

## **CITY OF VALDEZ**

### **PHYSICIAN RECRUITMENT AND RETENTION AGREEMENT**

THIS PHYSICIAN RECRUITMENT AND RETENTION AGREEMENT (hereinafter “Agreement”) is made by and between Samuel Shirk (hereinafter “Physician”) and the City of Valdez, Alaska (hereinafter the “City”) and is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2018. Physician and City are each individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, the provision of reliable high-quality medical services is of great importance to the health and wellbeing of Valdez citizens; and

WHEREAS, the City has determined that an insufficient number of physicians presently serve the community, and the high turnover rate of physicians practicing within the City of Valdez is detrimental to the health and wellbeing of Valdez citizens; and

WHEREAS, recruiting and retaining highly capable physicians to practice in the City of Valdez requires competitive pay and benefits; and

WHEREAS, the City desires to aid in the recruitment and retention of physicians by offering a financial incentive in addition to regular pay and benefits; and

WHEREAS, offering a financial incentive is necessary to compete in the marketplace for the purpose of retaining skilled physicians to practice medicine in the City of Valdez.

WHEREAS, Physician has accepted employment to practice medicine on a full-time basis in the City of Valdez and intends to continue practice within the City of Valdez in accord with Physician’s employment contract.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

#### **1. TERMS AND CONDITIONS**

- a. Physician shall maintain full-time employment practicing medicine within the City of Valdez for the term of this Agreement. Physician agrees to devote Physician’s full professional working time and attention to the practice of medicine within the City of Valdez.

- b. Physician shall at all times comply with the terms of any agreement(s) with his or her employer. The City shall have the right to review any such agreement(s) with the understanding that the contents of any such agreement will be kept confidential from the public as required by such agreements or by law.
- c. Nothing in this Agreement shall be interpreted as preventing Physician from acquiring an ownership interest in a medical practice.
- d. This Agreement does not entitle Physician to any compensation for employment prior to the execution of this Agreement.

## **2. COMPENSATION**

The City will compensate Physician as follows:

- a. Within sixty (60) days of execution of this Agreement the City will provide Physician with a Sixty Thousand Dollars (\$60,000) recruitment and transition payment. The \$60,000 recruitment and transition payment is compensation for Physician working as a full-time employee practicing medicine in Valdez for a (12) month period after execution of this Agreement. If Physician voluntarily or as the result of termination for cause fails to work as a full-time employee practicing medicine in Valdez for a period of twelve (12) months after execution of this Agreement, the \$60,000 recruitment and transition payment shall be repaid to City on a prorated basis at a daily rate of \$164.38.
- b. The City shall pay Physician up to sixteen (16) quarterly retention payments in the amount of Fifteen Thousand Dollars (\$15,000) within forty five (45) days of Physician's completion of the initial twelve (12) months of full-time employment and at the beginning of every three (3) months thereafter until the Physician reaches sixty (60) months of full-time employment from the date of execution of this Agreement. In the event Physician fails to work as a full-time employee practicing medicine in the City of Valdez for the entire quarter after receiving a quarterly payment the quarterly payment shall be repaid on a prorated basis at a daily rate equal to quarterly compensation divided by the number of days in the quarter.

## **3. TERM**

This agreement shall become effective on the date it is executed and shall remain in effect for a period of five (5) years, with an option, upon consent of both parties, to extend the Agreement for one (1) additional five (5)-year term with the compensation

provided in this Agreement adjusted for inflation as indicated by the Consumer Price Index.

#### **4. TERMINATION**

- a. If either Party fails to perform any provisions herein, that Party shall be in default. The Party not in default may, by written notice, provide notice of the default. If the default is not cured within thirty (30) days or as otherwise agreed to in writing by the parties, then the non-defaulting party may terminate this Agreement in whole or in part for failure to perform. In such event, the defaulting Party shall be liable for damages, as well attorney's fees arising out of or related to the default.
- b. If Physician discontinues work as a full-time employee practicing medicine within the City of Valdez for any reason, this Agreement may be terminated by the City.
- c. The City may at its sole discretion terminate this Agreement upon the occurrence of any of the following events:
  - i. the denial, suspension, revocation, termination, restriction, or voluntary relinquishment of the professional license or privileges of Physician,
  - ii. the death or inability of Physician to perform normal and ordinary duties as a physician due to sickness or accident for ninety (90) consecutive days,
  - iii. the termination or revocation of Physician's drug enforcement agency number, or
  - iv. the exclusion of Physician from participation in the Medicare, Medicaid, or other government health program.

#### **5. SOLE BENEFIT OF PARTIES**

This agreement is for the sole benefit of the Physician and the City. Nothing in this agreement is intended to confer any rights or remedies on any third party.

#### **6. LIABILITY**

In no event, whether as a result of breach of contract, tort liability, or otherwise, shall either party or its agents or employees be liable to the other party for indirect, economic, or consequential damages of any nature.

#### **7. NOTICES**

Notice under this agreement shall be given in writing and may be hand delivered, sent by U.S. Mail, or faxed as follows:

**If to Physician:**

Samuel Shirk  
PO Box 3143  
Valdez, AK 99686

**If to City:**

City of Valdez  
P.O. Box 307  
Valdez, Alaska 99686  
ATTN: City Manager

A party may change the address to which or official to whom notice is to be given by giving notice of such change to the other party.

## **8. GOVERNING LAW/JURISDICTION**

This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of Alaska and the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Valdez, Alaska. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Alaska and waive any defense of *forum non conveniens*.

## **9. NO WAIVER OF IMMUNITIES**

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

## **10. SEVERABILITY**

In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such unenforceable or invalid provision.

## **11. ASSIGNMENT**

Physician may not assign or transfer any of Physician's rights, duties, or obligations under this Agreement, in whole or in part, without the prior written consent of the City.

## 12. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding between the Parties relative to the recruitment and retention of physicians. All previous or contemporaneous contracts, representations, promises, and conditions relating thereto are superseded.

## 13. MODIFICATION, AMENDMENT, WAIVER

No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and authorized by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date first above mentioned.

### Physician

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

### City of Valdez, Alaska, Authorized

\_\_\_\_\_  
Jeremy O'Neil, Mayor

\_\_\_\_\_  
Date

Attested:

\_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

\_\_\_\_\_  
Date

### Recommended:

\_\_\_\_\_  
Elke Doom, City Manager

Date \_\_\_\_\_

### Approved as to Form:

\_\_\_\_\_  
Brena, Bell & Clarkson, P.C.  
Jon. S. Wakeland