



# City of Valdez

212 Chenega Ave.  
Valdez, AK 99686

## Meeting Agenda - Final

### City Council

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Tuesday, August 31, 2021

6:00 PM

Civic Center Conference Room

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#### Work Session (City Boards & Commissions Planning)

#### WORK SESSION AGENDA - 6:00 pm

*Transcribed minutes are not taken for Work Sessions. Audio is available upon request.*

1. [Work Session: Discussion Regarding City Boards, Commissions, and Other Citizen Advisory Groups](#)



## Legislation Text

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**File #:** 21-0427, **Version:** 1

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**ITEM TITLE:**

Work Session: Discussion Regarding City Boards, Commissions, and Other Citizen Advisory Groups

**SUBMITTED BY:** Mark Detter, City Manager

**FISCAL NOTES:**

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

**RECOMMENDATION:**

Receive and file

**SUMMARY STATEMENT:**

This work session is a follow-up discussion to the recent City Council strategic planning retreat.

Topics to discuss this evening:

**1. Process to establish Council appointed citizen advisory groups.**

- Board and commissions are incorporated in Valdez Municipal Code and established by ordinance (*excerpt attached*).
- Process for establishment of other citizen advisory groups (ie, a “task force”) needs to be incorporated in City Council Policies and Procedures (*document attached*)
- Staff recommendation for establishment of task forces:
  - Consider delegating/directing work to established city boards and commissions first.
    - For example, based upon the mission and purpose of established commissions, staff recommends the economic development portion of the current work on housing (incentives, etc.) should be assigned to the City Economic Diversification Commission. The commission would then work through the topic, with staff support and stakeholder/public involvement, to develop a recommendation to Council.
  - If the topic does not fit into the mission/purpose of an existing city board or commission, or if the work requires more specialized citizen involvement, then Council would

formally establish a **temporary** task force by Council resolution.

- Council resolution establishing the task force should include, at a minimum:
  - Task Force name
  - Scope of work
  - Timeline for work and sunset date
  - Member composition (can be appointed by name or solicited from the general public thru the city's application portal, depending on topic)
  - Expected task force work products and delivery date to Council
  - City department providing staff support to the Task Force.
  - Resolution used to establish Mayor's Economic Recovery Task Force (*attached*) could be used as a model to create a standardized resolution template
  - If there is Council consensus with this approach, the process would be incorporated as a formally approved change to Council Policies & Procedures.

## **2. Process to account for existing citizen advisory groups which were not originally established by resolution.**

- Staff are looking for Council guidance about how they would like to address each of existing task forces (*see attached memo for recommendations*):
  - Beautification Task Force,
  - Flood Mitigation Task Force, and
  - Hospital Expansion Task Force.
- Options for Council consideration:
  1. Formally establish the existing task force by resolution,
  2. Turn the task force into a commission by ordinance, or
  3. Formally sunset the task force.

## **3. Recruitment and selection of Council appointees to established city boards and commissions.**

- Current list of established boards, commissions, and committees to which Council appoints citizen representatives:
  - Library Board

- Planning & Zoning Commission
- Ports & Harbors Commission
- Parks & Recreation Commission
- Economic Diversification Commission
- Valdez Museum & Historical Archive Board of Directors
- City Permanent Fund Investment Committee
- *Note 1: Council appoints only Council Members to the City Audit Committee and to serve as the Council's representative on the VCVB Board of Directors.*
- *Note 2: Council appoints citizen representatives (1) to the Providence Valdez Medical Center Health Advisory Council under the current PVMC Operating and Management Agreement, (2) to the Prince William Sound Aquaculture Corporation Board of Directors, (3) to the Regional Citizen Advisory Council Board of Directors, and (4) to the AGPA Board of Directors. However, those boards are separate entities, independent of the city.*
- Current process for advertising vacancies for city boards and commissions is well established and managed by the City Clerk's Office. Online board and commission application portal provides the best avenue for receipt, tracking, and processing of applications and managing current appointments. Alternate paper application process, with follow-on manual entry into the electronic database by the Clerk's Office, is available for those who have barriers to using the electronic option.
- Council has expressed interest in discussing ways to encourage a more robust applicant pool for these volunteer positions. Like other areas in the community, interest in volunteering in general is often limited and/or comprised of the same group of individuals.

Some options to consider for increasing interest might include, but are not limited to:

- Reducing the term of appointment from the standard three-year term to a two-year term to reduce commitment barriers while still ensuring quality participation and continuity of knowledge of board members and commissioners (*Exception: Planning & Zoning Commissioners must serve three-year terms by Charter.*)
- Active recruitment of candidates for vacancies directly by City Council Members. Annual expiration of terms for specific boards/commissions occurs within the same month every year, so advance planning with notice from the Clerk's Office would be easily possible.
- Reduce the size of certain boards & commissions from seven to five members (*would require change by ordinance for each board and commission*).
- As a reminder, Council is not obligated to appoint applicants to boards and commission if they do not feel they are a suitable candidate, even when only one application is received for a particular vacancy.
- Some board members and commissioners struggle with attendance following

appointment, and therefore some boards and commissions struggle with maintenance of a quorum for their meetings.

Starting in 2019, the Clerk's Office added specific questions to the online board/commission application to very clearly set expectations regarding time and task commitments associated with board/commission service.

The process for resignation or replacement of board members or commissioners who are unable to regularly attend meetings is established. Attendance is being actively tracked and notice is given to commissioners who are experiencing challenges. Staff want to make Council aware that several formal requests for removal of commissioners due to attendance may be presented for their approval over the next six months.

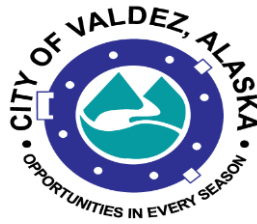
#### 4. Providence Alaska request for new appointment process for PVMC Health Advisory Council (HAC).

- Providence has approached the city manager requesting an update to the standard process by which PVMC HAC applications are collected and vetted prior to presentation to the Council for appointment. Staff would like to discuss this change with Council to determine any areas of concern.
- Section 24.e of the current PVMC Operating and Management Agreement (attached) requires a PMVC HAC to be established, with citizen appointments made by Council. However, the process nuances for routine application submission and vetting of applicants are not specifically outlined in that verbiage, with the exception that Council makes the formal appointment of HAC members.
- Currently, HAC vacancies are advertised **to the general public**, applications received, and appointees selected by Council in the same way as other city boards and commissions. **All applications received are presented to Council for consideration.**
- Providence would like to change the way applications are solicited, submitted, and vetted as outlined in Providence's recently approved PVMC Community Advisory Council charter (attached).
  - In this charter, "PVMC Community Advisory Council" replaces the "PVMC HAC", with the charter replacing the previous PVMC HAC by-laws.
- Within their new charter, when vacancies occur on the PVMC Community Advisory Council:
  - The PVMC Community Advisory Council would solicit for citizen applicants instead of the City Clerk's Office.

- Applications will be received and vetted by the PVMC Community Advisory Council first.
- Out of those applications, the PVMC Community Advisory Council would then select nominees to present to the Valdez City Council and the Providence Alaska Regional Board for formal appointment. ***(Not all applications would be forwarded to Council for consideration; only those nominated by the PVMC Community Advisory Council.)***

## 5. Communications pathways between Council and citizen advisory groups.

- There has significant interest expressed in renewing a formal routine for open, direct, two-way communications between City Council and its appointed board members and commissioners.
- Ensuring Council and board/commission priorities are the same is also crucial.
- Over the years, communication between Council and its appointed boards/commissions has taken many forms, including but not limited to:
  - Regularly scheduled joint work sessions between Council and the board or commission.
  - Regularly scheduled reports given by the board or commission to Council during a regular meeting (in-person or written and including in the agenda packet).
  - Attaching approved commission or board meeting minutes to Council agenda packets as an appendix item.
  - Council hosted thank you event/dinner for board members and commissioners.
- Staff are looking for Council direction about their preference for establishing a routine and/or process for communicating with their appointed citizen advisory groups.



## City of Valdez MEMO

**To:** City Council Members

City Clerk Sheri Pierce

City Attorney Jake Staser

**From:** Mark Detter, City Manager

**Date:** August 31, 2021

**Re:** Mayor's Task Force Groups & Boards & Commissions

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The Mayor's Task Force groups have accomplished a considerable amount of work and have added value to our community. I believe the goals of these groups is to achieve certain tasks within a set time frame. In that spirit, I would like to suggest that the following Task Forces finalize recommendations from their group in the following manner.

**-Mayor's Beautification Task Force-**The Task Force should be transition into an appointed commission with a specific mission, possibly advising staff on code enforcement issues and site planning. The awarding of grants for Beautification purposes could be another responsibility of this commission on a yearly basis.

**-Mayor's Flood Task Force-** Once the proper permits have been issued by the Alaska Department of Natural Resources for the Lowe River Flood Mitigation Plan the Task Force should recommend capital improvements related to the Lowe River to the City Council for their consideration. The Capital Projects department took bids on a flood maintenance project on the Lowe River, but a larger project involving further City expenditure is on the horizon once a permit has been issued by DNR (\$10-\$15 million Dike Project) with a potential annual gravel extraction program (Est. \$1-3 million / year). Further, the need for regular meetings of this group may decrease. However, during 2021 I would like to see some future goals set for this group. A few potential goals are:

- 1) Creating support for the City Council and staff on communicating to State officials the need for the issuance of the permit per AS 38.05.872

- 2) Identifying funding mechanisms for a larger flood project.

**Mayor's Hospital Expansion Task Force-** A committee of task force members, City staff, and hospital staff are currently developing an RFP for an update of the hospital master plan. Once the architectural firm is selected by the hospital expansion task force and the Providence Valdez Health Advisory Board, the Task Force will have completed their duty and the Providence Valdez health advisory board should make recommendations to the City Council on the implementation of the master plan.

Further consideration needs to be given to appointment of Boards and Commissions. Council is specifically empowered to appoint Boards or Commissions. **Section 3.7 Powers of the Council to Appoint Citizen Boards.** The council may establish by ordinance, boards or commissions as in its judgements are required and may grant to them such powers and duties as are consistent with the provisions of this Charter.

The creation of Task Forces is not specifically authorized in the Charter. Several Board and Commissions have been established by Ordinance and are in City Code, including

**Planning and Zoning Commission-**7 members.

**Parks and Recreation Commission-**7 members.

**Economic Diversification Commission-**7 members.

**Ports and Harbor Commission-**7 members.

**Library Board-**7 members.

**Permanent Fund Committee-**Selected by Council-Three Council Members appointed plus City Manager and 3 citizens.

**Museum Board-**Selected by Council.

The Mayor is to appoint members to these Commissions and Boards with Council approval.



**From:** [Allie Ferko](#)  
**To:** [Sharon Scheidt](#); [Dawson Moore](#)  
**Cc:** [Mark Detter](#); [Sheri Pierce](#)  
**Subject:** BTF Recommendation for Council Retreat  
**Date:** Tuesday, July 6, 2021 1:50:00 PM

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Sharon, Dawson,

Here is the Beautification Task Force's recommendation to City Council regarding the future of the group. As we planned, they put this recommendation together for you as part of the overall task force/commission/board discussion at the Council retreat.

(I should have the audio recording of the session posted on the city agenda's website by tomorrow afternoon if you also wanted to listen to their discussion.)

- 
- **Name/Type:** Beautification Commission  
(Commission to be established by ordinance if City Council concurs with the need for the group to continue their work.)
  - **Composition:** Seven commissioners, each serving a three-year term. A chair and chair pro tempore will be elected at the first meeting of the commission.
  - **Representation:** Commissioners should not be assigned specific sectors so as to not limit interested participants. However, Council could consider maintaining a variety of stakeholder representation during the commission selection/appointment process.
  - **Staff Advisor:** Clerk's Office. However, due to existing workload of the department, commissioners will be actively involved in performing the work of the commission.
  - **Meeting Schedule:** Commission should continue to meet once per month at their regular meeting time - noon on the last Monday of the month.
  - **Commission Mission Statement:** The Beautification Commission advocates for, promotes, and enhances the aesthetics of the community's human built environment to reflect the beauty of the surrounding natural environment and build a sense of place and civic pride.
  - **What commission success looks like in ten years:** Positive momentum towards passionate, sustained community engagement and pride in the aesthetic environment of our community.
  - **Commission Responsibilities** (to include in the ordinance; in no particular order):
    - Serving as an advisory commission to the city council.
    - Building community, a sense of place, and civic pride through beautification projects, educational programming, and activities focused on the aesthetics of town, including but not limited to design, landscaping, and public art.

- Serving as a collection point for public feedback regarding aesthetics of the community and associated needs/wants.
- Advising on the aesthetic components of city projects and public-private partnership projects, as requested.
- Advising on code enforcement efforts related to community aesthetics, as requested.
- Administering city-funded beautification grant and incentive programs.
- Facilitating applications to obtain outside beautification grant funding.
- Consulting with other city boards and commission on their work as it relates to community aesthetics.
- Participating in the comprehensive planning process as it relates to community aesthetics.
- Providing recommendations to city council thru the city budget process regarding beautification program or beautification project priorities for funding.
- **Commission Goals:** These will be set during the first couple of meetings once the commission is established. The task force did not want to get into too much detail or spend too much time on goal setting until they received confirmation the Council wanted them to continue their work in the form of a commission.

They did provide a few examples of goals, including but not limited to:

- Setting up a process to collaborate with other commissions, code enforcement, capital facilities, etc. after commission creation. Perhaps through joint work sessions. Collaboration process in place by January 2022. Commission would then know what their role would be with each, and other entities would know how/when the commission could help.
- Administer the beautification matching grant program annually, as long as funding and interest from property owners continue. Perhaps emphasizing landscaping or art in future years.
- Gathering input thru a variety of avenues on where the public believes the focus should be for beautification efforts moving forward. Done by the end of 2021. Does not need to be done by a contractor – can be a grassroots effort. Have this be an annual occurrence. Discussion about having a 2-3 person team of commission members staffing vendor booths at events to gather input using a paper survey of some sort. Would have to thought out to ensure we meet compliance with statute and have strict guidelines for the commissioners participating.
- Commission develop a public art/mural program. Solicitation to artists to envision where and what type of art would best be suited for different areas of the city.

Brainstorming session in early 2022 and future plan, with request for funding if necessary, by budget time in 2022.

- Commission develops an interactive presentation on the economic and social benefits of beautification by the end of 2021. Commission members use the presentation to do outreach to 5-10 community organizations in 2022.
- In late 2021 or early 2022, begin discussing/revisiting the “Valdez Home and Garden Show” concept. With the goal to help property owners with the resources and ideas needed to improve the aesthetics of their property. During the show, connect home/property improvement vendors with property owners, provide educational sessions on types of landscaping/plants that do well in our climate, provide educational sessions on basic home improvement skills in a home show type setting, etc. This may be a potential partnership opportunity with PWSC and other private entities.
- There continues to be discussion on the need for a centralized “town square” or centralized outdoor gathering/community use/event space in the core downtown area to pull together the pedestrian experience and overall aesthetic of town. So this is likely to be one type of project championed by this group in the future.

