Creek Residential Program to youth eligible for SEARHC services.

B. **Operator/Programmatic and Clinical Decisions.** JYS agrees to operate the Facility and to make all programmatic and clinical decisions at the Facility. JYS agrees to maintain all required licenses and certifications and meet

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 4 of 9

all legal requirements for provision of appropriate services in the Facility.

C. **Billing Agent:** JYS agrees to act as SEARHC's billing agent with all payers for the behavioral health services provided within the Facility. JYS will process and submit Medicaid billings for Medicaid-eligible youth on SEARHC's behalf, using SEARHC's provider number and in accordance with all applicable state and federal regulations. JYS will bill all primary and secondary payers for all allowable costs, and will provide all necessary information to payers in a timely manner to ensure maximum reimbursement for services provided in the Facility. In the event that any financial audit related to the Facility's operations indicates that funds for behavioral health services provided by JYS in the Facility that have been billed under item D below must be repaid by SEARHC to any payer, JYS agrees to fully reimburse SEARHC for any financial pay-back to the payer (including any fines, penalties and interest).

D. **Payment to JYS for Rent and Services Provided:** SEARHC agrees to pay JYS on a monthly basis for all reimbursable behavioral health services provided by JYS in the Facility that have been billed under item C in this section. The charge to SEARHC for all client services will be equal to 97.2% of the published rates for allowable costs in the Alaska Medical Assistance Program, Behavioral Health Services (Community Mental Health Clinics and Substance Abuse Services) Provider Billing Manual at the time services are provided. The signatories to this Agreement may adjust this billing rate on an annual basis, effective 1 July of each year, beginning 1 July 2007. Unless so adjusted, the current rate will remain in effect. If so adjusted, the adjusted rate will then apply prospectively to all services provided hereunder. Charges will be assessed on a fee-for-service basis for client services, including assessments and services delineated in clients' individualized treatment plans. SEARHC will pay JYS within two weeks of receiving JYS's invoice for services rendered. The parties agree that the payments made under this section, together with other consideration, mutual promises and covenants in this Agreement, reflect the fair market value of JYS's services to SEARHC and the fair market value for the rent of the Facility and for all associated equipment, supplies and materials provided under this Agreement, as that term is defined in 42 CFR § 411.351.

E. **Quality Assurance.** SEARHC agrees that it will retain the ultimate responsibility for quality assurance for services provided to clients in the facility. The parties agree in good faith to establish an overall framework for the Facility-related programs that are compatible with quality assurance standards for each agency, that are in full compliance with all applicable federal and state rules, and are acceptable to the other party. The parties agree that third party review of the facility and the program will be made available to either party as part of the quality review process. The parties further agree to make available records pertaining to quality assurance to the other party when requested to do so and to cooperatively formulate a framework to ensure the confidentiality of information of clients and records.

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 5 of 9

F. **Compliance with Law.** SEARHC and JYS intend to fully comply with 42 U.S.C. § 1320a-7b(b), commonly known as the federal Anti-Kickback Statute, with all federal and state law provisions governing fraud, abuse or referrals under the Medicaid program and other federal and state health care programs; intend that this professional services agreement comply with and is to be interpreted consistent with the Anti-Kickback Statute safe harbors, including the safe harbor set forth in 42 C.F.R. § 1001.952(d) (professional services and management contracts), as those rules may be amended; and agree that in the event any court or administrative agency of competent jurisdiction determines that this professional services agreement violates any such statutes, rules or regulations or that the compensation under this professional services agreement exceeds reasonable compensation, that SEARHC and JYS shall take all actions necessary to comply with, and to conform this professional services agreement to, those statutes, rules or regulations.

