

USE AGREEMENT

This USE AGREEMENT ("Agreement") is hereby entered into by and between the CITY OF VALDEZ, ALASKA, an Alaska municipal corporation ("City"), and the Valdez Emergency Assistance and Food Bank (Food Bank).

WITNESSETH:

WHEREAS, the City is owner of that certain parcel of real property that is located in the Valdez Recording District, Third Judicial District, State of Alaska ("Real Property"), more particularly described as follows:

Tract D, USS 447 and Accredited Lands

NOW, THEREFORE, IT IS MUTUALLY AGREED between the City and the Valdez Food Bank as follows:

1. Use of Real Property. The City grants the Food Bank the right and privilege to come and be present upon and to make use of a portion of the Real Property for the following purpose only:

to place, install, maintain and operate a building associated with the Valdez Food Bank.

2. Fees. The Food Bank shall pay to the City, in exchange for the right and privilege to use the Real Property as is permitted under this Agreement, and for the Term thereof, the sum of ONE DOLLAR (\$1.00) per year. This fee shall be paid directly to the City of Valdez, P.O. Box 307, Valdez, Alaska 99686.

3. Term. This Agreement shall be for a Term of FIVE (5) years, commencing on the 23rd day of May, 1997 and terminating five years after that date unless this Agreement is terminated at some earlier date under the terms and conditions set out hereinbelow.

4. Extended Term. The City may extend the Term of this Agreement for a period of FIVE (5) years if and insofar as the Food Bank gives written notice to the City of an intention to exercise this option no later than sixty (60) day prior to the expiration of the Term and that, at such time, the Food Bank is not in default in the performance of any of the terms and conditions of this Agreement or has failed to comply with any of the terms and conditions thereof, and the Valdez City council finds it to be in the public interest.

5. Specific Building Permitted. The type and kind of building that the Food Bank is permitted to place, install, operate and maintain upon the Real Property under this Agreement

is limited to the following:

upon the Real Property, the Food Bank may place one (1) building of a size not to exceed, as measured utilizing external dimensions, 720 square feet in area (24 feet x 30 feet).

6. Consent Required. The Food Bank shall not place or install any building, or make any alteration, addition, or improvement to any existing building previously placed or installed, or place or put any improvement on or to the Real Property, or commence any such undertaking without the prior written consent of the City. As a condition precedent to such consent, the Food Bank shall deliver to the City written plans and specifications for all such work. Such consent will not be unreasonably withheld by the City. It is not the intent of this paragraph to restrict or prevent any maintenance required.

7. Interference with Operation of the Animal Shelter and the Sewer Lift Station. The Food Bank shall not place, install, maintain or operate any building on or come upon, occupy or use the Real Property so as to hamper the operation or use of the Animal Shelter or Sewer Lift Station No. 1.

8. Compliance with Government Regulations. The Food Bank shall comply and assumes sole responsibility for compliance with any and all economic, operational, safety, and other requirements as are or may be imposed by federal, state, municipal, or other law or regulatory body, that apply or relate thereto pursuant to its involvement in the food distribution business; the Food Bank agrees to reimburse the City its entire costs, including but not limited to the amounts of fines or penalties and costs of counsel, arising from any assertion or finding of a lack of compliance with any aforesaid laws and/or regulations arising out of or with respect to the Food Bank's operations of the equipment associated with this Agreement.

9. Indemnification. The Food Bank hereby assumes the entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property, growing out of or resulting from the existence, placement, installation, maintenance, use or operation of equipment or improvements upon the Real Property under this Agreement. The Food Bank agrees to indemnify and save harmless the City, its agents, servants, and employees, from and against all loss, expenses, including attorney fees, damage or injury growing out of or resulting from or occurring in connection with the existence, placement, installation, maintenance, operation or use of equipment or improvements upon the Real Property under this Agreement.

10. Insurance Requirements. The Food Bank shall maintain at its own expense insurance in such forms and amounts as is necessary to satisfy and meet its indemnification obligations set forth in this Agreement and shall give to the City yearly a certificate from all carriers showing the dates and expiration of any and all policies as well as the limits of liability thereunder.

11. Termination. This Agreement may be terminated by the City should the Food Bank's use interfere with the City's use of the Real Property or upon the Food Bank's failure to perform or comply with any of the conditions or obligations contained in this Agreement, or the filing of a petition in bankruptcy, insolvency, or for reorganization or for the appointment of a receiver or trustee, by or against the Food Bank; in such event, the City shall give ten (10) days prior written notice of the termination and the Food Bank shall have thirty (30) days to remove any of its equipment from the Real Property. This Agreement may be terminated by the Food Bank upon thirty (30) days prior written notice of the termination and the Food Bank shall then have thirty (30) days to remove its building from the Real Property.

12. Assignability. The Food Bank shall not assign (by operation of law or otherwise) or transfer this Agreement or any interest therein without the prior written consent of the City.

13. Non-exclusive Use. The use of the Real Property by the Food Bank will not be an exclusive use and therefore others who request to use it for similar purposes may also be allowed by the City.

14. Snow Removal. The Food Bank will be responsible for all snow removal necessary for its use under this Agreement.

15. Utility Installation/Usage. The Food Bank will be responsible for the cost of installation of and the utilization of sewer, water and electricity needed for its use.

16. Environmental Laws.

(a) The Food Bank represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws, and will keep Property free of Hazardous Substances, except for fuel for heating generators. The City represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance as of the date of this Agreement.

(b) The Food Bank agrees to defend, indemnify and hold the City harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that the City may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely from the Food Bank's activities on the Property.

(c) The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any government authority.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 6th
day of June, 1997.

CITY OF VALDEZ, ALASKA

By: David C Cobb
David C. Cobb, Mayor

ATTEST:

Sheri L. Caples
Sheri L. Caples, CMC, City Clerk



Approved as to Form:
Walker, Walker, Wendlandt, & Osowski LLC

By: William M. Walker
William M. Walker

VALDEZ EMERGENCY ASSISTANCE
AND FOOD BANK

By: Ted Moore As
Its: President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 4th day of JUNE, 1997, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared TED MOORE, known to me and to me known to be the PRESIDENT of Valdez Emergency Assistance and Food Bank, and the individual named in and who executed the foregoing instrument, and he acknowledged to me that he did sign and seal the same as his voluntary act and deed and was authorized to do so by Port Valdez Company, Inc. for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first hereinabove written.

Julia Lynn Yagoe
Notary Public in and for Alaska
My Commission Expires: 4-4-98 *JY*