Take Care,

*Allie Ferko, MMC*

**Public Information Officer & Deputy City Clerk**

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**Valdez COVID-19 Community Updates:** [www.valdezak.gov/COVID-19](http://www.valdezak.gov/COVID-19)

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CITY OF VALDEZ, ALASKA

RESOLUTION NO. 20-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA,  
ESTABLISHING THE MAYOR'S COVID-19 ECONOMIC RECOVERY TASK  
FORCE

WHEREAS, on March 11, 2020, the State of Alaska declared a public health emergency in response to an anticipated outbreak of the COVID-19 in Alaska; and

WHEREAS, on March 17, 2020, the City of Valdez declared a local government disaster in preparation of an outbreak of the COVID-19 in the community; and

WHEREAS, Council seeks to mitigate the economic impacts of the COVID-19 virus and related state mandates; and

WHEREAS, on April 13, 2020, Council approved Resolution No. 20-19 waiving interest charges for delinquent water, sewer, and refuse fees; and

WHEREAS, on April 29, 2020, Council approved Resolution No. 20-24 amending the 2020 City Budget by Transferring \$2,890,600 from Permanent Fund Reserve to Local Economic Assistance-COVID-19 Account, and Authorizing Expenditure There-From; and

WHEREAS, on April 29, 2020, Council approved Resolution No. 20-25, waiving interest charges for past due Harbor services and City Lease payments; and

WHEREAS, further discussion, study, and analysis is needed to understand the economic impact of the COVID-19 public health emergency.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that:

Section 1: Mayor Pro Tempore Sharon Scheidt shall be the Chair of the Mayor's COVID-19 Economic Recovery Task Force and Mike Williams, Colleen Stephens, Dave Dengel, Mike Wells, Will Stark and John Duhamel shall serve as members of the task force.

Section 2: The purpose of the task force will be to develop a recommendation to the City Council on how to assist in the recovery of the Valdez economy from the economic impacts of COVID-19.

Section 3: The task force will submit its recommendations to the City Council by November 1, 2020.

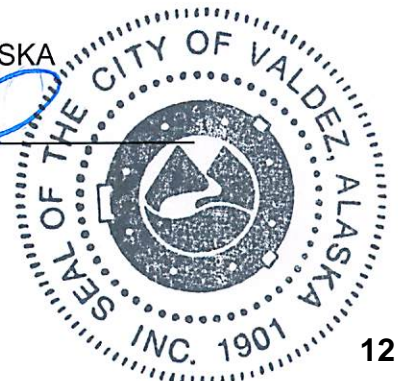
PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 19<sup>th</sup> day of May, 2020.

ATTEST:

  
Sheri Pierce, MMC, City Clerk

CITY OF VALDEZ, ALASKA

  
Jeremy O'Neil, Mayor



Section 3.7. Powers of the Council to Appoint Citizen Boards. (a) The council may establish by ordinance, boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter.

(b) There shall be a city planning and zoning commission which shall consist of a minimum of five members, who shall be appointed by the council. The commission shall elect its chairman from among the appointive members.

(1) The term of the appointive members shall be three years. Any vacancy during the un-expired term of an appointive member shall be filled by the council for the remainder of the term.

(2) The city planning and zoning commission shall have the authority to prepare and submit to the council for its approval a master plan for the physical development of the city, including the general location, character and extent of streets, bridges, parks, waterways, and other public ways, grounds and spaces, together with the general location of public buildings and other public property, public utilities, and the extent and location of any public housing or slum clearance projects. The commission shall recommend such modifications of said plan, from time to time, as it deems in the city's interest.

(3) It shall prepare and recommend to the council a comprehensive zoning ordinance, or propose amendments or revisions thereof, with such provisions as the commission shall deem necessary or desirable for the promotion of the health, safety, morals and general welfare of the inhabitants of the city, and shall exercise such functions with respect to land subdivisions, planning, and zoning as may be prescribed by ordinance not inconsistent with the provisions of this Charter. (10-2-01; 10-5-95)

**2.04.010 Vacancy of seat—Excuses for absence.**

The seat of any council member, including the mayor, shall become vacant when the council member or mayor is absent from three consecutive regular meetings of the council without excuse. "Excuse," for purposes of this section, only means absence due to a conflicting engagement of city council business or other cause for which the council member has received approval from the council prior to the absence. (Prior code § 2-2)

**Chapter 2.36**  
**VALDEZ MUSEUM AND HISTORICAL ARCHIVE**

Sections:

[2.36.010 Established.](#)

[2.36.020 Purpose.](#)

[2.36.030 Acquisitions—Gifts.](#)

**2.36.010 Established.**

The Valdez museum and historical archive, hereby established, is organized to support and enhance community goals in heritage preservation, public education and economic development. The governance and management of the Valdez museum and historical archive will be determined by the city council. (Ord. 97-01 § 2)

**2.36.020 Purpose.**

The Valdez museum and historical archive shall conduct programs for the benefit of residents and visitors and shall particularly support public education and visitor industry development. (Ord. 97-01 § 3)

**2.36.030 Acquisitions—Gifts.**

- A. The Valdez museum and historical archive may acquire property needed to accomplish its purposes. Such property shall include, but is not limited to informational materials and objects of significance to local/regional history; all such acquisitions shall be considered property of the city and managed as determined by the city council.
- B. Gifts and grants of monies received by the city for the Valdez museum and historical archive will be appropriated to accomplish the purposes for which they were given.
- C. Disposition of deaccessioned objects/materials shall be done in a manner which best protects public confidence in the city's stewardship of its heritage trust responsibilities. Proceeds from sales of deaccessioned cultural materials may accrue only to the Valdez Museum memorial endowment fund. (Ord. 97-01 § 4)

**Chapter 2.48  
PARKS AND RECREATION COMMISSION**

Sections:

[2.48.010 Establishment—Composition—Appointment of members.](#)

[2.48.020 Powers and duties.](#)

[2.48.030 Quorum and voting.](#)

[2.48.040 Limitations.](#)

**2.48.010 Establishment—Composition—Appointment of members.**

A. There is created a Valdez parks and recreation commission, consisting of seven members who are interested in parks and recreation opportunities and programs for the benefit of the city. The members are appointed by the mayor, with approval of the city council, for two-year terms.

B. Appointments to the commission shall be adjusted by the mayor and council to ensure continuity. In this regard, initial appointments may be made for terms other than two years, to ensure that the terms of no more than four members expire in any one year. (Prior code § 2-26)

**2.48.020 Powers and duties.**

The commission is an advisory commission to the city council and the planning and zoning commission. It shall:

A. Act in an advisory capacity to the city in regard to the planning, implementation and enforcement of programs dealing with the establishment, development and maintenance of parks, the creation and preservation of recreational facilities and opportunities, and the conservation of natural and recreational features within the city;

B. Receive, consider and evaluate public input, opinions and recommendations regarding the parks and recreation programs of the city and advise the city council and planning and zoning commission of any findings or recommendations;

C. Make recommendations regarding the parks and recreation budget of the city;

D. Meet at least once a month and cause minutes of each meeting to be recorded and forwarded to the council through the city manager; and

E. Perform such other activities as may be requested of it by the city council or the planning and zoning commission. (Prior code § 2-27)

**2.48.030 Quorum and voting.**

A quorum of the parks and recreation commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the commission except by

concurrence of at least four members. (Prior code § 2-28)

**2.48.040 Limitations.**

The commission has only those powers and duties set forth in this chapter and those necessarily implied from those enumerated. In particular, the commission may not:

- A. Expend or obligate city funds without prior approval of the city council; or
- B. Act in any manner inconsistent with the powers of the planning and zoning commission or with the requirements of Section [2.48.020](#). (Prior code § 2-29)



**Chapter 2.52  
PLANNING AND ZONING COMMISSION**

Sections:

[2.52.010 Established—Composition—Appointment of members—Chairman.](#)

[2.52.020 Terms of office of members—Filling of vacancies.](#)

[2.52.030 Powers and duties.](#)

[2.52.040 Quorum and voting.](#)

[2.52.050 Decisions.](#)

**2.52.010 Established—Composition—Appointment of members—Chairman.**

There shall be a city planning and zoning commission, which shall consist of seven members who shall be appointed by the mayor, with the approval of the city council. The city council shall serve as ex officio members of the commission. The commission shall elect its chairman from among the appointive members. (Prior code § 2-14)

**2.52.020 Terms of office of members—Filling of vacancies.**

The term of office of the appointive members of the planning and zoning commission shall be three years. Any vacancy during the unexpired term of an appointive member shall be filled by the city council for the remainder of the term. (Prop. 1, 10-2-01; prior code § 2-15)

**2.52.030 Powers and duties.**

The planning and zoning commission shall:

- A. Have the authority to prepare and submit to the city council for its approval a master plan for the physical development of the city, including the general location, character and extent of streets, bridges, parks, waterways and other public ways, grounds and spaces, together with the general location of the public buildings and other public property, public utilities, and the extent and location of any public housing or slum clearance projects. The commission shall recommend such modifications of such plan from time to time, as it deems in the city's interest;
- B. Prepare and recommend to the city council a comprehensive zoning ordinance and map, or propose amendments or revisions thereof, with such provisions as the commission shall deem necessary or desirable for the promotion of health, safety, morals and general welfare of the inhabitants of the city;
- C. Act as the platting board and exercise other functions with respect to land subdivisions, planning and zoning as may be prescribed elsewhere in this code or any other ordinance of the city, not inconsistent with the provisions of the city charter; and

D. Cause minutes of each meeting to be recorded and forwarded to the city council through the city manager. (Prior code § 2-16)

**2.52.040 Quorum and voting.**

A quorum of the planning and zoning commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the commission except by concurrence of at least four members. (Prior code § 2-17)

**2.52.050 Decisions.**

Any and all final decisions of the planning and zoning commission may be overruled or reversed by the city council, but only upon a vote of five council members in favor of such overruling or reversal. (Prior code § 2-18)

**Chapter 2.56  
PORTS AND HARBOR COMMISSION**

Sections:

[2.56.010 Established—Composition—Appointment and terms of members—Chairman.](#)

[2.56.020 Powers and duties—Meetings.](#)

[2.56.030 Quorum and voting.](#)

[2.56.040 Code references.](#)

**2.56.010 Established—Composition—Appointment and terms of members—Chairman.**

There is established a city ports and harbor commission which shall consist of seven members who shall be appointed by the mayor, with approval by the city council. The terms of the commission members shall be for three years or until their successors have been appointed and approved. The term of two members shall expire each year with the additional term expiring every third year. Vacancies shall be filled in the same manner as the commissioners are appointed. The commission shall elect its chairman from among the appointive members. The initial members of the commission shall be those individuals appointed to the former transportation commission who shall serve out the terms for which they were appointed. (Ord. 96-16 § 1 (part))

**2.56.020 Powers and duties—Meetings.**

A. The commission may recommend to the city council policies relating to the city's port and harbor and transportation issues including, but not limited to seaport, airport and land terminals.

B. The commission shall review and advise the city council on the following areas of public interest and concern:

1. Valdez port, including all docks: development, design, operation, maintenance, tariffs and fees and stevedore services;
2. Valdez airport: development, design, operation, maintenance, tariffs and fees;
3. Alaska Marine Highway: equipment, schedules, services and docks;
4. Vehicles for hire, taxicabs, buses and limousines: franchises, fares, routes and services;
5. Hostler and cartage: service and tariffs within the city limits;
6. Integration of systems: general integration of the air, highway and water transportation systems with the general and industrial development of the city;
7. Valdez small boat harbor: development, design, operation, maintenance, tariffs and fees.

C. The commission shall meet at least once a month. The commission shall cause minutes of each meeting to be recorded and forwarded to the council through the city manager.

D. The commission may adopt such rules and regulations as may be necessary to carry on its duties.

E. The commission may appoint, from time to time, committees of local citizens to aid it in its duties, including but not limited to investigations and reports relating to specific items. Such committees shall serve at the pleasure of the commission. (Ord. 96-16 § 1 (part))

**2.56.030 Quorum and voting.**

A quorum of the ports and harbor commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the commission except by concurrence of at least four members. (Ord. 96-16 § 1 (part))

**2.56.040 Code references.**

Any references in this code to “transportation commission” shall be interpreted to mean “ports and harbor commission.” (Ord. 96-16 § 1 (part))

**Chapter 2.60**  
**ECONOMIC DIVERSIFICATION COMMISSION**

Sections:

[2.60.010 Establishment—Composition—Appointment of members.](#)

[2.60.020 Powers and duties.](#)

[2.60.030 Quorum and voting.](#)

[2.60.040 Limitations.](#)

[2.60.050 Definitions.](#)

**2.60.010 Establishment—Composition—Appointment of members.**

A. There is established an economic diversification commission which shall consist of seven members who shall be appointed by the mayor, with the approval of the city council. The terms of the commission members shall be for three years or until their successors have been appointed and approved. The term of two members shall expire each year with the additional term expiring every third year. Vacancies shall be filled in the same manner as the commissioners are appointed.

B. Appointment to the commission shall be adjusted by the mayor and city council to ensure continuity. In this regard, initial appointments may be made for terms other than three years, to ensure that the terms of no more than three members expire in any one year.

C. Members of the commission shall be diversified to the maximum extent possible and appointed to represent specific industry sectors of the economy. No two members may be appointed to serve concurrently from the same industry sector. Representatives will be selected from among the following industry sectors:

1. Accommodations.
2. Commercial fishers.
3. Contracting/trades.
4. Food and beverage.
5. Healthcare.
6. Micro business/nonprofessional sole proprietors.
7. Oil and gas.
8. Professional services (attorney, engineer, banker, real estate, media, etc.).

9. Retail.
  10. Seafood processing.
  11. Sport fisheries.
  12. Summer tours and attractions.
  13. Transportation.
  14. Utilities.
  15. Winter tours and attractions.
- D. The commission shall elect its chairman from among the appointed members.
- E. There may be an additional appointed ex officio position to represent the military members of the community. This position may be held by a local active-duty member of the United States Coast Guard or National Guard. This seat is a nonvoting, advisory position. (Ord. 14-03 (part))

**2.60.020 Powers and duties.**

The commission is an advisory commission to the city council. It shall:

- A. Have the authority to prepare and submit to the city council for its approval a comprehensive economic diversification strategy for the overall economic diversification of the community. The commission shall recommend modifications of such plan from time to time, as it deems in the city's interest;
- B. Prepare and recommend to the city council for approval reports and plans regarding socioeconomic data and specific sectors of the economy;
- C. As directed by the city council, review and make recommendations to the council for approval of strategic plans, plans of work and funding requests of agencies, organizations, and event sponsors;
- D. Review and make recommendations to the city council for approval on projects submitted for economic development grant funding opportunities;
- E. Receive, consider and evaluate public input, opinions and recommendations regarding economic diversification programs of the city and advise the city council of any findings or recommendations;
- F. Monitor progress and report to council the status of capital improvement projects, programs and activities outlined as goals, objectives or action items in the community's economic strategy;
- G. Have the authority to prepare and submit to council for approval regular quarterly or annual

reports documenting economic trends in the community;

H. Make recommendations to the city council regarding the economic diversification portion of the annual city budget;

I. Meet at least once a month and cause minutes of each meeting to be recorded and forwarded to the city council through the city manager;

J. Perform such other activities as may be requested of it by the city council. (Ord. 14-03 (part))

#### **2.60.030 Quorum and voting.**

A quorum of the economic development commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the commission except by concurrence of at least four members. (Ord. 14-03 (part))

#### **2.60.040 Limitations.**

The commission has only those powers and duties set forth in this chapter and those necessarily implied from those enumerated. In particular, the commission may not:

A. Expend or obligate city funds without prior approval of the city council; or

B. Act in any manner inconsistent with the requirements of Section [2.60.020](#). (Ord. 14-03 (part))

#### **2.60.050 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Economy” means the process or system by which goods and services are produced, sold, and bought.

“Economic development” means the process by which the economy is caused to grow, or a sector of the economy is made more advanced.

“Economic diversification” means the process by which the economy is changed to increase the variety of goods or services produced or offered. (Ord. 14-03 (part))

## **Chapter 2.64 LIBRARY BOARD**

Sections:

[2.64.010 Creation—Appointment—Terms of members.](#)

[2.64.020 Powers and duties.](#)

[2.64.030 Quorum and voting.](#)

### **2.64.010 Creation—Appointment—Terms of members.**

A. There is created a city library board. The mayor, with the approval of the city council, shall appoint seven persons as regular members of the library board for three-year terms.