ARTICLE V - LIABILITY INSURANCE COVERAGE

A. SEARHC is a participant in the Alaska Tribal Health Compact and has annual funding agreements with the IHS. As such, claims against SEARHC and its employees, including its employees' action on behalf of SEARHC as provided in 28 U.S.C. § 2671, including any individual who provides health care services pursuant to a personal services contract with SEARHC for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service, are deemed to be claims against the United States that are covered by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346, 2401 and 2671-2680, pursuant to 42 U.S.C. §233, 25 U.S.C. § 450f(d) and 25 U.S.C. §1680c(d), § 314 of P.L. 101-512, as amended. SEARHC agrees that it will submit all such claims that arise out of the operation of the Montana Creek Residential Program to the United States and use its best efforts to secure the United States' agreement to defend and indemnify SEARHC and JYS for any such claims. Because of the nature of the FTCA, SEARHC does not represent or warrant that any or every claim against JYS, or SEARHC, will be covered by the Federal Tort Claims Act or that the United States will agree to defend or indemnify either JYS or SEARHC for any or every such claim. JYS agrees to indemnify and hold harmless SEARHC for all claims arising out of any actions which are finally determined to constitute malpractice or negligence and are not otherwise covered by the Federal Tort Claims Act. JYS's obligation to seek coverage and to indemnify and hold SEARHC harmless will arise only for those claims not covered by the FTCA. This does not relieve JYS of the obligation to notify its insurer(s) of any claim to protect against a failure-to-notify coverage defense.

B. JYS agrees to maintain liability insurance in a commercially-reasonable amount for its professional and paraprofessional staff. It further agrees to provide proof of that coverage to SEARHC upon demand. JYS agrees not to terminate such coverage without giving SEARHC thirty (30) days' advance written notice.

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 6 of 9

ARTICLE VI - PERSONNEL

Each party shall provide all necessary personnel required to carry out the terms of this agreement. JYS agrees that it will be responsible for providing a professional and paraprofessional staff with all requisite training, experience and licenses, and that meets all applicable legal requirements for the provision of behavioral health services at the Facility.

ARTICLE VII - SUPPLIES

JYS agrees to furnish all supplies and equipment necessary to carry out this Agreement at the Facility.

ARTICLE VIII - RECORDS & REPORTS

A. JYS agrees to be the custodian of contemporaneously-made complete records relating to persons receiving services pursuant to this agreement, including records relating to informed consent, services provided, and billing and payment records. These records will be available to JYS and SEARHC at all times. JYS will maintain records in accordance with all legal requirements. Client records must contain sufficient information to plainly identify the patient, to justify diagnosis and treatment, and to document services accurately.

B. With reasonable advance notice, the Co-Project Officers or their agents shall be entitled to visit the Facility and review the administrative and clinical records pertaining to Facility residents receiving services provided under this agreement.

C. Each party to this agreement shall comply with the requirements of the Privacy Act of 1974 relating to the maintenance, release and the disposition of records of beneficiaries served under this agreement.

D. Each party reserves the right to audit applicable Facility-related records and receive appropriate supporting documents to evidence accomplished contractual requirements and costs.

ARTICLE IX - AMENDMENTS AND EXTENSION

This agreement may be extended or amended by mutual agreement of participating parties.

ARTICLE X – TERMINATION

This agreement may terminate for any of the following:

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 7 of 9

A. Either duly-authorized representative of JYS or SEARHC may terminate this contract without prior notice in the event of willful negligence and/or actions by the other party that endanger clients or management.

B. Either party may terminate this contract, with or without cause, by giving six (6) months' advance written notice to the other party.

C. This contract shall automatically terminate should either party be excluded from participation in the Medicaid or Medicare programs, have its Alaska Business License terminated for any reason, or lose any required professional license, certificate or registration required to perform this contract.

D. The expectation is for this to be a long term business agreement. Unless terminated as indicated above, this agreement shall remain in effect for 5 years from the effective date, and will be renewed in increments of 5 years.

E. The agreement may be modified only with the signatures of the authorized representatives on behalf of JYS and SEARHC, respectively.

ARTICLE XI - HIPAA REQUIREMENTS

The parties agree to comply with HIPAA, as provided in their HIPAA Business Agreements, which are hereby incorporated by reference.

ARTICLE XII – Responsibilities

A. Each party to this agreement verifies that it and any other partner to this agreement are not currently excluded by the Office of the Inspector General (OIG), Department of Health and Human Services, and/or the General Services Administration (GSA).

B. Each party to this agreement agrees to notify the other party within 5 working days in the event that either party or any partner(s) becomes excluded by the OIG or the GSA.

IN WITNESS WHEREOF, the parties by signature affirm this agreement, with an effective date of 1 October 2006.

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 8 of 9

JYS, Inc.

SEARHC

By: Walter Meyers
Its: Executive Director

By: Kenneth Brown
Its: Pres/COO

JYS, Inc./SEARHC Professional Services Agreement,
1 October 2006, Page 9 of 9

Business Associate Agreements (January 12, 2007)

The business associate agreements set forth the framework that the organizations will use to address protected health information. The agreements contain provisions concerning duties and responsibilities for each party, and the use and disclosure of protected health information.

