

LEASE AND MANAGEMENT AGREEMENT

BY AND BETWEEN

CITY OF VALDEZ, ALASKA

AND

**VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION,
INCORPORATED**

**WITH RESPECT TO THE
VALDEZ MUSEUM AND HISTORICAL ARCHIVE**

As amended on May 5, 2021

Original agreement adopted on September 3, 1996

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LEASE AND MANAGEMENT AGREEMENT

THIS LEASE AND MANAGEMENT AGREEMENT (this "Agreement") is made as of the third day of September 1996 by and between CITY OF VALDEZ, ALASKA a political subdivision of the State of Alaska (the "City") and the VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INCORPORATED, an Alaska nonstock, nonprofit corporation (the "Museum Corporation") (the "City" and "Museum Corporation" are sometimes herein together referred to as the "Parties" and individually as a "Party").

WITNESSETH:

WHEREAS, the City owns and operates a local/regional history museum in Valdez, Alaska, known as the Valdez Museum and Historical Archive (the "Museum");

WHEREAS, the City owns the Museum's real property, including building and fixtures attached thereto (the "Current Buildings") in Valdez, Alaska, and more particularly described in Exhibit A attached hereto and hereby incorporated herein the (the "Current Sites");

WHEREAS, currently located in or around the Current Buildings, or in other locations on temporary loan from the Museum, are numerous artifacts, exhibits, and other items and materials of historical or scientific value or significance owned or held by the City and used or intended to be used for exhibition, display, education, or research in connection with or as a part of the activities and operations of the Museum (collectively the "Current Collections");

WHEREAS, currently located in or around the Current Buildings are various tangible personal property, other than the Current Collections, owned by the City for use in connection with the Museum, including, without limitation, equipment, chairs, tables, desks, furnishings, computers, office supplies, and materials used for the storage, handling or display of the Current Collections (collectively the "Current Personal Property");

WHEREAS, it is in the best interests of the Museum, the residents of the City and the public at large, that the City lease the Current Sites, the Current Buildings, the Current Personal Property, and the Current Collections to the Museum Corporation and that the Museum Corporation undertake primary responsibility for managing and operating the Museum as provided herein;

WHEREAS, the City and the Museum Corporation desire to set forth herein their agreements and understandings with respect to the Museum and other matters related thereto; and

WHEREAS, as used herein, the following terms shall have the following meanings:

"Collections" means, at any point in time, the Current Collections, plus all additional artifacts and archival materials of historical or scientific value or significance hereafter acquired or held by the City or the Museum Corporation to be used or intended to be used for exhibition, display, education, or research in connection with or as part of the activities and operations of the Museum, less any of the foregoing that shall be sold, transferred or otherwise disposed of in accordance with this Agreement. The term "Collections" includes objects of or documents relating to human activity and also specimens of naturally occurring objects and materials.

“Loaned Collections” means artifacts and archival materials that are held or possessed by the City or the Museum Corporation but are owned by others.

“Owned Collections” means artifacts and archival materials that are owned by the City or Museum Corporation.

“Personal Property” means, at any point in time, the Current Personal Property, plus all tangible personal property (other than the Collections) hereafter acquired by the City or the Museum Corporation for use in connection with the Museum, less any of the foregoing which shall be sold, transferred, or otherwise disposed of in accordance with this agreement.

“Members” of the Valdez Museum and Historical Archive Association (“VM&HA”) are exclusively the persons currently serving on the Valdez City Council and those who succeed them [see Article V, VM&HA Bylaws]. The Members appoint the VM&HA Board of Directors.

“Real Estate” means, at any point in time, the Current Sites and the Current Buildings plus any additional sites and real property interests in Valdez, Alaska or elsewhere, hereafter made subject to this Agreement by the terms hereof or by mutual agreement of the City and the Museum Corporation, plus all additions, extensions, improvements, betterments, and replacements hereafter constructed on the Current Sites or any such additional site, plus all rights, privileges, licenses, easements, tenements, hereditaments, and appurtenances belonging or appertaining to the foregoing, less any of the foregoing which shall be sold, transferred, or otherwise disposed of in accordance with this Agreement.

WHEREAS, the City has been authorized to enter into the Agreement by Resolution No. 96-71 adopted by the Valdez City Council on September 3, 1996.

NOW, THEREFORE, in consideration of Ten Dollars, the premises, the mutual promises and covenants contained therein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, such Parties hereby agree as follows:

ARTICLE I DEMISE AND OTHER PROPERTY TRANSFERS

Section 1.1 Demise of Real Estate, Personal Property and Collections.

The City does hereby lease, let and demise unto the Museum Corporation, and the Museum Corporation does hereby lease and rent from the City, all right, title, and interest of the City, now owned or hereafter acquired in the Real Estate, the Personal Property and the Collections on the terms and conditions set forth herein.