B. Appointment to this board shall be adjusted by the mayor and council to ensure continuity. In this regard, initial appointments may be made for terms other than three years, to ensure that the terms of no more than three members expire in any one year. (Prior code § 2-33)

### **2.64.020 Powers and duties.**

The library board is an advisory board to the city council. The board shall:

- A. Receive, consider and evaluate public input, opinions and recommendations regarding the care, staffing, equipping and managing of the city library;
- B. Act in an advisory capacity to the city council in regard to the planning and implementation of programs dealing with use and development of the city library and its resources;
- C. Make recommendations to the city council regarding the library budget of the city;
- D. Develop policies and rules for the conduct and frequency of its own meetings;
- E. Cause minutes of each meeting of the commission to be recorded and forwarded to the council through the city manager; and
- F. Perform such other activities as may be requested of it by the city council. (Prior code § 2-34)

### **2.64.030 Quorum and voting.**

A quorum of the library board for the conduct of any meeting or public hearing shall be a majority of the board. No actions shall be taken by the board except by concurrence of at least four members. (Prior code § 2-35)

### **3.04.051 Governance of the Valdez permanent fund assets.**

A. The city, the city council, the administration, the investment managers and the bank custodians shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management



of large investments entrusted to it, not in regard to speculation, but in regard to the long term investment of funds considering the probable safety of capital as well as probable income.

B. In order to ensure sound investment strategy, the city council will take action in the following manner:

1. The city council shall establish written investment policies by formal resolution which shall be adhered to without exception;
2. The city council shall review the investment policies of the permanent fund at least once each year during the first quarter and shall, by formal resolution, re-adopt or modify said policies;
3. The city council shall establish, by formal resolution, a plan for the allocation of investment assets each year thus determining a percentage range of the amount of assets which shall be committed to various asset classes, which sets forth portfolio duration, and which establishes performance benchmarks, and which makes a statement of the percentage or amount of that year's annual earnings that shall be retained to inflation-proof the fund principal;
4. The city council shall establish a permanent fund investment committee consisting of the city manager, three members of the city council, and up to three members of the community at large. Appointments to at-large seats shall be made by the city council each November. At-large seats will serve three-year staggered terms. The city finance director shall serve as liaison to the committee. The committee shall meet quarterly to determine general strategies and monitor results;
5. The city administration shall maintain on file the monthly reports which indicate transactions affecting the investment account, to include, at a minimum, transfers of cash into and out of the account, and interest or dividends received by the account;
6. The city administration shall order an objective performance evaluation of the investment program every year;
7. The city council shall retain one or more bank custodians to hold all investment cash and fixed income securities of the permanent fund; that the custodians shall render monthly reports to the administration regarding assets held at both book and market values, and individual transactions which have taken place; that the banks shall have adequate fidelity insurance, and that written contracts be entered into between the city and the custodian banks.

C. The city council shall retain one or more professional investment managers to design portfolios and invest funds in accordance with the written investment policies adopted by the city council. The investment managers shall be registered financial advisers with both the United States Securities and Exchange Commission and the state of Alaska, unless otherwise exempt from registration, and the investment managers shall agree to serve as a fiduciary to the city. Each investment manager shall carry professional liability insurance in an amount satisfactory to the city,

and the terms of the investment relationship shall be memorialized in a written contract entered into between the city and the respective investment advisers. (Ord. 09-01 § 1; Ord. 06-04 § 1; Ord. 02-08 § 1; Ord. 01-07 § 1)

VALDEZ CITY COUNCIL  
POLICIES AND PROCEDURES  
*Amended March 20, 2020*

I. **AUTHORITY**

- A. Charter: The Charter of the City of Valdez provides that the Council may determine its own rules of procedure for meetings. The following set of rules shall be in effect upon their adoption by the Council and until such time as they are amended or new rules adopted in the manner provided by these rules.

II. **GENERAL GUIDELINES**

- A. New Council Seated:
1. At the first regular meeting following the annual City election, the mayor and City Council members are sworn in by the City clerk.
  2. The mayor then conducts the election of mayor pro tempore from among the Council members. The mayor pro tempore shall serve for one year. A majority vote of not less than four of the members elects the mayor pro tempore. The mayor pro tempore serves at the pleasure of the Council.
- B. Meetings to be Public: All meetings of the Council except those qualified as Executive Session shall be open to the public. The journal of proceedings (minutes) shall be open to public inspection.
- C. Quorum: A majority (4) of the members of the Council shall constitute a quorum and be necessary for the transaction of business. A quorum must be present for the duration of the meeting. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time.
- D. Notice of Meetings: **At least** 24-hours written notice shall be given designating the time and purpose of a special meeting. In the event the mayor declares in writing that a state of emergency exists, at least six (6)-hours written notice shall be given designating the time and purpose of a special meeting.

- E. Journal of Proceedings: An account of all proceedings of the Council shall be kept by the City Clerk and shall be entered in a book constituting the official record of the Council.
- F. Discussion: Action items on the agenda require a motion prior to discussion. Discussion of any subject is permitted only with reference to a pending motion. When necessary, a motion can be prefaced by a few words of explanation or a member can first request information which may assist him in wording an appropriate motion. After a motion has been made and seconded, but prior to Council vote, members of the public may speak to the subject.

In debating a motion on the floor, Council members must confine themselves to the matter before the City Council. Council members should not question the motives of another Council member, city staff or members of the public. However, the nature or consequences of a measure may be condemned in strong terms. It should not be an individual Council member, but the measure that is the subject of debate.

If a particular Council member's remarks are objected to by another Council member as being improper, that Council member cannot proceed with the alleged improper comments without the permission of the City council expressed by a vote of a majority of Council members at that meeting, upon which question there shall be no debate.

- G. Rules of Order: Roberts Rules of Order Revised shall be the source of meeting procedure except where a different procedure is proper by law or Council custom.
- H. Attendance:
  - 1. Any Council member(s) not able to attend a particular meeting must notify the Mayor or City Clerk as far in advance as possible.
  - 2. Attendance by means of telephone or other electronic media is permitted where (a) physical attendance poses a risk to health or human safety as determined by the mayor; (b) during work sessions; or (c) by permission of the city council for purposes of executive session.

3. A Council member who is participating telephonically under this section may participate in and vote at the meeting by telephone or other electronic means under the following circumstances:
  - a. The Council may meet if a quorum of members are physically and/or telephonically present for the duration of the meeting;
  - b. Reasonable technical capabilities are available at the meeting location to allow the member to participate, to include being able to hear and engage in discussion and being audible to all persons participating in the meeting;
  - c. The member participating telephonically has the ability to obtain the meeting agenda and other pertinent documents to be discussed and/or acted upon;
  - d. A member who is voting will have a voice vote;
  - e. The public must be able to participate by telephone or other electronic means and must be provided the information required to engage in such participation when notice of the meeting is provided.
4. Telephonic or electronic participation under this section shall include any means through which a member may participate remotely, to include being able to hear and engage in discussion, and being audible to all persons participating in the meeting. Online platforms for web-based connection approved by the IT Director or his/her designee are permissible means of participation so long as the criteria for participation set forth in Section 3 are met.
5. Administrative staff as required should be available for all Council meetings.
6. The seat of any Council member, including the Mayor, shall become vacant if the Council member is absent from three consecutive regular meetings without excuse.
- I. Motions for Reconsideration: Any action may be brought up for reconsideration one time by any Council member if action which was

approved has not begun (i.e., contract signed, notice to proceed issued).

- J. Requests of Administration: Requests for information that is readily available or for tasks of an incidental nature, may be made by any individual council member, any time, without concurrence of a quorum.

Requests that will result in the use of staff time for the development of new documents, or to conduct activities that would not occur in the normal course of business, as determined by the city manager, shall require verbal consent by at least four (4) members of the council. (Four members of the council constitute a quorum).

- K. Attendance of Media at Council Meetings: All official meetings of the City Council and its commissions, boards and committees shall be open to the media, freely subject to recording by radio, television and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings. Recording, audio or video, arrangements shall be made with the City Clerk.

- L. Discipline: Council has the right to control its meeting hall. The mayor as presiding officer shall act on behalf of the Council in enforcing order as provided by parliamentary law. Decorum of the members should reflect the dignity of the Council and the public good.

- M. Each newly elected city council member shall complete a Declaration of Interest form setting forth each organization, board, non-profit corporation, etc., on which that newly elected city council member is a member. It is the obligation of the council member, throughout the duration of his/her term of office, to declare his interest prior to any relevant council discussions and to update this Declaration of Interest form to reflect any change of status on any current or new board positions. The Declaration of Interest form will be kept in the City Clerk's office and will be available to the public upon request. Each council member will comply with the conflict of interest sections of the Valdez City Code.

- III. **ORDER OF BUSINESS AND AGENDA:** Only items appearing on the published or posted agenda may be acted upon. Any other business coming before the body may be introduced only by majority consent of the members and acted upon only if it is inconsequential and of minor significance. Failing the consent of the majority, the item shall be deferred to the next special or regular meeting agenda.

A. Agenda Format: The usual order of business will be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Minutes
5. Public Appearances
6. Public Business from the Floor
7. Referrals/Reports from Commissions
8. Consent Agenda\*\*
9. Unfinished Business (An item having been before council at a previous meeting.)
10. New Business
11. Ordinances
12. Resolutions
13. Reports
14. City Manager/City Clerk/City Attorney/Mayor Reports
15. Council Business from the Floor
16. Council Travel
17. Executive Session (If needed)
18. Adjournment

B. Agenda Items: Items may be placed on the agenda by the city manager, city clerk, or at the request of the mayor, or any two members of the city council. Requests that items be placed on the agenda for action by the council shall under no circumstances violate the public notice requirement as set forth in Section 3.6 (c) of the City Charter.

C. Public Appearances: Public appearances shall be scheduled and placed on the agenda by the city clerk or the city manager. The speaker and topic of the presentation shall be identified on the agenda. Public appearances and presentations shall be limited to not more than 15 minutes. Presentations exceeding 15 minutes may be scheduled as a work session at the discretion of the city manager, the mayor, or two members of the city council.

D. Discussion Items: No action shall be taken on any item described on the agenda as a "discussion item" until a subsequent regular or special meeting. If prompt action is required on a matter due to timing of the issue involved, it shall be listed as an action item on the agenda.

- E. Consent Agenda: Items on the consent agenda are acted upon by one motion with no discussion. Consent Agenda items are to be those with no Council conflicts of interest and routine matters of business.

The Mayor or any council member may ask that an item listed on the Consent Agenda be moved to New Business for the purpose of discussion and vote.

The general public should be given the opportunity to speak to any item on the Consent Agenda. If a member of the public poses a question about any item on the Consent Agenda, that item must be moved to New Business for discussion.

#### IV. **TYPES OF MEETINGS:**

- A. Regular Meetings: The Council shall meet in the Council Chambers for regular meetings. The regular Council meetings are to commence at 7:00 p.m. on the first and third Tuesday of each month unless the Tuesday falls on a legal holiday in which case the meeting will be held the following Wednesday. All regular meetings of the City Council shall adjourn not later than twelve midnight, unless an affirmative vote of at least four members is taken to continue past midnight.
- B. Special Meetings: Special meetings of Council shall be called by the City Clerk upon request of the Mayor or two Council members. The request shall be documented by the City Clerk. The call for the special meeting shall specify the day, the hour and the location of the special meeting and shall list the subject or subjects to be considered. Only such business may be transacted at a special meeting as may be listed in the call for said meeting. Before a special meeting of Council is called, the City Clerk shall contact each Council member to verify attendance to determine if there will be a quorum.
- C. Work Sessions: The Council may meet in informal work sessions (open to the public) at the call of the Mayor or any two members of Council. A quorum must be present for the duration of the meeting. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time.

Only such business may be discussed at a work session as may be listed in the call for said work session. No action may be taken in a work session.



D. Executive Sessions:

1. Conduct of executive sessions shall be in accordance with the City of Valdez Charter and State law.
2. Items to be discussed in executive session shall be given prior public notice and properly identified on the published and posted agenda.
3. Matters that may be discussed in executive session:
  - a. matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the city;
  - b. subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
  - c. matters which by law, municipal charter, or ordinance are required to be confidential;
  - d. matters involving consideration of government records that by law are not subject to public disclosure;
  - e. some attorney-client communications
4. To take action on an item discussed during executive session, the item must be placed on the agenda both under the business portion of the agenda for action and the executive session portion for discussion. When the item is reached on the business portion of the agenda, a motion to modify the agenda to defer action on the item until after the executive session would be in order.
5. The City Council determines who may attend an executive session, including attendance by telephone.

V. CHAIRMAN AND DUTIES:

- A. Chairman: The Mayor shall preside as Chair at all meetings of the Council. In the absence of the Mayor, the Mayor Pro Tempore shall preside. In the absence of the Mayor and Mayor Pro Tempore, the

City Council member present with the greatest cumulative length of service on the council shall preside.

- B. Voting: The City Clerk shall report the vote (Clerk, "ayes, nays, absent, \_\_\_ abstaining;") and the result of the action "motion passes/fails."
- C. Limitation on Chairman: Prior to making a motion, the presiding officer must relinquish the gavel to another Council member who will preside over the discussion and determination of the motion.

VI. **LEGISLATION:**

A. Ordinances - Laws of the City:

1. Introduction - Two public readings are required. A waiting period may be required for some ordinances.
2. Method of Introduction: For Purpose of Public Hearing The ordinance is read in full, or, if sufficient copies are available to the public, it may be read by title only.
3. Action at first reading may be to:
  - Amend as appropriate, or
  - Approve at first reading and advance to second reading
4. Action at second reading may be to:
  - Amend as appropriate, or
  - Approve at second reading and adopt
5. Amendment: If a substantial change is made, then additional readings are required until two consecutive readings are accepted without substantial change.
6. Emergency Ordinances

May be passed at first reading for adoption with six positive votes; are limited to matters which may be acted upon.

7. Codification - Most ordinances adopted either supplement or amend existing ordinances which are in the City code of Laws, and such supplements and changes are periodically printed for insertion into the code book. Some special purpose ordinances are not codified.

VII. **RESOLUTIONS - AN EXPRESSION OR OPINION OF COUNCIL:**

- A. Introduction: One public reading and motion to adopt or approve.
- B. Method of Introduction: Read in full or by title only as with ordinances.
- C. Purposes: An act of temporary character (budgets, user fees, policies, etc.)

VIII. **PROCLAMATION:** Official announcement or endorsement of a special event or person issued by the Mayor.

IX. **FINANCES:**

- A. Budget:
  1. The budget is to be available for review by Council by November 15 of each year.
  2. A public hearing is required by Council not less than one week before adoption.
  3. The budget is to be adopted by resolution and money appropriated no later than December 20. There are provisions for adoption should Council fail to act as required.
  4. May be amended in a manner provided by the code.
  5. The Council will conduct a mid-year review of the budget and amend if necessary.
  - 6.
- B. Audit:
  1. Annual audit shall be made by an independent certified public accountant employed by Council.

2. Completed report is due to Council within 180 days following the close of the fiscal year under examination.

X. **TAXES:**

- A. **Property Assessment:** Annually at January 1.
- B. **Assessment Appeals:** Council acts as a Board of Equalization in establishing assessment roll property values.
- C. **Tax Calendar:** Council sets tax calendar by resolution to set various due dates for tax assessment and collection.
- D. **Tax Rates:** Council sets tax rate by resolution after tax roll is certified, subsequent to meeting of the Board of Equalization.

XI. **TRAVEL**

A. City Council and Administrative Officers

1. Purpose. To establish regulations and procedures for official travel, the approval of payment for per diem, and the reimbursement for travel related expenses.
2. Policy. It is the policy of the City of Valdez that City Council and Administrative Officers (City Clerk and City Manager) travel for official business outside the Valdez area shall be conducted in the most direct and cost effective way to accomplish its purpose.

The Deputy City Clerk as a non-exempt employee shall adhere to the travel policy as established in the City of Valdez personnel regulations. The City Clerk shall act as City Manager for the purpose of authorizing and approving travel by the Deputy City Clerk.