Observations

1. We decided to have two separate business associate agreements. In one agreement, SEARHC is the covered entity and JYS is the business associate. In the second agreement the roles are reversed with JYS being the covered entity and SEARHC being the business associate. We chose this course to provide for the maximum protection of health care records.
2. Collaborating entities are encouraged to think carefully about how confidential client information will be shared between the entities, and to ensure that all information exchanges comply with pertinent confidentiality laws.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (Agreement) is made this 12th day of January 2007, between the Juneau Youth Services (JYS), a non-profit corporation duly organized under the laws of the State of Alaska, and the SouthEast Alaska Regional Health Consortium (the "Associate") a non-profit corporation duly organized under the laws of the State of Alaska. This Agreement supplements and is made a part of any contract between JYS and the Associate.

WITNESSETH:

WHEREAS, JYS is subject to certain privacy obligations under the Health Insurance Portability and Accountability Act (HIPAA),

WHEREAS, pursuant to HIPAA and the regulations promulgated thereunder, JYS is required to have a Business Associate Agreement with the Associate,

WHEREAS, the Associate is deemed a Business Associate,

WHEREAS, the Associate will have access to and/or be given Protected Health Information (PHI) and/or Electronic Protected Health Information (E-PHI) to fulfill its contractual obligation to JYS,

WHEREAS, the Associate is required to abide by the HIPAA regulations in respect to safeguarding the PHI/E-PHI,

WHEREAS, the Associate assures JYS that it will abide by this Agreement and any other contract,

NOW, THEREFORE, in consideration of the mutual obligations, promises and covenants contained herein, and intending to be legally bound hereby, JYS and the Associate agree as follows:

1. *Length of Contract.*

This Agreement shall be effective as of the date first above written. Subject to the provisions of Section 3 of this Agreement, this Agreement shall remain in full force and effect for as long as JYS and the Associate have a valid contract that has not been revoked, cancelled, terminated, or otherwise not in good standing.

Approved: 8/03
Revised: 6/05

1

2. Terms.

- 2.1 "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. § 160.103.
- 2.2 "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501.
- 2.3 "Electronic media" shall have the same meaning as in 45 CFR §160.103.
- 2.4 "Electronic Protected Health Information" (E-PHI) shall have the same meaning as in 45 CFR §160.103.
- 2.5 "Security Incident" shall have the same meaning as in 45 CFR §164.304.
- 2.6 PHI and/or E-PHI is limited to the information the Associate may receive from JYS, information the Associate may access or be exposed to through performing services for JYS, or information that the Associate may create or receive on behalf of JYS.
- 2.7 Any references in this Agreement to HIPAA or to a section of the HIPAA regulations means that section as in effect or as may be amended.

3. Use and Disclosure of Protected Health Information/Electronic Protected Health Information.

The parties hereto agree that in order for the Associate to perform its duties as expected by JYS, it will be necessary for the Associate to use and disclose PHI and/or E-PHI.

Permitted and Required Uses and Disclosures of PHI and/or E-PHI.

The parties hereto agree that the Associate may use and disclose PHI/E-PHI in order to carry out any Payment function covered under the definition of "Payment" contained in 45 CFR § 164.501. The parties hereto further agree that the Associate may use or disclose PHI/E-PHI for any use or disclosure that is required by HIPAA or any other applicable law.

4. Termination.

4.1 Termination for Breach.

Pursuant to 45C.F.R.§ 164.504(e)(2)(iii), JYS may terminate this

Agreement if JYS determines that the Associate has breached a material term of this Agreement. In the event of a material breach of the Associate's duties and responsibilities contained in Sections 5.1 through and including 5.9 of this Agreement, JYS may immediately terminate this Agreement upon written notice to the Associate. In the event of a claimed material breach of any other provision of this Agreement by the Associate, JYS shall give the Associate written notice of the alleged material breach. The Associate shall have ten (10) days from the date of any written notice of breach to cure the alleged breach. In the event the Associate cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event that the Associate fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