Section 1.2 Assignment of Rights in Loaned Collections.

The City does hereby assign to the Museum Corporation, and the Museum Corporation hereby accepts from the City, all right, title, and interest of the City in the Loaned Collections on the terms and conditions set forth herein where this is consistent with the terms and conditions for the original loan of the individual objects to the City.

ARTICLE II TERM; RENT; USE

Section 2.1 **Initial Term.**

This Agreement shall be for an initial term commencing on the 6th day of May, 2021, and expiring at 11:59 p.m. on December 31, 2025 (the “Initial Term”), unless sooner in the event of an earlier effective date and/or if terminated as provided herein.

Section 2.2 **Extended Terms.**

The Initial Term may be extended for four (4) successive periods of five (5) years each upon approval of the Valdez City Council (each such extended term is an “Extended Term” and collectively such extended terms are the “Extended Terms.”) (The Extended Terms and the Initial Term are collectively the “Term.”) (The term preceding any Extended Term is the “Preceding Term.”) Each Extended Term shall commence upon the expiration of the Preceding Term, subject to approval by the Valdez City Council, except that any Extended Term shall not so commence if:

(a) The Museum Corporation gives the City notice not less than six (6) months prior to the expiration of any Preceding Term that the Museum Corporation elects not to extend such Preceding Term, in which case this Agreement shall terminate upon the expiration of such Preceding Term.

Section 2.3 **Rent.**

During the Term hereof, the Museum Corporation shall, as rent for the use and occupancy of the Real Estate, the Personal Property, and the Collections, pay the City an annual rent of Ten Dollars (\$10), payable in advance, on or before the 15th day of January of each and every calendar year during the Term hereof.

Section 2.4 **Use of the Property.**

The Museum Corporation may use the property described in Article I for the purposes of a local/regional history museum, historical archive, and ancillary and related uses, from time to time, in a manner not substantially unlike the current contemporary uses of property by first-class local/regional history museums and historical archives in the United States.

ARTICLE III TAXES; UTILITIES; REPAIRS; INSURANCE

Section 3.1 **Property Taxes.**

The City agrees to exempt the Museum Corporation and the Museum Corporation agrees to accept the exemption from all general real property taxes, if any, levied against the property owners within the City during the Term of this Agreement. If during the Term of the Agreement any special assessment or other similar charge is levied against the Real Estate, the City shall waive or be responsible for payment thereof. The Museum Corporation will apply for this exemption as required by the Code of the City of Valdez.

Section 3.2 Utilities.

At all times during the Term of this Agreement, the Museum Corporation shall cause the Real Estate to receive such separately metered utility services as are necessary for the use and operation of the Real Estate by the Museum Corporation. The Museum Corporation agrees to pay when due all charges and costs for gas, heat, air conditioning, electricity, telephone, and any and all other utilities furnished to or consumed by the Museum Corporation in or upon the Real Estate during the Term hereof.

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Section 3.3 Repairs and Maintenance.¹

The Museum Corporation covenants and agrees that, at its expense, it will plan for, budget for, and perform or contract the performance of the following maintenance responsibilities on the Real Estate Buildings:

- (a) Interior janitorial services;
- (b) Replacements of light bulbs and receptacles as needed;
- (c) Exhibit maintenance;

The City, at its expense, will plan for, budget for, and perform or contract the performance of the following maintenance responsibilities as deemed necessary by the City:

- (a) Maintenance, repair, and replacement of the following systems: boiler, heating, Fire and Intrusion Alarm systems, HVAC, electrical, water and sewer,
- (b) Annual inspection of the fire alarm systems;
- (c) Snow removal from the parking lot and sidewalk area;
- (d) Repairs or replacement of paved plaza, flag poles, sidewalks, and parking lots;
- (e) Maintenance, repair or replacement to the exterior of the building;
- (f) Repairs or replacements that are necessitated by the willful or negligent acts or omission of the City, its agents, employees, contractors, invitees, or representatives;
- (g) Repairs or replacements that are necessitated by reason of fire or another casualty;
- (h) Repairs or replacements that are necessitated by reason of a defect in the condition of the Current Sites or Current Buildings that existed prior to this date; and
- (i) Repairs or replacements that are necessitated by reason of a breach of any warranty or representation of the City contained in this Agreement or by reason of the City's

¹ Section 3.3 was amended on Aug. 19, 2002, by Valdez City Council to clarify and specify responsibilities for building maintenance.

failure to perform or observe any term, covenant, or condition to be performed or observed by the City pursuant to this Agreement.

~~(j) Intrusion alarm system; and~~

~~(k) Fire alarm system including annual inspections.~~

Section 3.4 City Insurance Obligations.