B. Travel for the Purpose of Training

The City Council and the City Clerk are encouraged to take advantage of training opportunities that will prepare them for advancement or expand their skills, but may only pay for expenses such as registration, travel or per diem.

Travel by Administrative Officers during normal work days/hours shall be compensable at the normal rate of pay.

The City will not compensate City Council members or the City Clerk for any inessential costs. For example, if a training session ends on a Wednesday and the employee does not return to work until the following Monday, the City Council or City Clerk will not be compensated for time (other than necessary travel time) or the extra costs incurred on Thursday and Friday.

City Council and Administrative Officers travel is authorized for official City purposes when one or more of the following criteria are met:

1. Travel is required to achieve operational and service objectives of the City.
2. Travel is required to support State or Federal efforts, which are beneficial to the City.
3. Travel is mandated by the State or Federal government.
4. Travel is for specific training, which is required for City Council members or the City Clerk to perform City functions, such as training on technological advances or for required certifications.
5. Travel is for specific training which will result in a significant cost savings or cost avoidance for the City.
6. Travel is required to attend a national or state board, committee meeting, or conference as a City representative and the exchange of information or participation will result in a benefit to the City.

C. Definitions

1. Travel Report. Travel documentation outlining travel details and expenses.
2. Travel Authorization Form. Standardized city form itemizing expenses required for internal processing of travel claims.
3. Traveler. City Council members, including, Administrative Officers authorized to travel on official business outside the Valdez area.

D. Responsibilities.

Travelers shall:

1. Assure that all official travel is conducted in a timely, cost-effective, and most beneficial manner for the City.  
Consideration of a maximum of 1 pre and/or post travel day may be allowed, depending on length of time of travel.
2. Incur only those expenses, which are necessary and reasonable to accomplish the approved purpose of the trip.
3. Maintain records and receipts for travel related expenses as may be required for payment or reimbursement.
4. Ensure that all official business expenses incurred or submitted for reimbursement are in compliance with this policy/procedure.
5. Upon completion of official travel, submit a Travel Authorization Form, including all required receipts, to the Deputy City Clerk within five (5) working days who will submit the travel authorization form and receipts to the Finance Department.
6. Submit in writing justification for any deviation from this policy/procedure.
7. The City Clerk's Office will provide a quarterly travel report to the City Council of all travel reports filed since the last reporting period. The report shall be provided at least 30 days following the end of the quarter.

E. City Council and Administrative Officers Travel Expenses and Per Diem:

Purpose. To establish regulations and procedures for the payment and/or reimbursement of authorized expenses.

Policy. It is the policy of the City of Valdez to authorize the City Council and Administrative Officers to use their City P-Card or request payment in advance for certain actual expenses incurred while on official City business

outside the Valdez area, provided the travel meets the criteria established in Section B, 1 thru 9.

1. Air Travel Costs. The City will pay the cost of air transportation directly related to travel for official business. The most economical and direct route available shall be utilized.
2. Private Vehicle Costs. The City will only pay a traveler for use of privately owned vehicles at the rate-per-mile currently being allowed by the Internal Revenue Service, not to exceed the cost of coach airfare and rental car. If two or more Council members travel in the same vehicle, only the owner of the vehicle may claim reimbursement for mileage. The City shall notify the Council and Administrative Officers of any rate changes by the IRS.

Mileage will be reimbursed based upon the following standard mileage/distance schedule:

Anchorage - 310 mi.  
Fairbanks - 363 mi.  
Wasilla - 254 mi.  
Palmer - 249 mi.  
Homer - 531 mi.  
Girdwood - 382 mi.  
Soldotna - 469 mi.  
Seward - 433 mi.  
Kenai - 456 mi.

3. City Vehicle. The City will pay the cost of fuel and other trip related vehicle-operating costs. No reimbursement for mileage will be allowed.
4. Lodging Costs. The City will pay lodging costs (room and taxes Government rates and tax exemptions shall be requested and used whenever possible. Use of Non Commercial, privately owned rental units must be pre- approved to be considered for reimbursement. Itemized hotel receipts are required for payment or reimbursement.
5. Per Diem. The City will pay up to \$70.00 per day for meals and incidental expenses incurred during official travel away from the Valdez area. If travel status is for at least three hours

between the hours of the following time periods, the rate indicated shall be paid:

Midnight - 8:00am: \$20.00

8:00am - 4:00pm: \$20.00

4:00pm - Midnight: \$30.00

Actual meal expenses for a per diem period greater than the per diem rate may be claimed in lieu of per diem, if fully documented with detailed receipts.

6. City Sponsored meals and Entertainment. Charges for city sponsored meals and entertainment are authorized in addition to per diem. The traveler sponsoring the event shall provide receipts and report expenses with their travel authorization form.
7. Registration Fees. The City may make advance payment and/or reimbursement for educational/training fees. Fees for spouse activities are the responsibility of the traveler and will not be paid by the City.
8. Ground Transportation. The City will pay for auto rentals and auto rental fuel only for the days and mileage necessary to conduct official City business. Private vehicle use in the conduct of City business will be reimbursed at the rate-per-mile allowed by the Internal Revenue Service.
9. Other Expenses. The City will pay or reimburse actual amounts paid for taxis, airport limousine services, telephone calls, laundry, self or valet parking, in-room movies, toiletries, etc. Paid itemized receipts for actual expenses will be required for any expense equaling \$10 or more.

F. Travel Advance. The City may, upon request by the traveler, make travel advances, up to one hundred (100%) of verified per diem and travel expenses contained within a travel authorization form. Travel advances may be requested only when travel plans have been finalized and expenses verified and documented.

G. Unforeseen Travel Interruptions. Travel expenses that result from incidents, outside of the traveler's control, (such as airline cancellations, road closures, etc.), that prevent a traveler from returning as scheduled, shall be paid or eligible for reimbursement by the City.



XII. **MISCELLANEOUS PROVISIONS:**

A. **Amendment of Council Rules of Procedure:**

1. Modifications and changes to City Council procedures may be as directed by Council.
2. Amendments resulting from city charter or code changes shall be deemed incorporated in the council procedures as required.

XIII. **CITIZEN ADVISORY GROUPS:**

A. **Commissions, Boards and Committees:**

Certain advisory groups are established by statute or ordinance. The members of advisory groups established by statute or ordinance shall be appointed by the City Council. Other advisory groups may be established by the Mayor or City Council for special temporary purposes.

Any vacancy during the un-expired term of an appointive member shall be filled by the council for the remainder of the term. The City Clerk shall advertise notice of the vacancy.

B. **Function of Advisory Groups:**

1. To receive citizen input and administration staff advice in formulating policy recommendations.
2. To assist and advise Council in the development of program policy and budget for the city.

C. **Established or Standing Advisory Groups:**

1. Planning and Zoning Commission
2. Valdez Museum and Historical Archive Board of Directors
3. Port and Harbor Commission
4. Parks and Recreation Commission
5. Valdez Consortium Library Board
6. Economic Development Commission

D. Attendance

1. Any member(s) not able to attend a particular meeting must notify their Staff Liaison as far in advance as possible.
2. A member may participate via telephone in a Commission or Committee meeting, except members of the Planning and Zoning Commission, which are bound by the attendance requirements set forth in II (H).
3. No more than three members may participate via telephone at any one meeting. A quorum of members must be physically present.
4. The member shall notify the Staff Liaison, if reasonably practicable, at least twenty- four hours in advance of a meeting which the member proposes to attend by telephone and shall provide the physical address of the location, the telephone number, and any available facsimile, email, or other document transmission service.
5. At the meeting, the Staff Liaison shall establish the telephone connection when the call to order is imminent.
6. A member participating by telephone shall be counted as present for purposes of discussion, and voting.
7. The member participating by telephone shall make every effort to participate in the entire meeting. From time to time during the meeting the Chair shall confirm the connection.
8. The member participating by telephone may ask to be recognized by the Chair to the same extent as any other member.
9. To the extent reasonably practicable, the Staff Liaison shall provide backup materials to members participating by telephone.
10. If the telephone connection cannot be made or is made then lost, the meeting shall commence or continue as scheduled and the Administrator shall attempt to establish or restore the connection.

11. Meeting times shall be expressed in Alaska time regardless of the time at the location of any member participating by telephone.
12. Participation by telephone shall be allowed for regular, special, work sessions and sub-committee meetings of the Committee or Commission.
13. Remarks by members participating by telephone shall be transmitted so as to be audible by all members and the public in attendance at the meeting.
14. All votes shall be taken by audible roll call vote.
15. As used in these rules, "telephone" means any system for synchronous two-way voice communication. "Chairperson" includes the Acting Chair or any other member serving as chair of the meeting.
16. A quorum (majority of the members) must be present at all times during a meeting or work session of the commission or committee.
17. The seat of any member, including the Chair, shall become vacant if the member is absent from three consecutive regular meetings without excuse.

D. Travel Authorization

All travel for members of Boards, Commissions, Advisory Groups, or members of other community service organizations for which city funding is requested, shall be coordinated through the City Clerk and is to be approved in advance by a vote of the council.

XIV. **CITIZENS' RIGHTS:**

A. Addressing the Council:

Any person desiring to address Council by oral communication shall first secure the permission of the Chair.

B. Manner of Addressing the Council -- Time Limit: Each person addressing the Council other than as a scheduled Public Appearance

shall step up to the microphone, shall give his/her name and address in an audible tone of voice for the record.

The time allowed for public testimony is five minutes, individually or by agent. A person may give individual testimony and testify as an agent of another, but may not exceed five minutes total. Additional time may be granted by the Mayor, upon motion and approval by the Council, to a person testifying who possesses special knowledge or expertise on the matter being heard. The five-minute limitation shall be strictly enforced by the Mayor.

All remarks shall be addressed to the Council as a body and not to any member thereof. No person other than members of the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through members of the Council. No questions shall be asked the Council members except through the Chair.

- C. Personal and Slanderous Remarks: Any person making personal, non-germane or slanderous remarks or who shall become boisterous while addressing the Council may be requested to leave the meeting.
- D. Written Communications: Interested parties, or their authorized representatives, may address the Council by written communication in regard to any matter concerning the City's business or over which the Council has control at any time by direct mail or by addressing the City Clerk and copies will be distributed to the Council members.

## XV. ADMINISTRATIVE OFFICERS:

### A. Definitions:

For the purposes of this section, Administrative Officers refer to the City Manager and City Clerk who work directly for the City Council as authorized and defined by the City Charter, Chapter V - The Administrative Service:

- B. Manner of Employment: The City Manager and City Clerk will be employed or engaged via negotiated individual contracts approved by the City Council.

- C. Evaluations: The City Council will evaluate the performance of the City Manager and the City Clerk under direct employment on a periodic basis, but not less than once annually.
- D. Annual Evaluation Process: The City Council will employ the following annual evaluation process:
  - 1. Two regular Council meetings before an evaluation, the City Council will be provided the currently adopted evaluation form(s) for the Officer being evaluated, and appoint a council member to serve as "evaluation chairperson" for that specific evaluation.
  - 2. Each City Council Member will fill out the evaluation form(s) individually.
  - 3. One regular Council meeting before the evaluation, the City Council will meet in Executive Session (without the Officer being evaluated\*) to discuss the performance and reach consensus regarding final disposition of the evaluation form(s).
  - 4. The evaluation chairperson will compile the final version of the evaluation form(s) and provide a copy to the full Council and the Officer being evaluated, not less than seven calendar days prior to the evaluation.
  - 5. The annual evaluation will occur at the next regular City Council meeting in Executive Session\*.
  - 6. All evaluation forms will be considered confidential and will not be released without the express written permission of the Officer being evaluated.

\*AS 44.62.310 (c) (2) allows a governing body to meet in executive session on matters which tend to prejudice the reputation and character of any person, except that the person to be discussed is entitled to notice and may insist upon open discussion.

# **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

## *Article I* **NAME**

Sec. 1 Name: The official name shall be the Valdez Museum and Historical Archive Association, Incorporated [hereinafter called “the Museum Corporation”].

## *Article II* **OFFICES**

The Principal office of the Museum Corporation in the State of Alaska shall be located in Valdez, Third Judicial District, State of Alaska.

The Museum Corporation shall have and continuously maintain in the State of Alaska registered office, and a registered agent whose office is identical with such registered office, as required by the Alaska Non-Profit Corporation Act. The registered office may be, but need not be; identical with the principal office in the State of Alaska, and the address of the registered office may be changed from time to time by the Board of Directors.

## *Article III* **PURPOSE**

The purpose of the Corporation shall be as set out in the Articles of Incorporation.

## *Article IV* **SEAL**

The Museum Corporation shall have a seal.

## *Article V* **MEMBERSHIP**

Sec. 1 Members: Membership in the Museum Corporation is limited to those persons holding office on the City Council of the City of Valdez, Alaska. A Member shall retain membership until his/her successor takes office on the City Council.

Sec 2 Voting: Each Member may vote on any issue brought before the Members in person, but not by proxy.

## *Article VI* **MEMBERSHIP MEETINGS**

Sec 1 Annual Meetings: The annual meeting of the Members shall be held during the month of October of each year. <sup>1</sup> At such meetings, the Members shall receive reports from the Board of Directors and transact such other business which shall come before the meeting; the place for all meetings will be the City Council chambers unless noticed otherwise. Notice in writing to all Members of the date, time and place of each meeting. This notice shall be given not less than thirty days in advance of the date of the meeting.

# **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

Sec 2 Special Meetings/Notice: Special meetings of the Members may be called by written request to the President of the Members by at least two or more of the Members. A minimum of 24 hours written notice to the Members and the public shall be given prior to convening of special meetings of the members. Notice to all Members which shall include a copy of the agenda for the special meeting. The Members shall not conduct any business at the special meeting unless it appears in the agenda accompanying the notice.

Sec 3 Quorum: A quorum for the transaction of business of any meeting of the Members shall consist of four of the voting membership. Once established, a quorum is valid for the remainder of the meeting so long as at least four voting Members are present.

Sec 4 Executive Sessions: The Members may adjourn any meeting into an Executive session by a majority vote of the quorum present for purposes of discussion as provided in Alaska Statue 44.62.310 and as hereafter amended. The agenda shall state the qualifications of item to be discussed in the Executive Session. Notice of a vote to adjourn to Executive Session must be posted at least 24 hours prior to the start of the meeting. No formal action may be taken in Executive Session.

Sec 5 Voting: A vote by a majority of the votes entitled to be cast on a matter to be voted upon by the Members present at a meeting at which a quorum has been established is an action by the membership.

Approval of four Members is required for:

- a. Removal of a member of the Board of Directors

Approval of six Members is required for:

- a. Amendment of the Articles of incorporation or Bylaws
- b. Merger or consolidation
- c. Sale or other disposal of substantially all of the assets of the Corporation
- d. A decision to expend endowment principal; this action also requires unanimous affirmative vote of the Museum Corporation Board of Directors
- e. Dissolution of the Museum Corporation

Each Member shall have one vote; cumulative voting is not permitted.

## *Article VII*

### **PROHIBITED ACTIVITIES**

The Corporation is a non-profit corporation under the laws of the State of Alaska and under Section 501(c)(3) of the Internal Revenue Code. No Member shall take any action which would jeopardize or in any way defeat the Organization's status as a non-profit corporation.

## *Article VIII*

### **BOARD OF DIRECTORS**

Sec 1 General Powers: The affairs of the Museum Corporation shall be managed by a Board of Directors, [hereinafter referred to as "the Directors"]. The Directors shall have authority over the operation and administration of the Museum Corporation and will adopt those policies it deems necessary to ensure the Valdez Museum and Historical Archive [hereinafter referred to as "the Museum"] is operated in a professional manner. The directors may employ an Executive Director as it deems necessary to administer and operate the Museum.