5. Duties and Responsibilities of the Associate.

- 5.1 *Restrictions on Use and Disclosure of PHI/E-PHI.* The Associate shall not use or further disclose any PHI/E-PHI other than as permitted or required by this Agreement, or as required by law;
- 5.2 *Safeguarding of PHI/E-PHI.* The Associate shall use appropriate safeguards to prevent the use or disclosure of PHI/E-PHI other than as provided for in this Agreement;
- 5.3 *Reporting of Unauthorized Use or Disclosure of PHI/E-PHI.* The Associate shall report to JYS any use or disclosure of PHI/E-PHI not provided for by this Agreement of which the Associate becomes aware;
- 5.4 *Protection of PHI/E-PHI by Agents and Subcontractors.* The Associate shall ensure that any agents, including any subcontractors, to whom it provides PHI/E-PHI received from, or created or received by the Associate on behalf of JYS agrees to the same restrictions and conditions that apply to the Associate with respect to such PHI/E-PHI, including using only the minimum necessary PHI/E-PHI;
- 5.5 *Access to PHI/E-PHI.* The Associate shall make available PHI in accordance with 45 CFR §164.524 within ten (10) days after receipt of a request from JYS for access to PHI in the possession of the Associate. The Associate shall make such PHI available to JYS within ten (10) days after receipt of a request from an individual for access to PHI in the possession of the Associate; the Associate shall forward such request to JYS;
- 5.6 *Amendments to PHI/E-PHI.* Within ten (10) days after receipt of a request from JYS for an amendment to any PHI/E-PHI, the Associate shall make

the requested PHI/E-PHI available to JYS for amendment and shall incorporate any such amendments into the PHI in accordance with 45 CFR §164.526. Within ten (10) days after receipt of a request from an individual for an amendment to any PHI, the Associate shall forward such request to JYS;

- 5.7 *Accountings.* Within ten (10) days after receipt of notice from JYS that JYS has received a request from an individual for an accounting of disclosures of PHI/E-PHI regarding the individual during the six (6) years prior to the date on which the accounting was requested, the Associate shall make available to JYS such information as is in the Associate's possession and is required for JYS to provide an accounting of disclosures of PHI to the individual in accordance with 45 CFR § 164.528;
- 5.8 *Internal Practices, Books, and Records.* The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI/E-PHI received from, or created or received by the Associate on behalf of JYS available to the Secretary of the Department of Health and Human Services for purposes of determining JYS's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations; and,
- 5.9 *Duties with Regard to PHI/E-PHI Upon Termination of this Agreement.* At termination of this Agreement, if feasible, the Associate shall return or destroy all PHI/E-PHI received from or created or received by the Associate on behalf of JYS that the Associate still maintains in any form and retain no copies of such PHI/E-PHI. If such return or destruction is not feasible, the Associate shall extend the protections of this Agreement to the PHI/E-PHI and limit further uses and disclosures of the PHI/E-PHI to those purposes that make the return or destruction of the PHI/E-PHI not feasible.
- 5.10 *Duty to Report Security Incidents.* The Associate will report to JYS any Security Incident of which it becomes aware in the following time and manner:
 - a. Any actual, successful Security Incident will be reported to JYS in writing, within five (5) business days of the date on which the Associate becomes aware of such Security Incident.
 - b. Any attempted, unsuccessful Security Incident of which the Associate becomes aware will be reported to JYS in writing upon the written request of JYS.
 - c. Upon the written request of JYS, the Associate will be required to send to JYS copies of all security audits and/or assessments conducted by the Associate or a third-party.

6. Duties and Responsibilities of JYS.

- 6.1 *Preparation and Delivery of Accountings.* It shall be the sole responsibility of JYS to prepare and deliver any accounting requested pursuant to 45 CFR §164.528;
- 6.2 *Decisions Concerning Access to PHI/E-PHI.* In the event that an individual has requested access to PHI directly from the Associate, and the Associate has forwarded such request to JYS in accordance with Section 5.5 of this Agreement, it shall be the sole responsibility of JYS to determine whether to grant or deny such access;
- 6.3 *Amendment of PHI/E-PHI.* In the event that an individual has requested an amendment to PHI/E-PHI directly from the Associate, and the Associate has forwarded such request to JYS in accordance with Section 5.6 of this Agreement, it shall be the sole responsibility of JYS to determine whether to allow or disallow such amendment.
- 6.4 *Minimum Necessary.* It shall be the responsibility of JYS to determine the minimum necessary PHI pursuant to 45 CFR § 164.502(b). If applicable, attachment 1 shall be used to identify the minimum necessary PHI/E-PHI that will be disclosed to the Associate.