Throughout the Term hereof, the City shall maintain in force insurance, at levels consistent with the coverage of other City facilities, covering:

- (a) The Real Estate (other than land) for replacement value thereof against loss or damage by fire or other hazards insurable by an extended coverage endorsement to standard fire insurance policies; and
- (b) The Personal Property and Artifacts against loss or damage by fire, other hazards, theft, and other risks in such manner and with such policy limits as are usual and customary for museums of the type and character of the Museum, as may be mutually determined between the City Manager and the VM&HA.

Throughout the Term hereof, the City shall maintain public liability insurance, the coverage limits of which are consistent with that for other facilities and/or properties of the City.

All such insurance shall be carried for the benefit of the City and the Museum Corporation as their interests appear.

Section 3.5 Museum Insurance Obligations.

Throughout the Term hereof, the Museum Corporation shall maintain workman's compensation insurance as required by state law with a waiver of subrogation in favor of the City.

Throughout the Term hereof, the Museum Corporation shall maintain officers and directors insurance, auto, and corporate liability insurance in an amount mutually determined between the City Manager and the VM&HA naming the City as an additional insured.

Section 3.6 Release of Liability and Waiver of Subrogation.

Whenever any loss, cost, damage, or expense resulting from any peril covered by any insurance carried is incurred by any Party to this Agreement in connection with the Museum, including, without limitation, the contents thereof, then the party so insured hereby releases the Party from any liability it may have on account of such loss, cost, damage, or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation that might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage.

ARTICLE IV ADDITION, IMPROVEMENTS AND ALTERATIONS

Section 4.1 Real Estate.

Subject to Members' approval, that shall not be unreasonably withheld, the Museum Corporation may make whatever improvements and additions to the Real Estate and construct whatever additional improvements on the Real Estate, as the Museum Corporation deems necessary or desirable in the best interest of the Museum. Trustees' approval shall not be required for non-structural modifications or additions to the interior of existing buildings on the Real Estate. All such real property improvements and additions, regardless of how funded, shall be deemed to be part of the Real Estate and shall be subject to the terms of this Agreement.

At any time during the Term hereof, subject to Members' approval, that shall not be unreasonably withheld, the Museum Corporation may alter, demolish, or remove any or all of the buildings and structures that are part of the Real Estate as it deems necessary or desirable in the best interests of the Museum provided, however, that prior to the demolition of any substantial portion of any such buildings, the Museum Corporation shall furnish the City with either:

(a) A resolution of the Board of Directors of the Museum Corporation containing findings, supported by the written opinion of an independent architect, to the effect that such demolition will not impair the structural integrity of, or the ability of the Museum Corporation to house a first-class Museum in, the remaining Real Estate, or

(b) Evidence that the portion of the Real Estate to be demolished will be replaced with newly acquired or constructed building(s) or building addition(s), the funding for which has been committed. Members' approval shall ~~not be required~~ for all demolitions, where such activity is needed for purposes of displays or exhibits.

Section 4.2 Personal Property.

The Museum Corporation may furnish, install and maintain on the Real Estate any and all personal property which the Museum Corporation deems necessary or desirable in connection with the operation of the Museum. All tangible personal property, other than Collections, acquired by the City or the Museum Corporation and installed in or located on the Real Estate for use in connection with the Museum, regardless of how funded, shall be deemed to be part of the Personal Property and shall be subject to the terms of this Agreement. The Museum Corporation may alter, rehabilitate and improve Personal Property in such manner, as it deems necessary or desirable in the best interests of the Museum.

Section 4.3 Collections.

The Museum Corporation may acquire whatever artifacts, exhibits, archival materials and other items of historical or scientific value or significance it deems necessary or desirable in connection with the operation of the Museum. All such items, regardless of how funded, shall be deemed to be Collections and shall be subject to the terms of this Agreement. The Museum Corporation may alter, rehabilitate, restore and improve Collections in such manner, as it deems necessary or desirable in the best interests of the Museum.

**ARTICLE V
MANAGEMENT OF THE MUSEUM**

Section 5.1 General Management.

Subject only to limitations expressly set forth in this Agreement, the Museum Corporation shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Museum during the Term of this Agreement. Without limiting the generality of the foregoing, but subject to such limitations, the Museum Corporation shall have the following rights and duties with respect to the management and operation of the Museum:

- (a) To employ, pay, supervise, and discharge all employees and personnel, including an Executive Director, as shall be deemed necessary or desirable by the Museum Corporation for the operation of the Museum;
- (b) To determine and carry out the labor policies of the Museum relating to, among other things, compensation, hours and conditions of employment, retirement and benefit plans, and the hiring and discharge of employees;
- (c) To contract for such goods and services as shall be deemed necessary or desirable by the Museum Corporation for the operation of the Museum;
- (d) To determine and carry out all policies relating to the exhibition and display of Collections in the Museum;
- (e) To determine and carry out all policies relating to the acquisition, loan, maintenance, exchange, lease, sale, disposal, accession, and de-accession of Collections;
- (f) To determine and carry out the historical, educational and research policies, programs, and activities of the Museum;
- (g) To keep and maintain the financial books and records of the Museum Corporation in accordance with generally accepted accounting principles;
- (h) To determine and carry out the budgetary and fiscal policies of the Museum, including the establishment of admission fees and other fees and charges for other services;
- (i) To determine, in consultation with the City, and carry out the building and maintenance policies for the properties of the Museum, including the Real Estate and the Personal Property;
- (j) To determine and carry out policies relating to the ancillary activities and services offered at the Museum without limitation;

- (k) To determine and carry out policies relating to the promotion and publicity of the Museum; and
- (l) To properly keep and maintain all Collection inventory records, accession records, and de-accession records_ ~~(existing records are described in Exhibit F hereto).~~

In performing its duties under this Section 5.1, the Museum Corporation shall exercise the same degree of care and skill exercised by nonprofit corporate owners and managers of similar local/regional history museums in the United States and shall comply in all material respects with all laws applicable to the conduct of its business and the use and operation of the Museum.

The Museum Corporation is an independent contractor for the management and operation of the Museum, and nothing herein is intended to create or shall be deemed to create a partnership or joint venture between the Museum Corporation and the City.

Section 5.2 Funding.

~~(a) Museum Endowment. Funding is provided to the Museum Corporation pursuant to Valdez Municipal Code 3.40.020 Valdez Museum memorial endowment account. During the first City Council meeting following the effective date of this agreement, the City will, by resolution, transfer and assign management authority for the Museum Endowment to the Members. If funds are available, the City may make a one time or scheduled deposits to the Museum Endowment. These contributions will acknowledge and demonstrate the City's long-term commitment to maintain its public trust property and will serve as an inducement to other potential donors to the Endowment.~~

~~—To complete the maturation of the Museum Endowment, the Museum Corporation will organize and conduct a long-range, formal fund development program. The Board of Directors will report the proceeds of this fund development program and all other revenue programs annually to the Members.~~

~~—In the distribution of revenues, the Members will allocate a minimum amount equal to 50 percent of the previous annual earnings of the Museum Endowment to the Fund's principal at the close of each fiscal year; the Members may use any remaining balance of the previous year's interest income from the Endowment and other program revenue to further enhance the Museum Endowment and/or to fund operational and capital expenses of the Museum Corporation as they deem appropriate.~~

~~(b) Phyllis Irish Memorial Fund. During the first City Council meeting following the effective date of this agreement, the City will, by resolution as above, transfer and assign management authority for the Phyllis Irish Memorial Fund to the Board of Directors; the resolution will specify the dollar amount to be transferred to VM&HA. This fund—established in memory of original Heritage Board member Phyllis Irish—will be invested in an interest bearing account as a revolving account to fund special projects such as acquisitions, publishing, restorations, scholarships, as requested by the Executive Director and approved by the Board of Directors.~~

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(e) (b) Funding for Museum Operations/Capital Improvements. The Board of Directors will provide the Members and the City with an annual budget request no later than the date established each fiscal year by the City Manager². This document will reflect the previous year's expenses and revenues and projections for future years. This projected budget will reflect funding requested for administration and operations of the Museum Corporation as well as requests for capital improvements; the City will review this request and recommend appropriate levels of funding.

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Funds appropriated for Museum operations shall be paid to the Museum Corporation in installments as mutually determined by the Parties.

During the fourth quarter of each fiscal year, the Board of Directors will report any General Fund budget surplus of the Museum Corporation to the Members for consideration and reallocation by the City.

Section 5.3 Museum to be operated as a Public Museum.

The Museum shall be operated as a facility open to the general public, subject to such reasonable rules and regulations as the Museum Corporation may promulgate in its discretion from time to time regarding matters such as, but not limited to: admission fees; day and hours of operation; the safety of employees and the general public; the safety, protection, and security of Collections; the anonymity of donors who desire anonymity; and, to the extent permitted by law, the confidentiality of employee records and business records.

Notwithstanding the foregoing, throughout the Term hereof, admission to the Museum shall be free to residents of the City a minimum of twelve (12) days of each year on such days as determined to be appropriate by the Museum Corporation.

Section 5.4 Accessions and De-accession of Collections.

By resolution of its Board of Directors, the Museum Corporation shall adopt a formal written policy regarding the accession and de-access of Collections. Upon its adoption and upon any amendment thereof, a copy of such policy or amended policy, as the case may be, shall be submitted to the Members for approval, which shall not be unreasonably withheld.

Commencing with the Effective Date of this Agreement, the Museum Corporation shall establish and maintain an inventory record of all newly accessioned Collections according to generally accepted museum inventory practices.