Sec 2 Number, Tenure and Election: The number of voting Directors shall be eleven, appointed at large by the Members of the Corporation. One Director may be nominated by the Valdez Native Tribe, Inc. and

# BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

reported in writing to the Members of the Corporation. All appointments to the Board of Directors will be for three years unless such appointment is to fill a vacant position. In this latter event, the person appointed shall complete the remaining term of the director vacating the position.<sup>2</sup>

Sec 3 Vacancies: Any vacancy occurring in the Board of Directors shall be filled by the Members of the Museum Corporation; the appointed Director will serve the balance of the unexpired term of such vacant office.

Sec 4 Replacement: A Director who, without due cause, fails to attend three consecutive regular or special meetings of the Board of Directors may be removed by an affirmative vote by the majority of the quorum present at a regular or special meeting. The motion to declare a Director position vacant shall include a recommendation to fill the vacancy as outlined in Section 3 above.

Sec 5 Meetings: The Board of Directors shall set meetings at a time and place to be fixed by the board. Notice of each regular meeting shall be given by the Secretary in writing to all Board members. Notice shall be given not less than ten nor more than thirty days in advance of the meeting date. No business of the organization shall be conducted unless it appears in the agenda attached to the notice of the meeting.

Sec 6 Meetings to be Public: In accordance with the Alaska State Open Meetings Act, all meetings of the Board of Directors except those qualified as Executive Session shall be open to the public. The journal of proceedings (minutes) shall be open to public inspection.

Sec 7 Quorum: A quorum for the transaction of business of any meeting of the Board of Directors shall consist of six of the voting membership. Once established, a quorum is valid for the remainder of the meeting so long as at least six voting Members are present.

Sec 8 Attendance: Notwithstanding anything elsewhere contained in these By-Laws and to the extent permitted by applicable law, any one or more Directors may participate in a meeting by Teleconferencing. Participation by such means shall constitute presence in person at a meeting of the Directors.

1. Any Director(s) not able to attend a particular meeting must notify their Executive Director as far in advance as possible.
2. A Director may participate via telephone in a Board or Committee meeting, if the Director declares that circumstances prevent physical attendance at the meeting. If the President or Chairperson chooses to participate via telephone, the Vice-Chair or other member physically present shall preside.
3. The Director shall notify the Executive Director, if reasonable, at least twenty- four hours in advance of a meeting which the Director proposes to attend by telephone and shall provide the physical address of the location, the telephone number, and any available facsimile, email, or other document transmission service.
4. At the meeting, the Staff Liaison shall establish the telephone connection when the call to order is imminent.
5. A Director participating by telephone shall be counted as present for purposes of discussion, and voting.
6. The member participating by telephone shall make every effort to participate in the entire meeting. From time to time during the meeting the Chair shall confirm the connection.
7. The Director participating by telephone may ask to be recognized by the Chair to the same extent as any other Director.



## BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

8. To the extent reasonably practicable, the Staff Liaison shall provide backup materials to members participating by telephone.
9. If the telephone connection cannot be made or is made then lost, the meeting shall commence or continue as scheduled and the Staff Liaison shall attempt to establish or restore the connection.
10. Meeting times shall be expressed in Alaska Time regardless of the time at the location of any member participating by telephone.
11. Participation by telephone shall be allowed for regular, special, work sessions and sub-committee meetings of the Committee.
12. Remarks by Directors participating by telephone shall be transmitted so as to be audible by all Directors and the public in attendance at the meeting.
13. All votes shall be taken by audible roll call vote.
14. As used in these rules, "telephone" means any system for synchronous two-way voice communication. "Chairperson" includes the Acting Chair or any other member serving as chair of the meeting.
15. A quorum (majority of the Directors) must be present at all times during a meeting or work session of the committee

### *Article IX* **OFFICERS**

Sec 1 Officers: The officers of the Museum Corporation Board of Directors shall be a President, a Vice President, a Secretary, and a Treasurer. Officers shall be Directors of the Museum Corporation. When appointed by the Directors, an Executive Director will serve as a non-voting *ex-officio* Director of the Museum Corporation Board of Directors.

Sec 2 Election of Officers: The officers of the Museum Corporation Board of Directors shall be elected annually by the Directors at their initial meeting following appointment by the Members; voting will take place via secret ballot from candidates nominated from the floor or submitted by a nominating committee appointed by the President of the Board of Directors.

Sec 3 Terms of Office: All officers will serve two-year<sup>3</sup> terms. Except for Initial Directors, a person must serve at least one year as a Director to be eligible to be elected an officer. No person may serve more than two successive terms as President of the Board of Directors of the Museum Corporation.

Sec 4 Duties of Officers: Duties of officers of the Museum Board of Directors are as follows:

- a. **PRESIDENT-** the President shall be the principal officer of the Museum Board of Directors and shall in general supervise the businesses and affairs of the Museum Corporation. He/She may sign, with the Secretary or any other proper officer of the Museum Board of Directors authorized by the board, any contracts, or other instruments which the Museum Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Museum Board of Directors or by these by-laws or by statute to some other officer or agent of the Museum Board of Directors. In general, he/she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Museum Board of Directors.
- b. **VICE PRESIDENT-** In the absence of the President or in event of his/her inability or refusal to act, the Vice President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice

# BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

President shall perform such other duties as may be assigned by the President or by the Museum Board of Directors.

- c. SECRETARY- The Secretary shall insure the minutes of the Museum Board of Directors meetings be kept in one or more books provided for that purpose; oversee that all notices are duly given in accordance with the provision of the by-laws or as required by law; be custodian of the corporate records and of the seal of the Museum Board of Directors and see that the seal of the Museum Board of Directors is affixed to all legally binding documents the execution of which on behalf of the Museum Corporation under its seal is duly authorized in accordance with the provisions of the by-laws; keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; and, in general, perform duties incident to the office of Secretary as may be assigned by the President or by the Museum Board of Directors.
- d. TREASURER- The Treasurer shall oversee and be responsible for the accounting of all funds, securities, and properties of the Museum Board of Directors; and shall oversee and be responsible for an annual report for the annual meeting; and, in general, perform all the duties incident to the office of Treasurer and such other duties as may be assigned by the President or by the Museum Board of Directors.

## Article X COMMITTEES

Sec 1 Standing Committees: The Standing Committees of the Museum Board of Directors will consist of a Finance Committee, a Board Development Committee, and a Collections Committee. Descriptions and duties of Standing Committees are as follows:

- a. FINANCE COMMITTEE: The role of the Finance Committee is to provide financial oversight of the Valdez Museum & Historical Archive Association, Inc. Tasks include budgeting and financial planning; monitor adherence to the budget; financial reporting; and the creation and monitoring of internal controls and accountability policies.
  - 1) Finance Committee will meet at least four times a year to review the status of the Museum's financial position. During the first Finance Committee Meeting, the Executive Director will provide a schedule outlining the four meetings to be conducted within the fiscal year.
  - 2) The Finance Committee will include:
    - a) Board of Directors – President
    - b) Board of Directors – Treasurer
    - c) Executive Director
    - d) Committee Member (2)
- b. BOARD DEVELOPMENT COMMITTEE: The role of the Board Development Committee is to give attention to the composition of the Board – and the effective and appropriate involvement of all Directors to ensure continuing vitality and effective governance. Tasks include, but are not limited to:
  - 1) Develop an annual recruitment plan that takes into account the expertise, perspective, judgment and resources needed in new board members. Review potential candidates and present to the Directors.
  - 2) Develop Board Job Descriptions and Committee Job Descriptions that clearly state the role and expectation of the Directors
  - 3) Plan and implement an orientation program, including official briefings, printed materials and individual mentorship to make new Directors part of the Board culture.

## BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

- 4) Conduct an Annual Review of the Board Manual to ensure that the supplemental materials are up to date.
  - 5) Review the talents and interests of current and new Directors and recommend to the Board President, committee assignments most appropriate for their involvement.
  - 6) Recommend to the Board, the policies about expectations for Directors; reaching out to those whose commitment does not match expectations.
  - 7) Encourage participation in special occasions which bond Directors to each other and to the organization.
  - 8) The Board Development Committee will include:
    - a) Board of Directors - Committee Chairperson
    - b) Board of Directors – (2)
    - c) Executive Director
- c. **COLLECTIONS COMMITTEE:** The Collections Committee exists in accordance with the Valdez Museum & Historical Archive's Lease Management Agreement with the City of Valdez as the stewards of the City's historical collections. The Collections Committee's role is to review and make recommendations to the VMHA Board of Directors regarding collection acquisitions, deaccessions, and collections policy revisions. The Collections Committee will meet at least four times a year. Tasks include, but are not limited to:
- 1) Recommendations for deaccessions will be included in the monthly report to the Board of Directors. Upon acceptance by the Board, these recommendations will be passed on to the City Council acting as representatives of the Members of the VMHA as per the museum's collections policy.
  - 2) The Collections Committee will be called upon for approval of collections acquisitions exceeding the year's annual acquisitions budget. In instances where time is of the essence, a consensus may be reached and documented in the committee's report to the Board of Directors.
  - 3) The Collections Committee will include, but is not limited to:
    - a) Board of Directors (Chair)
    - b) Board of Directors – Member
    - c) City Clerk
    - d) Curator of Collections and Exhibitions
    - e) Curator of Education and Public Programs
    - f) 4 Members-At-Large, one each specializing in one of the following areas:
      1. Historical Collections,
      2. Alaska Native Culture,
      3. Art Collections, and
      4. Archives

Sec 2 Other Committees: The Directors may, by resolution, appoint other standing or *ad hoc* committees. Except as otherwise provided in such resolution, the chairpersons of such committee shall be Directors of the Museum Corporation and the President of the Directors shall appoint the chairperson thereof. Any committee-member may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Museum Corporation shall be served by such removal.

Sec 3 Terms of Office: Each member of a Standing Committee shall be appointed at the first Directors meeting following the annual meeting of the Museum Corporation and will serve a one-year term of office. Terms of appointment to *ad hoc* committees will be defined in the Committee Description.

# BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

Sec 4 Chairperson: One member of each committee shall be appointed Chairperson by the President or the designee authorized to appoint the members thereof.

Sec 5 Vacancies: Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Sec 6 Quorum: Unless otherwise provided in the Committee Description, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Sec 7 Rules: Rules for each Committee shall be outlined in the Committee Description as long as those rules are consistent with those of these by-laws.

## *Article XI*

### **CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

Sec 1 Contracts: The Directors may authorize any officer or officers, agent or agents of the Museum Board of Directors, in addition to the officers so authorized by these by-laws, to enter into any contract, or execute and deliver any instrument in the name of and on behalf of the Museum Board of Directors, and such authority may be general or confined to specific instances.

Sec 2 Checks, Drafts, etc.: All checks drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Museum Board of Directors shall be signed by such officer or officers, agent or agents of the Museum Corporation and in such manner as shall from time to time be determined by resolution of the Directors. In the absence of such determination by the Directors, such instruments shall be signed by the Treasurer and countersigned by the President or Vice President of the Directors.

Sec 3 Deposits: All funds of the Museum Board of Directors shall be deposited to the credit of the Museum Corporation in such banks, trust companies or other depositories as the Directors may select.

Sec 4 Gifts: The Directors may accept on behalf of the Museum Corporation any contribution, gift, bequest or other fiscal device for general purposes or for any special purpose of the Museum Corporation.

Sec 5 Funds: The Directors will establish and manage the general funds of the Museum Corporation and may assign or delegate management authority for these funds to their agent or agents; this assignment will be written and will be specific in defining the authority and limits being assigned or delegated.

Sec 6 Special Funds: The special funds of the Corporation are the Phyllis Irish Memorial Fund and the Valdez Museum Endowment Fund. The Directors may, by resolution, create other special funds to be managed according to and for purposes defined in their instituting resolutions.

- a. Phyllis Irish Memorial Fund- Created by the City Council in 1985, the Phyllis Irish Memorial Fund commemorates a founding member of the Valdez Museum. Its purpose is to provide an interest-bearing revolving account for special museum projects. This fund will be managed by

# BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

the Directors who will have authority for its disbursement; during the annual meeting, the Directors will advise Members of expenditures made from this fund.

- b. Valdez Museum Endowment Fund- Created initially in memory of Clinton J. “Truck” Egan, this fund was instituted by City Council as a separate account to be invested in long-term interest-bearing instruments. The fund’s purpose is to provide interest-income to be used ultimately to fund operating expenses of the Valdez Museum in replacement of tax-based General Fund revenues. The Members will hold the Valdez Museum Endowment Fund Principal in perpetual trust for the benefit of the Valdez Museum. The Members will provide policy guidance to the Directors for the administration, management and investment of the Museum Endowment Fund. Expenditures of the fund principal are not anticipated but may be authorized by unanimous affirmative vote by the Members and the Directors in a joint public meeting noticed at least 24 hours in advance; the notice will specify the purposes of the meeting.

## Article XII

### MUSEUM ADMINISTRATION

Sec 1 Executive Director: The Directors shall select, appoint, determine compensation for, evaluate and discharge a Chief Operating and Administrative Officer with the title of Executive Director. The Executive Director shall be given the necessary authority and responsibility to operate the Museum in all its activities and departments, subject only to such policies as may be issued by the Directors or by any of its committees to which it has delegated power for such action or by such constraints as may be imposed by City, State, and/or Federal laws and regulations.

The Executive Director shall act as the duly authorized representative of the Directors in all matters in which the directors have not formally designated some other person to act.

Sec 2 Authority and Responsibility: The authority and responsibility of the Executive Director shall include:

- a) Carrying out all policies established by the Directors and advising on the amendments to these policies.
- b) Developing and submitting to the Directors for approval a plan of organization for the conduct of Museum operations and recommended changes when necessary.
- c) Preparing an annual budget, including estimated capital expenditures, showing the expected revenues and expenditures as required by the Directors or its committees.
  - i. The Executive Director’s fiscal management responsibilities include development, execution and/or oversight of a permanent, formal fund development program to enhance the Museum’s non-tax fiscal resources.
- d) Selecting, employing, training, controlling and discharging employees and developing and managing personnel policies and practices for the Museum Corporation.
- e) Maintaining physical properties of the Museum Corporation in a good and safe state of repair and operating condition.
- f) Maintaining the public trust properties entrusted to it in accordance with professional standards of such organizations as the American Association of Museums and the society of American Archivists.
- g) Supervising the business affairs of the corporation to ensure that funds are collected and expended in a manner consistent with their public trust responsibilities and to the best possible advantage of the Museum Corporation.
- h) Working continually with other museum and archive organizations and professionals to the end those high-quality services may be provided at all times.

## **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

- i) Presenting to the Directors and Members and/or their committees periodic reports reflecting the professional services, financial activities, acquisitions, loans [to and from the museum], transfers, and other pertinent information regarding the museum's collections, exhibitions, publications, and programs.
- j) Attending all meetings of the Directors and serving in a person or by appropriate designee on committees thereof; attending all meetings of the Members.
- k) Serving as the liaison and channel for communications between the Board and the Members.
- l) Preparing a plan for the achievement of the Museum Corporation's specific objectives and periodically reviewing and making recommendations for revision of the objectives.
- m) Representing the Museum Corporation in its relationship with other heritage service organizations.
- n) Performing other duties that may be necessary or in the best interest of the Museum.

Sec 3 Performance Review: The performance of the Executive Director shall be reviewed annually by the Directors; this evaluation will be preceded by a self-examination report to the Directors. Adjustments to the Executive Director's compensation may be made on the basis of annual or special evaluations.

### *Article XIII* **MUSEUM STAFF**

Sec 1 Authority: The Executive Director will have sole authority for recruitment, selection, appointment and discharge, and determination of duties and compensation levels for all employees of the Museum Corporation. Exercise of this authority will be consistent with applicable rules, schedules, fiscal resources, and policies of the Corporation established and adopted by the Directors and attached as appendices to these by-laws.

Sec 2 Rules: The staff of the Museum Corporation will be employed according to terms defined in Personnel Policy formulated and adopted by the Directors; acceptance of the corporation's Personnel Policy will be a condition of employment.