7. Representations and Warranties of JYS.

JYS hereby represents and warrants to the Associate as follows:

- 7.1 *Accurate Information.* All accounts placed with the Associate by JYS shall contain accurate information;
- 7.2 *Consents and Authorizations.* Prior to disclosing any PHI/E-PHI to the Associate, JYS shall obtain all required consents and authorizations pursuant to 45 CFR § 164.506 and 45 CFR § 164.508 respectively, sufficient to permit the disclosure of PHI from JYS to the Associate, and to permit the Associate to perform its duties pursuant to the terms of this Agreement;
- 7.3 *No Restrictions.* JYS shall not place any account with the Associate if JYS has agreed to any individual's request to restrict the use or disclosure of PHI connected with such account pursuant to 45 CFR § 164.522; and,
- 7.4 *Organization and Authority.* JYS is a valid corporation under the laws of the State of Alaska and has all requisite power and authority to enter into

this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by JYS and constitutes a legal, valid and binding obligation of JYS, enforceable against it in accordance with its terms.

8. Confidentiality.

The Associate agrees to keep all PHI/E-PHI received from, or created or received by the Associate on behalf of JYS confidential except as necessary for the Associate to perform its duties pursuant to the terms of this Agreement. The Associate's duty to maintain the confidentiality of PHI/E-PHI shall continue forever, unless disclosure of such information should be allowed or required by law.

9. No Third Party Beneficiaries.

JYS and the Associate hereby expressly understand and agree that individuals whose PHI/E-PHI is disclosed by JYS to the Associate are not intended to be third party beneficiaries of this Addendum or the Contract for Services.

10. Independent Associate Status.

The parties hereto expressly agree that in performing its duties under this Addendum and the Contract for Services, the Associate is acting as an independent Associate (contractor) of JYS. Nothing contained herein is intended, nor shall it be construed to create a joint venture relationship, a partnership, or an employer-employee relationship between the parties.

11. Enforcement.

If either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of the action, including without limitation, reasonable attorneys' fees.

12. Severability.

Approved: 8/03
Revised: 6/05

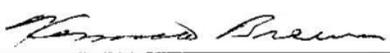
If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not affect, impair or invalidate the remainder of this Agreement.

13. Change of Law.

The parties hereto shall modify any term of this Agreement at anytime if it is determined that the inclusion of any term of this Agreement or the omission of any term from this Agreement violates any federal or state law or regulation, including, without limitation: the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164); the Health Insurance Reform: Standards for Electronic Transactions; Announcement of Designated Standard Maintenance Organizations (45 CFR Parts 160 and 162); and the Security and Electronic Signature Standards (the "Security Standard") (45 CFR Part 142), all promulgated under the Health Insurance Portability and Accountability Act of 1996 (Pub.Law104-191).

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

By: 
Walter Majors, Executive Director
Juneau Youth Services

By: 
Kenneth Brewer, President/CEO
SouthEast Alaska Regional Health Consortium

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (Agreement) is made this 12th day of January, 2007, between the SouthEast Alaska Regional Health Consortium (SEARHC), a non-profit corporation duly organized under the laws of the State of Alaska, and Juneau Youth Services (the "Associate") a non-profit corporation duly organized under the laws of the State of Alaska. This Agreement supplements and is made a part of any contract between SEARHC and the Associate.

WITNESSETH:

WHEREAS, SEARHC is subject to certain privacy obligations under the Health Insurance Portability and Accountability Act (HIPAA),

WHEREAS, pursuant to HIPAA and the regulations promulgated thereunder, SEARHC is required to have a Business Associate Agreement with the Associate,

WHEREAS, the Associate is deemed a Business Associate,

WHEREAS, the Associate will have access to and/or be given Protected Health Information (PHI) and/or Electronic Protected Health Information (E-PHI) to fulfill its contractual obligation to SEARHC,

WHEREAS, the Associate is required to abide by the HIPAA regulations in respect to safeguarding the PHI/E-PHI,

WHEREAS, the Associate assures SEARHC that it will abide by this Agreement and any other contract,

NOW, THEREFORE, in consideration of the mutual obligations, promises and covenants contained herein, and intending to be legally bound hereby, SEARHC and the Associate agree as follows:

1. Length of Contract.

This Agreement shall be effective as of the date first above written. Subject to the provisions of Section 3 of this Agreement, this Agreement shall remain in full force and effect for as long as SEARHC and the Associate have a valid contract that has not been revoked, cancelled, terminated, or otherwise not in good standing.