Section 5.5 Dispositions of Personal Property.

The Museum Corporation shall have the right to sell, lease, (as lessee or lessor), transfer or otherwise dispose of Personal Property as it deems necessary or desirable in the best interests of the Museum. In this disposition, the Museum Corporation will provide the City either the

² Amended on Aug. 19, 2002, by the Valdez City Council to change the date that the budget is due to the City.

opportunity of first refusal to acquire such personal Property either by transfer or purchase as appropriate. Upon request of the Members, the City shall execute and deliver such bills of sale or other instruments of transfer as the Museum Corporation may reasonably deem necessary or desirable to evidence, perfect or give legal effect to any such sale, lease transfer or other disposition.

Section 5.6 Grants and Releases of Interests in Real Estate.

The Museum Corporation shall have the right to lease portions of the Real Estate and to grant and release easements, licenses and property interests in the nature of subleases, easements or licenses in respect of the Real Estate to third parties as it deems necessary or desirable in the best interest of the Museum for any of the following purposes:

- (a) In the case of subleases and property interests in the nature of subleases to facilitate the exhibition or display of Collections or the provision of ancillary services or activities, such as the provision on food concessions or gift shops; provided, however, that any such sublease shall provide that it shall terminate contemporaneously with the expiration or earlier termination of this Agreement; and
- (b) In the case of easements, licenses and property interests in the nature of easements or licenses—to facilitate the provision of utility or transportation of services to the Museum.

Section 5.7 Funds of the Museum Corporation.

All funds of the Museum Corporation, whether derived from the City, from operations, from loans, from or in respect of the disposition of property, from insurance or condemnation proceeds, from gifts or bequests, or from other sources, shall be held and used by the Museum Corporation solely for the management, operation, maintenance, repair, expansion or betterment of the Museum. Funds that are received and accepted by the Museum Corporation subject to restrictions shall be held and used in accordance with such restrictions. Any budgetary surplus of VM&HA general fund revenue will be reported at the end of each fiscal year to the Member of the Corporation, as provided for in Section 5.2 (c).

By resolution of its Board of Directors, the Museum Corporation shall adopt a formal written policy regarding the investment of funds held by the Museum Corporation. Upon its adoption and upon any amendment thereof, a copy of such policy or amended policy, as the case may be, shall be delivered to the Members and to the City Clerk of the City of Valdez for retention in the records of the City. The Museum Corporation shall invest its funds only in accordance with such policy.

Section 5.8 Accounting Systems; Financial and Insurance Reporting; Inspections.

The Museum Corporation shall employ a system of accounting in accordance with generally accepted accounting principles applicable to a corporation of its type and character. The Museum Corporation shall close its fiscal year on December 31st of each year and shall make the following periodic filings with the City for retention in the City's records:

- (a) Budget: By the date established each fiscal year by the City Manager³, the Museum Corporation will submit an operations and capital expenditure budget for the following fiscal year to the Members and to the City;
- (b) Quarterly Financials: Within forty-five (45) days following the close of each fiscal quarter of the Museum Corporation, —unaudited statements of revenues, expense, and cash flows of the Museum Corporation for such quarter and a balance sheet of the Museum Corporation as of the close of such fiscal quarter, certified by the chief accounting officer of the Museum Corporation to be true, correct, and subject to annual audit adjustments, in accordance with generally accepted accounting principles;
- (c) Annual Audit: Within ninety (90) days following the close of each fiscal year of the Museum Corporation,—statements of revenue, expenses, and cash flows of the Museum Corporation for such fiscal year and a balance sheet of the Museum Corporation as of the close of such fiscal year prepared in accordance with generally accepted accounting principles, together with a report and opinion thereon made and given by independent certified public accountants in accordance with generally accepted auditing standards; and
- (d) Annual Insurance Summary: Within thirty (30) days following the close of each fiscal year of the Museum Corporation, —a written summary of the insurance policies needed by the Museum Corporation, including the limits of coverages afforded thereby, the expiration dates thereof and insurers thereon.

The Museum Corporation shall permit the City and its duly authorized agents to inspect the Real Estate, the Personal Property, and the Collections and to examine the books and records of the Museum Corporation at any reasonable time, upon at least twenty-four (24) hours written notice, for the purpose of determining the compliance by the Museum Corporation with the provisions of this Agreement. The Museum Corporation shall also cooperate with the City in their monitoring and review of the financial and programmatic progress of the Museum.

Section 5.9 City funding of Capital Expenditures.

The City agrees that any request of the Museum Corporation for the funding of capital improvements or additions to the Real Estate or Personal Property that are included in the Museum Corporation's capital budget furnished pursuant to Section 5.8 (a) hereof and that the City is not otherwise obligated to fund pursuant to this Agreement will be presented to the City for its consideration and recommendation regarding funding as part of the City's annual budgetary process.