Sec 3 Compensation, Benefits, etc.: The compensation and benefits for Museum Corporation employees will be in accordance with pay/wage scales and schedules formulated and adopted by the Directors.

### *Article XIV* **CONFLICT OF INTERESTS**

Sec 1 Purpose: This conflict of interest Article is to protect the Valdez Museum & Historical Archive (VMHA) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Member, Director, Executive Director, Staff or Volunteer of the Museum Corporation; or might result in a possible excess benefit transaction. This Article supplements (not replaces) local, state or federal laws governing conflict of interest applicable to nonprofit and charitable organizations

#### Sec 2 Policy:

- a) The Members, Directors, Executive Directors, staff, and volunteers, including immediate family (to include spouse, parents, siblings and children) or someone in the immediate household, shall exercise the utmost good faith in all transactions in which they are involved in the course of their duties for the Museum Corporation. In their dealings with and on behalf of the Museum, they shall

# **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

be held to a strict standard of honest and fair dealings between themselves and the Museum. They shall not use their position or any knowledge gained thereby, in such a way that a conflict may arise between the interests of the Museum Corporation and that of the individual.

- b) All acts of such persons shall be for the best interest of the Valdez Museum Corporation.
- c) Such persons shall not accept any gift, factor or hospitality which would influence their decisions or actions which affect the Museum Corporation.
- d) It is the policy of the corporation to require complete disclosure of any material conflict of interest. Any officer or director of the corporation with a material financial interest or other conflict of interest in an item or items of business of the corporation shall disclose that conflict of interest to the presiding officer. If the conflict of interest arises in the presiding officer it shall be disclosed to the Board. After disclosure, the officer, director or member may not vote on any matter involving the conflict of interest without the consent of the Board.
- e) If a matter before the board involves a “disqualified person” as that term is defined in section 4958 of the IRS Code and the associated regulations, then the Board shall satisfy the requirements of section 4958 as to that “disqualified person” including, but not limited, to the requirements that apply to conflicts of interest and the “safe harbor” standards with regard to the “disqualified person”.

Sec 4 Annual Statements: Each Director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a) Has received a copy of the By-laws outlining conflict of interest.
- b) Has read and understands Article XIV, Conflict of Interest
- c) Has agreed to comply with Article XIV, Conflict of Interest, and
- d) Understands the Museum Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## *Article XV* **FISCAL YEAR**

The Fiscal Year of the Museum Corporation shall be the calendar year.

## *Article XVI* **INDEMNIFICATION**

Sec 1 Non-Derivative Actions: Subject to the provisions of Sections 3, 5, and 6 below, the Museum Corporation shall defend, indemnify and hold financially harmless any person who was or is a part, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (Other than an action or in the right of the Museum Corporation) by reason of or arising from the fact that the person is or was a Member, Director, Officer, employee, or agent of the Museum Corporation, or is or was serving at the request of the Museum Corporation as a director, officer, employee, agent, partner, or trustee of another corporation, partnership, joint venture, trust, or other enterprise, against costs and expenses (including attorney’s fees when counsel is selected by the Directors or Members) of said suit, action or proceeding, judgments, fines and amounts paid in settlement actually or reasonable incurred in connection with the action, suit or proceeding if:

## BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.

- a) The person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Museum Corporation and, with respect to a criminal action or proceeding, did not know and had no reasonable cause to believe the conduct was unlawful.
- b) The person's act or omission giving rise to such action, suit or proceedings is ratified, adopted or confirmed by the Museum Corporation or the benefit thereof received by the Corporation.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption, and settlement shall not constitute any evidence that the person did not act in good faith and in a manner which the person reasonably believe to be in or not opposed to the best interests of the Museum Corporation and, with respect to a criminal action or proceeding, did not know and had no reasonable cause to believe that the conduct was unlawful.

Sec 2 Derivative Actions: Subject to the provisions of 3, 5, and 6 below, the Corporation shall defend, indemnify and hold financially harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of or arising from the fact that the person is or was a Member, Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation, partnership, joint venture trust or other enterprise, against costs and expenses (including attorney fees when counsel has been selected by the Directors or Members) actually and reasonably incurred in connection with the defense or settlement of such action or suit if:

- a) The person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Museum Corporation, or
- b) The person's act or omission giving rise to such action or suit is ratified, adopted, or confirmed by the Museum Corporation or the benefit thereof received by the Corporation.

No indemnification shall be made in respect of any claim, issue or matter as to which such person as a Member, Director, employee or agent shall have been adjudged to be liable for: (a) a breach of that person's duty of loyalty to the Corporation; (b) acts or omissions not in good faith or that involve intentional misconduct of a knowing violation of law; or (c) a transaction from which the person derives an improper personal benefit, unless, and only to the extent that, the court in which the action or suit was brought, shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

Sec 3 Denial of Right of Indemnification: Subject to the provisions of section 5 and 6 below, defense and indemnification under sections 1 and 2 of this article automatically shall be made by the Museum Corporation unless it is expressly determined that defense and indemnification of the person is not proper under the circumstances because the person has not met the applicable standard of conduct set forth in section 1 or 2 of this article. The person shall be afforded a fair opportunity to be heard as to such determination. Defense and indemnification payment may be made, in the case of any challenge to the propriety thereof, subject to repayment upon ultimate determination that indemnification is not proper.

Sec 4 Determination: The determination described in section 3 shall be made

- a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding, or



# **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

- b) If such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel selected by Directors or Members in a written opinion.

Sec 5 Successful defense: Notwithstanding any other provision of sections 1, 2, 3, or 4 of this article, but subject to the provision of section 6 below, if a person is successful on the merits of otherwise in defense of any action, suit or proceeding referred to in section 1 or 2 of this article, or in defense of any claim, issue or matter therein, the person shall be indemnified against costs and expenses (including attorney fees when counsel is selected by the Directors) actually and reasonably incurred in connection therewith.

Sec 6 Condition Precedent to Indemnification: Any person who desires to receive defense and indemnification under this article shall notify to Museum Corporation reasonably promptly that the person has been named a defendant to an action, suit or proceeding of a type referred to in sections 1 or 2 and that person intends to rely upon the right of indemnification described in this article. The notice shall be in writing and mailed via registered or certified mail, return receipt requested, to the Executive Director of the Corporation at the principal office of the Corporation or, in the even the notice is from the Executive Director, to the Chairman of the Board of Directors and to the registered agent of the Corporation. Notice need not be given when the Corporation is otherwise notified by being named a party to the action. This notice alone does not provide indemnification.

Sec 7 Insurance: At the discretion of the Board of Directors, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Member, Director, officer, employee, agent, partner or trustee of another, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Museum Corporation would have the power to defend and indemnify the person against such liability under to provisions of this article.

Sec 8 Former Members, Officers, Directors, etc.: The indemnification provisions of this article shall be extended to a person who has ceased to be a Member, Director, Officer, employee, or agent as described above and shall insure to the benefit of the heirs, personal representatives, executors, and administrators of such person.

Sec 9 Purpose and Exclusivity: The defense and indemnification referred to in the various sections of this article shall be deemed to be in addition to and not in lieu of any other rights to which those defended and indemnified may be entitled under any statute, rule of law or equity, agreement, vote of the Members or Board of Directors or otherwise. The purpose of this article is to augment pursuant to AS 10.06.490 (f), the provisions of AS 10.20.011 (14), and the other provisions of AS 10.06.490.

Sec 10 Limitation of Liability: If set forth in the articles of Incorporation, no Member or Director of the Museum Corporation shall have any personal liability to the Corporation for monetary damages for the breach of fiduciary duty as a Member or Director except as provided in AS 10.20.151 (d).

Sec 11 Director Reliance: In acting for the Museum Corporation and unless the Member or Director has knowledge concerning the matter in question that makes reliance unwarranted, Members or Directors may rely upon information, opinions, reports, or statements, including financial statements, and data prepared by (1) officer, employees, and agent of the Corporation whom the Director believes to be reliable and competent in the matters presented, (2) counsel, public accountants, or other person as to matters that the Director reasonably believes to be within the person's professional or expert competence, and (3)

# **BY-LAWS OF THE VALDEZ MUSEUM AND HISTORICAL ARCHIVE ASSOCIATION, INC.**

committees of the Board of Directors as to matters within the authority of the committee which the Director believes to merit confidence.

## *Article XVII*

### **PARLIAMENTARY PROCEDURES**

Unless inconsistent with law, these By-laws or the Articles of Incorporation, meetings of the Members and Directors shall be conducted in accordance with Roberts Rules of Order; the Directors and Members may modify or suspend the rules by majority vote of those present during a regular or special meeting.

## *Article XIII*

### **AMENDMENTS**

These By-Laws may be altered, amended or repealed and new By-laws adopted by an affirmative vote of six of the Members of the Corporation present in any regular or special meeting of the Members provided that a full statement of such purpose shall have been published in a notice calling the meeting and written notices of the proposed changes shall have been given to each Member and Director. However, any provision herein contained required to be approved by the Members or which require Member vote or action may not be altered, amended or repealed without such approval by the Members of this Corporation.

### **End Notes**

Amendment 97-1 adopted 3/16/97 by Members: Article V, Sec 2 changing the annual Meeting from September to October. Amended again on 1/22/01 by Members: changed the annual meeting date to any time in October.

Amendment 97-2 adopted 3/16/97 by Members: Art. VII, Sec 3 extending Board officer terms to two years from one year.

Amendment 98-1 adopted 7/20/98 by Members: Art VI, Sec 2 adding two more seats, one at large, one designated for VNT and making all seats three-year terms except when filling a seat vacated early.

Amendment 13-1 adopted 8/5/13 by Members: Art VI, Sec 2 Secretary shall provide 30 days notice, Sec 3 Special Meeting notice, Sec 4 adjourn when less than quorum.

Amendment 13-2 adopted 8/5/13 by Members: Art VII, prohibited activities.

Amendment 13-3 adopted 8/5/13 by Members: Art VIII, Sec 5 agenda and notice of meetings.

Amendment 13-4 adopted 8/5/13 by Members, Art IX, Sec 4 duties of officers.

Amendment 13-5 adopted 8/5/13 by Members, Art X, Sec 1, Descriptions and duties of Standing Committees.

Amendment 13-6 adopted 8/5/13 by Members, Art X, Sec 4, one member of each committee shall be appointed Chairperson by the President or the designee authorized to appoint the members thereof.

Amendment 13-7 adopted 8/5/13 by Members, Art XIV, Sec 1 thru Sec 4, Conflict of Interest purpose and policy.

Amendment 13-7 adopted 8/5/13 by Members, Art XIII, Bylaws may be altered, amended, repealed and new By-laws adopted by an affirmative vote of six of the Members of the Corporation.

Amendment 15-1 adopted 3/2/15 by Members, Art VIII, Sec 6, comply with Alaska Open Meetings Act. Meetings to be public.

Amendment 15-2 adopted 3/2/15 by Members, Art VIII, Sec 8, attendance and teleconferencing.

THIS AMENDMENT NO. 2 TO  
MANAGEMENT AND OPERATING AGREEMENT  
BETWEEN THE CITY OF VALDEZ  
AND  
PROVIDENCE HEALTH & SERVICES – WASHINGTON  
DBA PROVIDENCE HEALTH & SERVICES ALASKA

This Amendment No. 2 (“Amendment No. 2”) to the Management and Operating Agreement (“Agreement”) between the City of Valdez (“City”) and Providence Health & Services-Washington dba Providence Health & Services Alaska (“Providence”) is made this 17<sup>th</sup> day of December 2019. Providence and the City may be referred to in this Amendment as a “Party” or, collectively, as the “Parties.”

**RECITALS**

WHEREAS, the City and Providence are Parties to a Management and Operating Agreement (“Agreement”) which became effective January 1, 2015, amended by Amendment No. 1 on January 1, 2016, and which collectively expires December 31, 2019; and

WHEREAS, Section 2 of the Agreement states: “The Parties may extend the Term for an additional five (5) years based upon mutual written agreement. Such renewal (if applicable) shall be on the same terms and conditions of this Agreement.”; and

WHEREAS, the Parties seek to improve upon the efficiency of their respective budgeting processes, which includes meeting informational, reporting, timeliness and other expectations of the City; and

WHEREAS, the Parties seek to clarify and streamline the performance of the operating and capital budgets under the Agreement.

**AMENDMENT**

NOW THEREFORE, the Parties hereby agree as follows:

1. **Extension of Term.** Subject to the Parties’ respective termination rights pursuant to the Agreement, the term of the Management and Operating Agreement, inclusive of all amendments heretofore and foregoing, is hereby extended through December 31, 2024.
2. **Capitalized Terms.** All capitalized terms in this Amendment shall have the same meaning given to such terms in the Agreement unless otherwise specified in this Amendment.
3. **Revised Section 4(d):** Section 4(d) to the Agreement is hereby amended and replaced in its entirety to read:

(d) Alterations. Providence shall have the right to make alterations, additions, improvements and renovations to the Health Care Facilities, the costs of which shall be recoverable as Reimbursable Expenses, provided: 1) Providence shall notify the City with respect to any such work requiring any substantial expenditure; 2) Such work shall not adversely affect the structural integrity of the Health Care Facilities or diminish the value thereof; 3) Any such work shall be performed in a good and workmanlike manner and in conformance with all applicable building, fire, health regulations; 4) The City shall have approved in

writing such work in advance, such approval to not be unreasonably withheld; and 5) Such work shall comply with the Little Davis-Bacon Act as set forth in Alaska Statutes Title 36, if applicable.

4. **Revised Section 5(e):** The first sentence of Section 5(e) to the Agreement is hereby amended and replaced in its entirety as follows:

(e) By no later than fourteen (14) days prior to the Hospital's scheduled City Council budget work session or other budget hearing, or October 15<sup>th</sup>, whichever is later, of each Operating Year during the term of this Agreement, Providence shall submit and recommend to the City an operating and capital budget for the Health Care Facilities.

5. **Revised Section 6(a):** Section 6(a) to the Agreement is hereby amended and replaced in its entirety as follows:

(a) Providence will pay Reimbursable Expenses as they become due, using funds from the Accounts. Providence will assure that all Reimbursable Expenses will be paid consistent with the various terms and conditions of vendors, as well as the annually approved operating and capital budgets or other express City approvals, and applicable regulations.

Notwithstanding the major maintenance or capital improvement projects elected by the City to manage, or agreed upon by the Parties for the City to manage, upon approval of the annual capital budget, Providence may purchase the approved items subject to its internal procurement policies. Capital items not anticipated in the budget with a cost not in excess of \$40,000, require approval from the City manager or designee prior to purchase. Capital items not anticipated in the budget with a cost in excess of \$40,000 require approval from City Council. Capital items are defined as those costing \$5,000 or more. All capital purchases procured in this manner will be the property of the City.

6. **Continuation of Agreement.** Except as specifically amended pursuant to the foregoing, the Agreement shall continue in full force and effect in accordance with the terms in existence as of the date of this Amendment. After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

The Parties have executed this Amendment on the date first above written.

**Providence Health & Services  
-Washington dba Providence Health  
& Services Alaska**

Signature

Presion M Simmons, DSc

Name

Chief Executive Alaska PSTH

Title

1/3/19

Date

3760 Popin St

Mailing Address

Anchorage, AK 99508

City, State, Zip Code

Federal I.D. or S.S.N.

Corporate Secretary

Attest:

Corporate Secretary

Cindy Strauss

**City of Valdez, Alaska, Authorized**

Sharon Scheidt, Mayor Pro-Tempore

12/23/19

Date

Attested:

4018 deputy for  
Sheri L. Pierce, MMC, City Clerk

12.23.19

Date

Recommended:

Mark Dettter

Mark Dettter, City Manager

12/20/19

Date

Approved as to Form:

Brena, Bell & Clarkson, P.C.