Approved: 8/03
Revised: 6/05

2. Terms.

- 2.1 "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. § 160.103.
- 2.2 "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501.
- 2.3 "Electronic media" shall have the same meaning as in 45 CFR §160.103.
- 2.4 "Electronic Protected Health Information" (E-PHI) shall have the same meaning as in 45 CFR §160.103.
- 2.5 "Security Incident" shall have the same meaning as in 45 CFR §164.304.
- 2.6 PHI and/or E-PHI is limited to the information the Associate may receive from SEARHC, information the Associate may access or be exposed to through performing services for SEARHC, or information that the Associate may create or receive on behalf of SEARHC.
- 2.7 Any references in this Agreement to HIPAA or to a section of the HIPAA regulations means that section as in effect or as may be amended.

3. Use and Disclosure of Protected Health Information/Electronic Protected Health Information.

The parties hereto agree that in order for the Associate to perform its duties as expected by SEARHC, it will be necessary for the Associate to use and disclose PHI and/or E-PHI.

Permitted and Required Uses and Disclosures of PHI and/or E-PHI.

The parties hereto agree that the Associate may use and disclose PHI/E-PHI in order to carry out any Payment function covered under the definition of "Payment" contained in 45 CFR § 164.501. The parties hereto further agree that the Associate may use or disclose PHI/E-PHI for any use or disclosure that is required by HIPAA or any other applicable law.

4. Termination.

4.1 Termination for Breach.

Pursuant to 45C.F.R.§ 164.504(e)(2)(iii), SEARHC may terminate this

Agreement if SEARHC determines that the Associate has breached a material term of this Agreement. In the event of a material breach of the Associate's duties and responsibilities contained in Sections 5.1 through and including 5.9 of this Agreement, SEARHC may immediately terminate this Agreement upon written notice to the Associate. In the event of a claimed material breach of any other provision of this Agreement by the Associate, SEARHC shall give the Associate written notice of the alleged material breach. The Associate shall have ten (10) days from the date of any written notice of breach to cure the alleged breach. In the event the Associate cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event that the Associate fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

5. Duties and Responsibilities of the Associate.

- 5.1 *Restrictions on Use and Disclosure of PHI/E-PHI.* The Associate shall not use or further disclose any PHI/E-PHI other than as permitted or required by this Agreement, or as required by law;
- 5.2 *Safeguarding of PHI/E-PHI.* The Associate shall use appropriate safeguards to prevent the use or disclosure of PHI/E-PHI other than as provided for in this Agreement;
- 5.3 *Reporting of Unauthorized Use or Disclosure of PHI/E-PHI.* The Associate shall report to SEARHC any use or disclosure of PHI/E-PHI not provided for by this Agreement of which the Associate becomes aware;
- 5.4 *Protection of PHI/E-PHI by Agents and Subcontractors.* The Associate shall ensure that any agents, including any subcontractors, to whom it provides PHI/E-PHI received from, or created or received by the Associate on behalf of SEARHC agrees to the same restrictions and conditions that apply to the Associate with respect to such PHI/E-PHI, including using only the minimum necessary PHI/E-PHI;
- 5.5 *Access to PHI/E-PHI.* The Associate shall make available PHI in accordance with 45 CFR §164.524 within ten (10) days after receipt of a request from SEARHC for access to PHI in the possession of the Associate. The Associate shall make such PHI available to SEARHC within ten (10) days after receipt of a request from an individual for access to PHI in the possession of the Associate; the Associate shall forward such request to SEARHC;
- 5.6 *Amendments to PHI/E-PHI.* Within ten (10) days after receipt of a request from SEARHC for an amendment to any PHI/E-PHI, the Associate shall

make the requested PHI/E-PHI available to SEARHC for amendment and shall incorporate any such amendments into the PHI in accordance with 45 CFR §164.526. Within ten (10) days after receipt of a request from an individual for an amendment to any PHI, the Associate shall forward such request to SEARHC;