³ Amended Aug. 19, 2002, by Valdez City Council to change date that budget must be submitted to the City.

ARTICLE VI DAMAGE; CONDEMNATION

Section 6.1 Damage or Destruction.

If, during the Term of this Agreement, there is damage or destruction to the Real Estate or such portion thereof as to render the remaining portion thereof unsuitable for the continued operation of a first-class local/regional history museum, the Museum Corporation thereafter, by giving written notice to the City within ninety (90) days following such damage or destruction, may terminate this Agreement.

If the Museum Corporation does not elect to terminate this Agreement or if the damage or destruction to the Real Estate does not render the remaining portion thereof unsuitable for the continued conduct of the Museum Corporation's activities thereon, then this Agreement shall continue in full force and effect, and the City and the Museum Corporation shall promptly pursue mutually agreeable means to complete whatever repairs to the Real Estate are necessary to restore the Real Estate to substantially the same condition that it was in prior to such damage or destruction. All such repairs shall be performed promptly and in good workmanlike manner in accordance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Real Estate.

In the event that this Agreement shall terminate, the rental, management compensation and all other amounts payable hereunder shall be prorated to the date of the damage or destruction.

In the event that this Agreement shall not terminate, then commencing on the date of such damage or destruction and continuing during the period in which the City is repairing and restoring the Real Estate pursuant to this Section 6.1, the rental and all other amounts payable by the Museum Corporation shall abate in proportion to the floor area of the building of which the Museum Corporation is deprived for the period in which the Museum Corporation is deprived of such area.

ARTICLE VII WARRANTIES OF CITY

Section 7.1 Warranty of Title; Quiet Enjoyment.

The City hereby represents and warrants that it has a good, valid, and marketable title (in fee simple, as to the Real Estate) to the Real Estate, the Owned Collections, and the initial personal property provided for use by the Museum, free of all liens, charges, and encumbrances except encumbrances of public record and those that are set forth in Exhibit B attached hereto and hereby incorporated herein (as to the Current Sites and Current Buildings), Exhibit C attached hereto and hereby incorporated herein (as to the Owned Collections), and Exhibit D attached hereto and hereby incorporated herein (as to the Current Personal Property). ~~The City represents that Exhibit E contains a complete identification of the Loaned Collections and the terms under which the City is in possession thereof.~~ The City covenants and agrees that, so long as the Museum Corporation shall duly and punctually perform and observe all of its obligations under this Agreement (taking into consideration the grace periods granted herein), the Museum Corporation shall peaceably and quietly have, hold, and enjoy the Real Estate, the Personal Property, and Owned Collections.

Section 7.2 Condition of Property; Compliance of Property with Law.

The City hereby represents and warrants to the Museum Corporation that, as of the date of this Agreement, the City has no knowledge of any material defect in the condition of the Real Estate, the Personal Property, or the Collections that will or might impair the Museum Corporation's occupancy or use thereof, as the case may be.

Section 7.3 Defaults Under Other Agreements.

With respect to the Museum, the City hereby represents and warrants that it is not in default under any contract to which it is a party or obligation owed to it that could result in the creation of any lien, charge, or encumbrance whatsoever upon any of the Real Estate, the Personal Property, or the Collections.

Section 7.4 No Breach of Statute or Contract.

The City hereby represents and warrants that it has full right and authority to enter into this Agreement. The City further warrants and represents that the use and operation of the Real Estate, the Personal Property, and the Collections by the Museum Corporation pursuant to this Agreement will not breach or violate any statute, ordinance, or regulation of any governmental authority or adversely affect any other previous agreement or instrument to which the City is a party.

Section 7.5 No Litigation or Adverse Events.

The City hereby warrants and represents that, except as set forth in Exhibit B hereto, with respect to the Museum, no suit, action or legal, administrative, arbitration or other proceeding, or investigation by any governmental agency, including but not limited to, matters involving environmental, safety, or health standards, is pending or has been threatened, nor do any fact exist that might lead to any such proceedings.

**ARTICLE VIII
TERMINATION**

Section 8.1 Default of the Museum Corporation.

The City may terminate this Agreement upon written notice to the Museum Corporation (i) if any default by the Museum Corporation occurs in case of nonpayment of rent for more than ten (10) days after written notice of such default from the City or (ii) if any default by the Museum Corporation, other than nonpayment of rent, continues for more than ninety (90) days after written notice to the Museum Corporation from the City specifying such default and demanding that it be corrected (or, if such default is not of a type that can be reasonably corrected within ninety (90) days, then if the Museum Corporation fails to commence promptly and proceed with due diligence to correct such default.) In the event that the City terminates this Agreement as provided in this section, the City may re-enter the Real Estate or any part thereof with judicial process and expel and remove the Museum Corporation or any person or persons occupying the same and again repossess and enjoy the Real Estate, the Personal Property, and the Collections.