Jon S. Wakeland

12.20.19

Date



THIS AMENDMENT NO. 1 TO  
MANAGEMENT AND OPERATING AGREEMENT  
BETWEEN THE CITY OF VALDEZ  
AND  
PROVIDENCE HEALTH & SERVICES – WASHINGTON  
DBA PROVIDENCE HEALTH & SERVICES ALASKA

This Amendment No. 1 ("Amendment No. 1") to the Management and Operating Agreement ("Agreement") between the City of Valdez ("City") and Providence Health & Services-Washington dba Providence Health & Services Alaska ("Providence") is made this 1<sup>st</sup> day of January, 2016. Providence and the City may be referred to in this Amendment as a "Party" or, collectively, as the "Parties."

**RECITALS**

WHEREAS, the City and Providence are Parties to a Management and Operating Agreement ("Agreement") which became effective January 1, 2015 and which expires December 31, 2019; and

WHEREAS, said Agreement provides for Providence's management of Providence Valdez Medical Center, the Valdez Extended Care Center, and the Valdez Counseling Center (collectively, the "Health Care Facilities"); and

WHEREAS, said Agreement authorizes Providence to employ or otherwise retain and maintain responsibility over all personnel that are reasonably necessary and appropriate for the operation of the Health Care Facilities, except for building, grounds, and maintenance staff; and

WHEREAS, the City has retained authority under the Agreement for employment and oversight of personnel responsible for buildings, grounds, and maintenance at the Health Care Facilities, but has found it increasingly resource-intensive to maintain operational aims and meet regulatory standards as the Health Care Facilities buildings and grounds have aged; and

WHEREAS, Providence has expertise and economies of scale to capably address the needs of the aging buildings and grounds, and the Parties share an ongoing commitment to cooperate in the sharing of resources to further the ends of improving healthcare in the community and to seek cost efficiencies that will assist in preserving and maintaining the Health Care Facilities' buildings and grounds; and

WHEREAS, as a result of the above, the Parties desire to amend the Agreement to allow Providence rather than the City to hire, train, supervise, fire, and maintain oversight over those personnel responsible for buildings, grounds and maintenance at the Health Care Facilities.

**AMENDMENT**

NOW THEREFORE, the parties hereby agree as follows:

1. **Revised Section 1(a) (8):** Section 1(a)(8) to the Agreement is hereby amended and replaced in its entirety as follows:

8) Employ or otherwise retain and shall be responsible for selecting, hiring, training, supervising, and firing all management, professional, administrative, clerical, secretarial,

bookkeeping, accounting, payroll, billing and collections, clinical staff, buildings, grounds and maintenance staff, and other personnel that are reasonably necessary and appropriate for the operation of the Health Care Facilities. Health Care Facilities will maintain parity with geographically competitive market wages, using City of Valdez and related salary scale data to establish salaries for employed personnel.

2. **Revised Section 1(a) (13):** Section 1(a)(13) to the Agreement is hereby deleted in its entirety.
3. **Renumber Sections 1(a)(14)-1(a)(18):** Sections 1(a)(14)-1(a)(18) shall be renumbered as Sections 1(a)(13)-1(a)(17).
4. **Revised Section 1(c) (5):** Section 1(c)(5) to the Agreement is hereby amended and replaced in its entirety with the following:

5) Costs associated with maintaining the functional and safe operating conditions, consistent with applicable federal or state statutes, rules, and requirements, of the City-owned real property and capital assets located on the Health Campus, including but not limited to building painting, roofing, siding, plumbing, heating, fire safety, lighting/electrical, and ventilation systems, or other maintenance or repairs.

5. **Revised Section 8:** Section 8 to the Agreement is hereby amended and replaced in its entirety with the following:

8. **Employment.** All personnel of the Health Care Facilities during the term of this Agreement shall be employees of Providence, with the exception of certain temporary labor required from time to time to sustain operations, and EMS personnel employed by the City or other third parties. Providence shall adopt its own employment policies and procedures. Providence agrees to select and hire an individual to serve as the Administrator of the Health Care Facilities (the "Administrator"). The City shall have the right to participate in, and ask for a review process regarding, the selection of an Administrator. The Administrator shall be Providence's primary representative with respect to Communications to the City. All of Providence's employee costs related to the provision of services under this Agreement are deemed to be Reimbursable Expenses, except as otherwise noted in Section 4.

6. **Capitalized Terms.** All capitalized terms in this Amendment shall have the same meaning given to such terms in the Arrangement unless otherwise specified in this Amendment.

7. **Continuation of Arrangement.** Except as specifically amended pursuant to the foregoing, the Arrangement shall continue in full force and effect in accordance with the terms in existence as of the date of this Amendment. After the date of this Amendment, any reference to the Arrangement shall mean the Arrangement as amended by this Amendment.

The Parties have executed this Amendment on the date first above written.

**CITY OF VALDEZ:**

**RECOMMENDED:**

By: Dennis Ragsdale  
Dennis Ragsdale  
City Manager

Date: 2-11-16

**PROVIDENCE HEALTH & SERVICES  
- WASHINGTON dba Providence Health  
& Services Alaska**

By: Bruce Lamoureux  
Bruce Lamoureux  
Vice President/Chief Executive

Date: 2-10-16

**APPROVED:**

By: Larry Weaver  
Larry Weaver  
Mayor

Date: 02/25/2016

**ATTEST:**

By: Sheri L. Pierce, MMC  
Sheri L. Pierce, MMC  
City Clerk



**APPROVED AS TO FORM:**

Brena, Bell, & Clarkson, P.C.  
Attorney for the City of Valdez

By: Anthony Guerriero  
Anthony Guerriero



## MANAGEMENT AND OPERATING AGREEMENT

THIS MANAGEMENT AND OPERATING AGREEMENT ("Agreement") is made and entered into by and between THE CITY OF VALDEZ, a municipal corporation (the "City") and PROVIDENCE HEALTH & SERVICES - WASHINGTON dba PROVIDENCE HEALTH & SERVICES ALASKA, a Washington non-profit corporation authorized to do business in Alaska ("Providence"). The City and Providence may be referred to below collectively as "Parties" and individually as "Party".

### RECITALS

Whereas, the City owns and operates the Valdez acute-care hospital (the "Hospital"), the Valdez Extended Care Center, and the Valdez Counseling Center (collectively, the "Health Care Facilities"); and

Whereas, the City, in the interest of sound fiscal management and to ensure the continued operation of the Health Care Facilities in a professional and efficient manner, has requested that Providence enter into this Agreement to manage and operate the Health Care Facilities; and

Whereas, the City desires to continue to provide quality and affordable health care to the residents of Valdez; and

Whereas, the City desires that the Hospital be operated as a stand-alone facility; and

Whereas, Providence owns and operates a number of health care facilities and nursing homes that are operated in keeping with its philosophy, mission and values; and

Whereas, Providence desires to manage and operate the Health Care Facilities subject to the terms and conditions contained herein.

Now, therefore, in consideration of the mutual covenants contained herein, and each of the Parties intending to be legally bound hereby, it is mutually agreed as follows:

1. Appointment; Control; Operations; Limitations.

- (a) Appointment; Agreement to Operate/Manage. The City hereby contracts with and appoints Providence to be the sole and exclusive operator and manager of the Health Care Facilities for the term of this Agreement. Providence hereby accepts such appointment and agrees to operate and manage the Health Care Facilities on behalf of the City consistent with the terms of this Agreement and all applicable laws, regulations and ordinances. Subject to the terms herein, including but not limited to Section 13, Providence assumes all the rights, duties, liabilities and obligations, which shall arise out of Providence's operation of the Health Care Facilities. Notwithstanding anything to the contrary, both Parties understand and agree that any and all services provided by Providence during the term of this Agreement shall be provided solely for the benefit of the City. During the term of this

Agreement and subject to the other provisions of this Agreement, Providence, shall operate the Health Care Facilities, including without limitation, performing or arranging for the provision of the following:

- 1) Ensure timely deposits into the Accounts (as defined in Section 5) of all receipts and moneys arising from the operation of the Health Care Facilities, and shall make disbursements from such accounts in such amounts and at such times as the same are required;
- 2) Establish all prices, price schedules, rates and rate schedules for the Health Care Facilities;
- 3) Negotiate, prepare and execute any such other contracts reasonably necessary or desirable in connection with the operation of the Health Care Facilities in the usual course of business; provided however the auditing firm to be retained by Providence in connection with preparation of the annual audited financial statements for the Health Care Facilities requires City approval;
- 4) Hire or retain any consultants, accountants, attorneys, or other professional personnel necessary and appropriate to assist Providence in carrying out its duties and responsibilities in accordance with this Agreement;
- 5) Operate the Health Care Facilities in a manner that is consistent with applicable federal, state and local anti-discrimination laws, including the provision of services to persons at the Health Care Facilities without regard to financial circumstances, or race, creed, color, national origin, religion, sex, disability, or any other protected class.
- 6) Operate the Health Care Facilities in a manner consistent with their Medical Staff Bylaws and Rules and Regulations, as applicable. The Parties hereby specifically agree to allow Providence, while acting on behalf of the Health Care Facilities, to enter into certain exclusive contracts for the practice of primary care physicians, anesthesiologists, radiologists, pathologists, or other providers for the benefit of the Health Care Facilities;
- 7) Provide provider credentialing services and any and all other services as reasonably required to facilitate and perform credentialing functions (as applicable) at the Health Care Facilities;
- 8) Employ or otherwise retain and shall be responsible for selecting, hiring, training, supervising, and firing all management, professional, administrative, clerical, secretarial, bookkeeping, accounting, payroll, billing and collection, clinical staff and other personnel that are reasonably necessary and appropriate for the operation of the Health Care Facilities. Health Care Facilities will maintain parity with geographically competitive market wages, using City of Valdez and related salary scale data to establish salaries for employed personnel.
- 9) Take all such actions reasonably necessary to cause the Health Care Facilities to continue as participating providers under the Medicare and Medicaid programs;

- 10) Prepare, execute and file any required documents with governmental or accrediting agencies, including without limitation any Medicare cost reports, provider agreements, and licensing documents; provided, however, that the Medicare cost report consulting firm to be retained by Providence in connection with preparation of the any cost reports for the Health Care Facilities requires City approval;
- 11) Provide or arrange for the provision of all marketing and public relations services that are reasonably necessary and appropriate for the operation of the Health Care Facilities, as determined by Providence after taking into account the Health Advisory Council's recommendations, if any, related to promoting healthcare and creating awareness of the provision of services and programs by the Health Care Facilities to meet the needs of the local community. The Parties hereby agree that Providence may, during the term of this Agreement, identify the Health Care Facilities as entities under the operational management of Providence;
- 12) Provide oversight as necessary to assure that building and grounds staff maintain the Health Care Facilities in conformance with applicable fire and life safety codes necessary to maintain each Health Care Facility's respective licensure and accreditation, including but not limited to such standards imposed by the Centers for Medicare & Medicaid Services ("CMS") as a condition of participation in Medicare and/or Medicaid;
- 13) Collaborate with City supervisors of the Health Care Facilities building and grounds staff, including, upon request of the City, by providing input to the City regarding its hiring decisions or providing documentation requested by the City related to the performance of Health Care Facilities building and grounds staff; provided that, in no event, shall Providence be responsible for any hiring, firing, performance evaluation, discipline or other employment decisions made by the City with respect to City employees;
- 14) Subject to the last paragraph of this Section 1 hereof, with written notice to the City, Providence may, in its sole discretion defend, assert, settle, or otherwise dispose of any claims, litigation, judgments, or liabilities in connection with the Health Care Facilities, and will notify the City of same;
- 15) Provide to the City Manager an annual budget for each of the Health Care Facilities;
- 16) Negotiate, contract for and generally supervise the disposal of all medical waste and/or garbage refuse;
- 17) Conduct medical educational training programs at the Health Care Facilities, including training of students and residents and other medical/technical personnel, in a manner consistent with applicable governmental regulations and Providence's policies; and
- 18) Unless otherwise specifically provided in this Agreement, Providence shall be responsible for the

performance of all other acts reasonably necessary in connection with the operation of the Health Care Facilities in accordance with their approved annual budgets and the terms and conditions of this Agreement.

Notwithstanding anything to the contrary in this Agreement, Providence shall not have authority to bind the City or the Health Care Facilities as to the following matters or to perform any of the following on behalf of the City or the Health Care Facilities without first obtaining approval from the City Manager pursuant to Valdez City Code: (i) any sale, lease, exchange, mortgage, pledge, or other transfer or disposition of any of the assets of any of the Health Care Facilities other than in the ordinary course of business; (ii) any fundamental change in the nature of the Health Care Facilities' businesses; (iii) any merger, consolidation or affiliation of any of the Health Care Facilities with another entity; (iv) any material change with respect to the insurance coverage obtained or provided through Providence, unless such change is beyond Providence's reasonable control; and (v) settle or otherwise dispose of any claims, litigation, judgments or liabilities in connection with the Health Care Facilities in excess of \$40,000.

(b) Licenses. The City represents that, as of the Effective Date, it has any and all necessary licenses as owner of the Health Care Facilities, and has listed Providence on such licenses as the manager to operate the Health Care Facilities. Providence agrees that it will take all steps necessary to maintain and continue the Health Care Facilities' licenses, permits and certifications for the term of this Agreement. Providence shall provide the City with copies of such licenses, permits and certifications.

(c) General Control of the Health Care Facilities and Responsibilities Retained by the City. Although the City has contracted day-to-day operations and management of the Health Care Facilities to Providence during the term of this Agreement, the City shall continue to own and have financial responsibility for the real property and premises that house the Health Care Facilities, as well as the surrounding grounds, ingress/egress, parking, sidewalks, passageways, and all other common areas adjacent to the Health Care Facilities that are City-owned (the "Health Campus"). The City may allow other tenants to use the Health Campus during the Term of this Agreement, so long as such uses do not interfere with the ongoing provision of health care services on the Health Campus by Providence pursuant to the term of this Agreement. The City's retained responsibilities associated with the Health Campus shall include the following:

- 1) Costs associated with ownership of the real property on which the Health Care Facilities, and their surrounds are located, as well as the completion of any capital or facility improvements

- related thereto, except for such alterations undertaken by Providence as specifically authorized by the City pursuant to Section 4(d) and which are payable pursuant to the terms of this Agreement;
- 2) Costs associated with the maintenance, alteration, or improvements to the buildings and grounds surrounding the Health Care Facilities, including but not limited to labor-related, equipment, and other costs associated with: grounds maintenance and landscaping for the Health Campus; parking lot maintenance; maintaining traffic flow and signage/indicators for parking and pedestrian areas (e.g., directional striping); snow removal; maintaining safe sidewalks and curbs; and other general maintenance of the grounds, with the exception of front entrance areas maintained by Providence;
  - 3) Costs associated with ambulance and delivery vehicles used by the Health Care Facilities;
  - 4) Costs associated with equipment used to maintain the exterior grounds associated with the Health Campus;
  - 5) Costs associated with maintaining the functional and safe operating conditions, consistent with applicable federal or state statutes, rules, and requirements, of the City-owned real property and capital assets located on the Health Campus, including but not limited to building painting, roofing, siding, plumbing, heating, fire safety, lighting/electrical, and ventilation systems, or other maintenance or repairs, and all costs associated with the Maintenance Building and Hospital Maintenance Staff (as described in Section 8) that support the Health Campus; and
  - 6) Costs associated with utilities serving the Health Campus (e.g., electrical, water, and heating) that are invoiced to the City by Providence for all tenants/users, and which shall be allocated among tenants/users based upon metered electrical use, square footage allocation, or such other mutually agreed upon methodology.

(d) Notifications:

- 1) Official notifications, reports and communications related to this Agreement shall be made to the City via the City Manager.

(e) Required Notifications: Providence shall notify the City in writing within twenty-four (24) hours of the occurrence of any one or more of the following events:

- 1) Any loss of licensure by the Health Care Facilities;
- 2) At such time as Providence becomes aware of any material governmental investigation or disciplinary proceeding relating to the Health Care Facilities;
- 3) Any of the Health Care Facilities becomes debarred, suspended or otherwise ineligible to participate in any federal or state health care program, including the Medicare and Medicaid programs;
- 4) At such time as Providence becomes aware of any act of nature or any other event which has a material adverse effect on Providence's ability to operate any of the Health Care Facilities.