- 5.7 *Accountings.* Within ten (10) days after receipt of notice from SEARHC that SEARHC has received a request from an individual for an accounting of disclosures of PHI/E-PHI regarding the individual during the six (6) years prior to the date on which the accounting was requested, the Associate shall make available to SEARHC such information as is in the Associate's possession and is required for SEARHC to provide an accounting of disclosures of PHI to the individual in accordance with 45 CFR § 164.528;
- 5.8 *Internal Practices, Books, and Records.* The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI/E-PHI received from, or created or received by the Associate on behalf of SEARHC available to the Secretary of the Department of Health and Human Services for purposes of determining SEARHC's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations; and,
- 5.9 *Duties with Regard to PHI/E-PHI Upon Termination of this Agreement.* At termination of this Agreement, if feasible, the Associate shall return or destroy all PHI/E-PHI received from or created or received by the Associate on behalf of SEARHC that the Associate still maintains in any form and retain no copies of such PHI/E-PHI. If such return or destruction is not feasible, the Associate shall extend the protections of this Agreement to the PHI/E-PHI and limit further uses and disclosures of the PHI/E-PHI to those purposes that make the return or destruction of the PHI/E-PHI not feasible.
- 5.10 *Duty to Report Security Incidents.* The Associate will report to SEARHC any Security Incident of which it becomes aware in the following time and manner:
 - a. Any actual, successful Security Incident will be reported to SEARHC in writing, within five (5) business days of the date on which the Associate becomes aware of such Security Incident.
 - b. Any attempted, unsuccessful Security Incident of which the Associate becomes aware will be reported to SEARHC in writing upon the written request of SEARHC.
 - c. Upon the written request of SEARHC, the Associate will be required to send to SEARHC copies of all security audits and/or

assessments conducted by the Associate or a third-party.

6. Duties and Responsibilities of SEARHC.

- 6.1 *Preparation and Delivery of Accountings.* It shall be the sole responsibility of SEARHC to prepare and deliver any accounting requested pursuant to 45 CFR §164.528;
- 6.2 *Decisions Concerning Access to PHI/E-PHI.* In the event that an individual has requested access to PHI directly from the Associate, and the Associate has forwarded such request to SEARHC in accordance with Section 5.5 of this Agreement, it shall be the sole responsibility of SEARHC to determine whether to grant or deny such access;
- 6.3 *Amendment of PHI/E-PHI.* In the event that an individual has requested an amendment to PHI/E-PHI directly from the Associate, and the Associate has forwarded such request to SEARHC in accordance with Section 5.6 of this Agreement, it shall be the sole responsibility of SEARHC to determine whether to allow or disallow such amendment.
- 6.4 *Minimum Necessary.* It shall be the responsibility of SEARHC to determine the minimum necessary PHI pursuant to 45 CFR § 164.502(b). If applicable, attachment 1 shall be used to identify the minimum necessary PHI/E-PHI that will be disclosed to the Associate.

7. Representations and Warranties of SEARHC.

SEARHC hereby represents and warrants to the Associate as follows:

- 7.1 *Accurate Information.* All accounts placed with the Associate by SEARHC shall contain accurate information;
- 7.2 *Consents and Authorizations.* Prior to disclosing any PHI/E-PHI to the Associate, SEARHC shall obtain all required consents and authorizations pursuant to 45 CFR § 164.506 and 45 CFR § 164.508 respectively, sufficient to permit the disclosure of PHI from SEARHC to the Associate, and to permit the Associate to perform its duties pursuant to the terms of this Agreement;
- 7.3 *No Restrictions.* SEARHC shall not place any account with the Associate if SEARHC has agreed to any individual's request to restrict the use or disclosure of PHI connected with such account pursuant to 45 CFR § 164.522; and,

Approved: 8/03
Revised: 6/05

7.4 *Organization and Authority.* SEARHC is a valid corporation under the laws of the State of Alaska and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by SEARHC and constitutes a legal, valid and binding obligation of SEARHC, enforceable against it in accordance with its terms.

8. Confidentiality.

The Associate agrees to keep all PHI/E-PHI received from, or created or received by the Associate on behalf of SEARHC confidential except as necessary for the Associate to perform its duties pursuant to the terms of this Agreement. The Associate's duty to maintain the confidentiality of PHI/E-PHI shall continue forever, unless disclosure of such information should be allowed or required by law.

9. No Third Party Beneficiaries.

SEARHC and the Associate hereby expressly understand and agree that individuals whose PHI/E-PHI is disclosed by SEARHC to the Associate are not intended to be third party beneficiaries of this Addendum or the Contract for Services.

10. Independent Associate Status.

The parties hereto expressly agree that in performing its duties under this Addendum and the Contract for Services, the Associate is acting as an independent Associate (contractor) of SEARHC. Nothing contained herein is intended, nor shall it be construed to create a joint venture relationship, a partnership, or an employer-employee relationship between the parties.