Section 8.2 Special Right of Museum Corporation to Re-Open Agreement.

Any time during the Initial or any Extended Term of this Agreement, if the combination of earned and contributed operating revenues of the Museum Corporation from sources other than from the City for each of two (2) consecutive fiscal years shall have exceeded the funding provided by the City for such years, the Museum Corporation may request appropriate modifications to this Agreement and other agreements with the City respecting the operation and governance of the Museum to reflect such change in funding status; and the City hereby agrees to negotiate in good faith with respect to any such request.

Section 8.3 Special Right of Terminations for Invalidity, etc.

Any Party may terminate this Agreement if this Agreement is determined to be invalid by operation of law or by any court or tribunal of competent jurisdiction, or if compliance with or enforcement of this Agreement or any part hereof is restrained by any court or tribunal of competent jurisdiction or if it is determined that any Party lacks the legal capacity or authority to execute or perform under this Agreement or that such execution or performance would violate any collective bargaining agreement or any other agreement by that which any such Party is bound. If this Agreement is so terminated the Parties shall fully and completely cooperate each with the other to effectuate and comply with any court order or judgment as may be applicable and shall further negotiate in good faith to resolve equitably any matters that require resolution in connection with such termination.

**ARTICLE IX
PRESCRIBED AND PROSCRIBE PRACTICES**

Section 9.1 Nondiscrimination, Equal Employment Opportunity and Affirmative Action Programs.

In the operation of the Museum, as contemplated by this Agreement, the Museum Corporation shall not discriminate against any employee or applicant for employment because of race, color, religion, marital status, change in marital status, pregnancy, national origin, age, sex, physical or mental disability, or other characteristic protected by law.

Section 9.2 Prohibited Practices.

- (a) During the Term of this Agreement, the Museum Corporation shall not hire, retain, or utilize for compensation any member, officer, or employee of the City or any person who, to the actual knowledge (without inquiry) of the principal officers of the Museum Corporation, has a conflict of interest that has been undeclared as required by Code of the City of Valdez.
- (b) The Museum Corporation hereby states that it is familiar with the Code of Ethics (Chapter 2.24, code of the City of Valdez) and warrants and agrees to conduct the business of the Museum Corporation and the operations of the Museum according to its provisions.

Section 9.3 Cultural Awareness.

The Museum Corporation and its Board of Directors shall portray cultural groups in existing and newly created exhibits in an accurate and respectful manner and when possible to develop new exhibits and exhibitions in a collaborative manner with cultural groups specific to the content of the exhibit or exhibition.

(a) The Museum Corporation and its Board of Directors shall follow, as a matter of policy, the federal Native American Graves Protection and Repatriation Act, and all other relevant federal or state acts concerning artifacts, whether the Museum receives federal or state funding or not.

Section 9.4 Open Meeting and Records.

The Museum Corporation shall comply with the applicable provision of the Alaska statutes with respect to Open Meetings [AS 44.62.310-.312] and the Open Records provisions of the Valdez City Code [Sec. 2.76] as currently presented and hereafter amended except to the extent appropriate to protect the privacy of donors to the Museum.

**ARTICLE X
SURRENDER OF PROPERTY; HOLDOVER**

Section 10.1 Surrender of Real Estate, Personal Property, and Collections.

Upon expiration or termination of this Agreement, by lapse of time or otherwise, the Museum Corporation agrees to peaceably surrender the Real Estate, Personal Property, and the Collections to the City. In addition, upon such expirations or termination, the Museum Corporation shall execute and deliver to the City such quit-claim deeds, bills of sale, or other instruments as the City may reasonably request to evidence, perfect, or give legal effect to the relinquishment by the Museum Corporation of its right, title, and interest in and to the Real Estate, Personal Property, and Artifacts to the extent the Museum Corporation is not prohibited from doing so by the terms of the Museum Corporation's acquisition of such property (including without limitation, donation restrictions, and purchase money financing restrictions).

Section 10.2 Holdover

If the Museum Corporation remains in possession of Real Estate, Personal Property, or Collections after the termination of the Term of this Agreements and without the execution of a new agreement, the Museum Corporation shall be deemed to be occupying or possessing such Real Estate, Personal Property, and Collections as a tenant from month-to-month, subject to all of the applicable terms, covenants, and conditions of this Agreement, including without limitation Article V hereof.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Memorandum of Agreement.

At the request of the Museum Corporation, the City shall execute and deliver a memorandum or short form of this Agreement, in form satisfactory to the Museum Corporation, setting forth the principal terms hereof, other than the rent and management fees, for purposes of recording the same in the office of the Magistrate, Third Judicial District, State of Alaska, on order to provide third parties with notice of the rights of the Museum Corporation hereunder.

Section 11.2 No Liens.

Without, in each instance, the prior written consent of the City, the Museum Corporation shall not directly or indirectly create or permit to be created or to remain any lien, encumbrance, charge on, or pledge of (collectively “Encumbrances”) any of the Real Estate, Personal Property, or the Collections, except as follows:

- (a) With respect to the Real Estate—the Encumbrances described in Exhibit B hereto;
- (b) With respect to Personal Property—(i) the Encumbrances described in Exhibit D hereto and (ii) any Encumbrances in the nature of purchase money security interests or title retention arrangements in connection with the acquisition or leasing of Personal Property provided that the Encumbrance is limited to the Personal Property so acquired or leased; and
- (c) With respect to the Collections—(i) the Encumbrances described in Exhibit C hereto, (ii) any Encumbrances with respect to Loaned Collections, the rights of the owner thereof, and (iii) any Encumbrances in the nature of purchase money security interests or title retention arrangements in connection with the acquisition or leasing of Collections provided that the Encumbrance is limited to the Collections so acquired or leased.

Section 11.3 Notices.

Notice as permitted or required under this Agreement shall be given by certified or registered mail or hand delivered and any notice so sent shall be deemed to have been given on the date that the same is deposited in a United States Postal Service mailbox, postage prepaid or hand delivered. Notices shall be addressed to the City at P.O. Box 307, Valdez, Alaska 99686-0307, Attention: City Clerk and to the Museum Corporation at P.O. Box 8, Valdez, Alaska 99686-0008, Attention: President, or at such other address as either Party may from time to time specify in writing in lieu thereof.

Section 11.4 Choice of Law.

This Agreement shall be construed by and enforced in accordance with the laws of the State of Alaska.

Section 11.5 Benefit.

This Agreement and all of the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 11.6 Entire Agreement; Severability; Interpretation.

This Agreement contains all of the agreements of the Parties hereto with respect to the subject matter hereof and supersedes all previous negotiations. There have been no representations made by or understandings made between the Parties with respect to the subject matter hereof other than those set forth in this Agreement. This Agreement may not be modified except by a written instrument duly executed by the Party against whom enforcement is sought. If any provision of this Agreement shall be held or declared to be invalid, illegal, or unenforceable under any applicable law, that provision shall be deemed omitted from this Agreement without impairing or prejudicing the validity, legality, and enforceability of the remaining provisions hereof. The headings contained herein are for convenience only and shall not be used in any manner in construing the meaning or intent of this Agreement. The doctrine that a document is to be construed against its draftsman shall not be applied to this Agreement.

Section 11.7 Relationship of the City and Museum Corporation.

Nothing contained herein or in any other instrument or agreement between the City and the Museum Corporation shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, of partnership, or of joint venture, or of fiduciary between the City and the Museum Corporation.

Section 11.8 Warranties Survive.

The warranties and representations contained herein shall survive the Term of this Agreement.

IN WITNESS WHEREOF, the City and the Museum Corporation have executed this Agreement as of the day, month, and year first-above written.

CITY OF VALDEZ
ALASKA

VALDEZ MUSEUM &
HISTORICAL ARCHIVE, INC.

By: _____
Sharon Scheidt, Mayor

By: _____
Donna Lane, President
Board of Directors

Attest:

APPROVED AS TO FORM:
BRENA, BELL, & WALKER, P.C.

By: _____
Sheri Pierce, CMC, Clerk
City of Valdez

By: _____
Jake W. Staser
Attorney for the City of Valdez

VALDEZ MUSEUM LEASE AND MANAGEMENT AGREEMENT

EXHIBIT A

Legal Description of Current Sites of the Valdez Museum

The following described Real Estate is situated in the City of Valdez, Third Judicial District, and State of Alaska to-wit:

Museum: The south one-half (1/2) of Block 30, Mineral Creek Sub-division and a portion of the north half of Block 30, Mineral Creek Subdivision. The Valdez Museum is located at 217 Egan Drive.

Annex: A portion of Tract F, Port Valdez Subdivision occupying the middle section of City of Valdez Warehouse No. 1. The street address for the Museum Annex is 436-B South Hazelet.

EXHIBIT B

Encumbrances and Legal Proceeding Against the Valdez Museum

There are no encumbrances of the Current Sites except encumbrances of record in the Office of the Magistrate, Valdez, Alaska, Third Judicial District, and State of Alaska.

There are no pending legal proceedings against the Valdez Museum, which might affect the implementation of this Agreement.

EXHIBIT C

Exceptions as to Title to Owned Collections of the Valdez Museum

There are no encumbrances of the title to Owned Collections except those as may be attached to specific gifts made by their donors as a condition of their gift and as may be evidenced in the Museum's records.

EXHIBIT D

There are none.