11. Enforcement.

If either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of the action, including without limitation, reasonable attorneys' fees.

12. Severability.

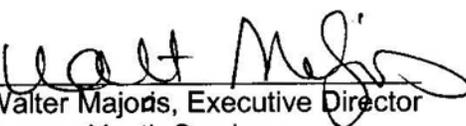
If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not affect, impair or invalidate the remainder of this Agreement.

13. Change of Law.

The parties hereto shall modify any term of this Agreement at anytime if it is determined that the inclusion of any term of this Agreement or the omission of any term from this Agreement violates any federal or state law or regulation, including, without limitation: the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164); the Health Insurance Reform: Standards for Electronic Transactions; Announcement of Designated Standard Maintenance Organizations (45 CFR Parts 160 and 162); and the Security and Electronic Signature Standards (the "Security Standard") (45 CFR Part 142), all promulgated under the Health Insurance Portability and Accountability Act of 1996 (Pub.Law104-191).

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

By: 
Kenneth Brewer, President/CEO
SouthEast Alaska Regional Health Consortium

By: 
Walter Majors, Executive Director
Juneau Youth Services

VI. Continuing Care Agreement

The Continuing Care Agreement is a mechanism whereby Native health corporations may be reimbursed in an after-the-fact settlement process for losses incurred in the provision of children's health care services. After our business agreement documents were developed, we conducted a separate legal analysis to determine if the Continuing Care Agreement could be applied to the SEARHC/JYS collaborative venture, and if so, under what circumstances. This legal analysis yielded the following information.

- a. Use of the Continuing Care Agreement is possible, but certain conditions need to be met as outlined below.
- b. The joint venture program would need to be included in the Continuing Care Agreement (CCA) between the Native health corporation and the state.
- c. The reimbursement framework would need to be constructed so that any potential losses would be incurred by the Native health corporation, and not the other collaborating entity. The CCA can only reimburse the Native health organization for losses; it cannot extend this reimbursement mechanism to the other collaborating entity.
- d. The reimbursement framework, once again, needs to be compliant with the safe harbor provisions of the federal Anti-Kickback law. This law does not allow a "cover all losses" provision. The compensation amounts must be set in advance, and be consistent with "fair market value in arms-length transactions."

Observations

1. We strongly recommend that use of the Continuing Care Agreement (CCA) be considered early on in the financial negotiations between the collaborating entities. In our case, we established a reimbursement framework which placed the financial risks and potential losses onto JYS. We were therefore precluded from seeking reimbursement under the Continuing Care Agreement, even though the collaborative project was included in the CCA. To utilize the CCA within the JYS/SEARHC framework in the future would require us to shift the financial risks/losses to SEARHC.
2. Even if the business agreements are constructed to place the risk of financial losses with the Native health organization, this is not a guarantee that all losses will be reimbursed. Under the CCA, the state conducts an audit of the health corporation's financial records and determines what items are in fact reimbursable. In addition, the lag between the experience of the loss and ultimate reimbursement can be a year or more.

VII. Summary Comments

In many ways, developing the Montana Creek Residential Facility/Program was based on a “leap of faith.” When SEARHC and JYS began working together we knew that the project would entail many challenges. We started with no resources other than our genuine desire to improve services for Alaskan adolescents and families, and our willingness to develop a workable business model between our two agencies.

We discovered early on that the success of this endeavor would largely rest on our relationship. We were honest and open about our strengths and weaknesses. This helped to create an environment of trust and also gave us insight on which agency should take the lead on certain issues. We were much more effective because of the development of an honest working relationship at the outset of the project; this should be considered strongly by agencies that will be working together on a project of this nature.

We encountered many legal complexities with this project and urge others to devote adequate time and resources to this aspect of their collaborative facility and program development. Hopefully, the work we have done identifies many of the key issues and will help to reduce the level of effort required in this area by other entities.

We received support for this project at multiple levels within each of our agencies. Our governing bodies were supportive, key administrative staff in both agencies saw the benefits of this endeavor, and because we included program staff during key phases of the development of the project, they also got behind the project. We could not have succeeded without this support. This may be useful information for others who are planning similar projects.

Last, but not least, we received support from state agencies, state staff, as well as various foundations and commissions. They too sometimes took a “leap of faith” on this endeavor and trusted us to make the right decisions even when aspects of the project were not as clear as they might have wanted. We are indebted to all those stakeholders who supported our efforts and cleared the way for this collaborative project to take place.