(f) Name of Facilities: The Parties hereby agree that during the term of this Agreement the Hospital and the Valdez Counseling Center shall be identified and signed as the "Providence Valdez Medical Center," and the "Providence Valdez Counseling Center," respectively. Upon any termination or expiration of this Agreement, Valdez shall immediately remove any reference to Providence from any ongoing signage, letterhead, and other publications or documents relating to the Hospital, the Valdez Counseling Center, and any of the other Health Care Facilities. Nothing in this Agreement shall be construed as providing Valdez with any rights whatsoever to use the name Providence after any termination or expiration of this Agreement.

(g) Requirements for Providence and City Emergency Medical Services (EMS) Personnel. The Parties hereby agree that during the term of this Agreement they will follow the following requirements with respect to all EMS personnel rendering services on the Health Campus:

- 1) EMS personnel may enter the Health Care Facilities and Health Campus while on duty, to perform their job functions in transporting, escorting, assisting and when called upon to respond to emergencies at the Health Care Facilities.
- 2) Beyond the regular practice of their responsibilities to transport and hand-off patients to the Hospital staff, specified EMS personnel, with their supervisor/trainer may be located at the Health Care Facilities to take advantage of education or training opportunities, as long as medical and staff routines can be carried out without disruption.
- 3) In order for EMS personnel to be present on the Health Campus beyond their usual routine of transporting and escorting patients, the Privacy Officer will ensure that each individual has signed a Confidentiality and Privacy Agreement.
- 4) All EMS personnel will comply with all applicable policies and procedures that govern their practices except if there is conflict between agency and/or Providence policies, at which time, reconciliation will be made among the Heads of the departments and to the Valdez Fire

Department to ensure standardization of practice and safety of patients/personnel are prioritized at all times.

- 5) EMS personnel will respect and follow the chain of command for decision-making as it relates to their own supervision and in working with Health Care Facility personnel.
- 6) Hospital staff will perform all required duties as outlined in their job description and will not delegate any such duties to non- Hospital staff.
- 7) EMS personnel may only perform functions on Hospital's patients when there are physician orders written specifically for their patients that authorize EMS personnel to perform these clinical tasks (e.g., draw blood work; intubate; start IV's) on them.
- 8) All patients who are subjects of, or included in, EMS personnel training will be consulted for their consent to allow for such training to occur with the patient's involvement.
- 9) EMS Instructors are welcomed to train Health Care Facility staff and physicians to their modalities, equipment and methodologies in early response scenarios, and are welcomed to join in certification offerings such as BLS, ACLS, PALs and NRP at the Hospital. Together with Hospital staff, EMS personnel are permitted to access educational resources and pertinent offerings at Hospital.
- 10) Due to the irregularity of EMS activation and type, any Hospital staff seeking to have more exposure to EMS protocols in early response, or to ride with them during their responses, will have to arrange it on their own time.
- 11) Prior to escorting a patient in an ambulance during a medical evacuation, Hospital staff will be provided with an orientation of the rig and protocols necessary to provide safe care for the patient during the transport.

2. Effective Date and Term. This **Agreement shall become effective on January 1, 2015** (the "Effective Date"). The term of this Agreement shall be five (5) years from the Effective Date unless sooner terminated as provided herein ("Term"). The Parties may extend the Term for an additional five (5) years based upon mutual written agreement. Such renewal (if applicable) shall be on the same terms and conditions of this Agreement.

3. Admission and Treatment Policy. Providence agrees to treat any and all patients presenting for emergency care to the Hospital in accordance with the Emergency Medical Treatment and Labor Act, 42 USC § 1395dd (EMTALA), and to provide or arrange for services to such patients in accordance with the Hospital's available space, qualified personnel, capabilities, and applicable policies and protocols. Providence agrees it shall not discriminate in the admission of patients or delivery of outpatient services on the basis of financial circumstances, race, creed, color, national origin, religion, sex, disability, or any other protected class. Providence

agrees that any patient seeking treatment at any of the Health Care Facilities has the right to choose the health provider(s) and hospital(s) of the patient's preference. Where transfer to another provider is necessary for any reason, Providence agrees to honor such determinations by patients to the extent possible, and will communicate such directives to attending physician(s) and emergency transportation services.

Providence acknowledges the importance to the people of Valdez of being able to receive care and treatment in a local hospital rather than to be transported out of town and agrees that, except to the extent necessary to meet patient choice or the particular health or safety needs of a patient, Providence will not move or cause patients to move to other facilities arbitrarily. The City has the right to request a retrospective review for any disputed transfer, so long as such review is in compliance with applicable laws and rules governing the security and the confidentiality of individually identifiable patient healthcare information.

4. Reimbursable Expenses. Indirect costs associated with administrative and support services provided to the Health Care Facilities by the Providence Alaska Regional Office and Providence System Office ("System Allocations") are deemed to be recovered in the form of the Annual Fixed Fee as described in Section 7, and will not be billed to the City in addition to the Annual Fixed Fee. Other than for System Allocations, any and all direct and indirect costs, including without limitation those expenses described below, and budgeted and unbudgeted operating or capital costs actually incurred by Providence in connection with its operation of the Health Care Facilities pursuant to this Agreement, shall be deemed "Reimbursable Expenses" subject to the reimbursement provisions of this Agreement:

- (a) Operating Expenses. In accordance with the operating and capital budgets adopted annually, or as otherwise expressly approved by the City, Providence will incur costs generally associated with the operation of Health Care Facilities ("Operating Expenses"). In the event the City and Providence discontinue their contractual relationship, the costs incurred by the Health Care Facilities in winding down and closing out its relationship with the City shall be deemed Operating Expenses which are recoverable as Reimbursable Expenses under this Agreement.
- (b) Supplies. Providence shall be entitled to use, as a part of the operations of the Health Care Facilities, the supplies maintained at the Health Care Facilities on the Effective Date. Providence shall, as part of its Operating Expenses, supply and maintain all expendable hospital/medical supplies as may be required in Providence's discretion for the proper operation of the Health Care Facilities. Upon termination of this Agreement, Providence will leave behind all of the supplies in inventory as well as floor stock items maintained at the Health Care Facilities.



(c) Equipment Expenses. In accordance with the annual operating and capital budgets, or as otherwise expressly approved by the City, Providence will incur costs to maintain equipment (regardless of ownership), or to purchase replacement or additional equipment, used by Providence in the provision of healthcare services within the Healthcare Facilities ("Equipment Expenses"), which shall be Reimbursable Expenses under this Agreement. The City will retain title to all Health Care Facilities' equipment owned by the City, and any replacement or additional equipment purchased by Providence under this Section shall be the City's property and shall be identified as such.

(d) Alterations. Providence shall have the right to make alterations, additions, improvements and renovations to the Health Care Facilities, the costs of which shall be recoverable as Reimbursable Expenses, provided: 1) Providence shall notify the City with respect to any such work requiring any substantial expenditure; 2) Such work shall not adversely affect the structural integrity of the Health Care Facilities or diminish the value thereof; 3) Any such work shall be performed in a good and workmanlike manner and in conformance with all applicable building, fire and health regulations; and 4) The City shall have approved in writing such work in advance, such approval to not be unreasonably withheld.

5. Disposition of Funds, Reporting and Administration.

(a) Funds originating from the operation of the Health Care Facilities and collected by Providence pursuant to this Agreement shall be received, handled, managed and disposed of as follows:

- 1) Providence shall deposit all funds received by it from the operation of the Health Care Facilities and all amounts advanced by the City in a jointly held bank account or accounts bearing the name of one or more of the Health Care Facilities (hereinafter the "Accounts") in a bank or trust company approved by the City and Providence. Such funds shall in no event be commingled with other City or Providence funds. Providence shall have no liability or responsibility for any loss resulting from the insolvency, malfeasance or nonfeasance of the bank or banks in which such funds are deposited.
- 2) Providence has the right to make withdrawals from and use the Accounts for the purposes of operating the Health Care Facilities and performing their obligations hereunder, paying Providence's compensation hereunder, and paying the Reimbursable Expenses described in Section 4, until the expiration or termination of this Agreement, at which time Providence shall resign as co-signatory for the Accounts.
- 3) Signatories and approvals as to the amounts on all checks drawn from the Accounts shall be in accordance with the policies and procedures mutually agreed to by Providence and the City.

- (b) Providence will perform all billing and collection activities for the Health Care Facilities' accounts receivables, will process accounts payable, and will provide such other administrative, accounting and clerical services as are necessary. All revenues and cash collections including those from patients, third-party payors and other sources billed and collected by Providence, and arising out of or related to services rendered during the term of this Agreement, or any predecessor agreement(s) between the parties related to the subject matter hereof, and all grants or portions thereof attributed to the Health Care Facilities arising out of or related to the Health Care Facilities during the term of this Agreement, shall be used first to offset Reimbursable Expenses of the Health Care Facilities incurred on or after the Effective Date. Providence shall appropriately collect all amounts billed for services provided at the Health Care Facilities. The excess, if any, of such revenues over such expenses shall accrue to the Accounts, and be applied in the City's sole discretion, to pay debt service on the City's existing revenue bonds related to the Health Care Facilities, the costs of repairs, renewals, improvements or additions to the Health Care Facilities, or to cover past, present or future losses. Providence and the City agree that, in the absence of exigent circumstances, the Accounts will maintain a balance equal to ninety (90) days of operating expenses.
- (c) Providence shall provide the City with audited year-end financial statements for the Health Care Facilities within 120 days after the end of each year. Within ninety (90) days after the end of the fiscal year, Providence shall prepare and deliver to the City an operational report that shall provide information on services provided, new programs and services that have been initiated, programs and services that have been terminated or relocated to other facilities, statistics on patients treated, and other information of interest to the City and the community. Providence shall provide the City with an electronic copy of the report for distribution among the City officials and members of the community. Upon request by the City, Providence will make a representative available to make presentations to the Valdez City Council and community groups concerning the annual report. The information to be shared under this paragraph shall not include protected health information covered by applicable federal or state laws and rules governing the security and the confidentiality of individually identifiable patient healthcare information, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and regulations adopted there under ("HIPAA").
- (d) Providence shall maintain all financial, medical and hospital records, including admitting registers, schedules of room rentals, patients' insurance records, pertinent hospital personnel records and such other information and records as are necessary to the continued operation of the Health Care Facilities. Original copies of medical and hospital records shall be maintained and stored at one or

more of the Health Care Facilities or at another facility acceptable to Providence. Record retention and destruction will occur in accordance with the Providence Health & Services Retention Guidelines, which are based on state and federal law.

- (e) By no later than September 15<sup>th</sup> of each Operating Year during the term of this Agreement, Providence shall submit and recommend to the City an operating and capital budget for the Health Care Facilities. Providence will use reasonable efforts to operate the Health Care Facilities consistent with their respective budgets. Under the terms of this Agreement, the City shall have the right to review and approve Providence's proposed annual operating and capital budgets, and the City and the Administrator will meet annually or as requested by the City Manager, to discuss which known or projected expenditures for the Health Campus should be approved. Providence shall provide the City with monthly updates comparing each Health Care Facility's actual financial performance to the approved budget during the course of each year to ensure that the City is fully aware of the financial performance of the Health Care Facilities on a monthly basis.

Providence will provide the City with monthly financial reports, including current revenues, expenses and cash flow projections, prepared in accordance with generally accepted accounting principles. The monthly reports shall include comparisons to budgeted amounts and prior year historical analysis comparisons. Providence will provide the City with detailed trial balances of each general ledger account with prior year historical comparisons, upon request. The City shall have access to all financial information related to the Health Care Facilities.

- (f) The City agrees to defend, indemnify and hold Providence harmless against all claims, liability and expense resulting from acts or omissions of any of the Health Care Facilities in connection with any agreements assigned to Providence and relating to the period prior to Providence's management and operation of the Health Care Facilities.

#### 6. Working Capital and Cash Flow.

- (a) Providence will pay Reimbursable Expenses as they become due, using funds from the Accounts. Providence will assure that all Reimbursable Expenses will be paid consistent with the various terms and conditions of vendors, as well as the annually approved operating and capital budgets or other express City approvals, and applicable regulations.

- (b) Throughout the Term of this Agreement, the City shall ensure that sufficient funds are available in the Accounts to pay Reimbursable Expenses, which for purposes of this Section shall mean funds sufficient to cover ninety (90) days of Daily Operating Expenses for the Health Care Facilities, as determined in Exhibit A. Reimbursable Expenses include payment of any and all expenses, debts, obligations, and liabilities incurred by Providence relating to the operation of the Health Care Facilities, other than as expressly excluded under Section 4. In the event Providence provides written notice to the City of an actual or likely shortfall or deficit of such funds outside the annual budgeting process, the City agrees to deposit that amount into the Accounts within thirty (30) days to offset such shortfall or deficit.
- (c) The Parties agree that the City may need to advance an annual supplement to the Health Care Facilities during the term of this Agreement, to offset expected operating shortfalls and/or provide a desired reserve capacity. Prior to each fiscal year, Providence shall forecast its annual Operating Expenses/Revenues and calculate the City's operating supplement pursuant to Exhibit A herein. Supplement requests shall be forwarded to the City in accordance with the City's annual budget schedule. Following adoption of the City budget by the City Council, the City shall pay the entire supplement amount to Providence within the first forty-five (45) days of the City's fiscal year or as otherwise agreed upon by both Parties. In the event (i) the City fails to deposit any required amount under this Section, (ii) the City fails to approve the estimated annual shortfall amount for any Operating Year during the term of this Agreement, or (iii) the Parties are unable to reach mutual agreement in a timely manner (as reasonably determined by Providence) with respect to any Operating Year's estimated annual shortfall amount, Providence may terminate this Agreement by providing the City with thirty (30) days advance written notice of such termination. It is the express intent that sufficient working capital will be present to preclude the need for Providence to advance or fund working capital.
- (d) The Parties agree that it is desirable to allow for the growth of reserve capacity in the Accounts beyond the minimum set forth herein. Therefore Providence shall be permitted to use surplus operating revenues to increase the total balance in the Accounts to cover up to one hundred and twenty (120) days of Daily Operating Expenses.
- (e) Surplus operating revenues resulting in Accounts balance in excess of one hundred and twenty (120) days of Daily Operating Expenses shall be applied as follows, (i) to the City's next installment of the Annual Fixed Fee and/or subsequent operating supplement, (ii) to any costs associated with the City's

retained responsibilities in Section 1(c) of this Agreement, or (iiii) to accumulate in the Accounts for future community health care investments, as determined solely by the City.

7. Annual Fixed Fee. For each twelve (12) month period beginning as of the Effective Date and continuing throughout the Term of this Agreement thereafter (each such twelve (12) month period, an “Operating Year”), the City shall pay Providence a periodic fixed fee (“Annual Fixed Fee”) as compensation to Providence for its management and administrative services under this Agreement, including all System Allocations, but exclusive of any Reimbursable Expenses directly incurred by Providence under Section 4. The Annual Fixed Fee will be payable by the City in equal monthly installments, in arrears, and will be prorated in any partial Operating Year(s). The Annual Fixed Fee for the initial Operating Year, beginning on the Effective Date, will be a total of Six Hundred Thousand Dollars (\$600,000). For each subsequent Operating Year beginning on or after January 1, 2016, the Annual Fixed Fee will be adjusted annually based on the Consumer Price Index for each twelve-month period (Anchorage, Alaska, All Urban Consumers – Not Seasonally Adjusted, Base:1982-1984. Both Parties understand and agree that the City has other financial obligations to Providence pursuant to the terms of this Agreement.

8. Employment. All personnel of the Health Care Facilities during the term of this Agreement shall be employees of Providence, with the exception of certain temporary labor required from time to time to sustain operations, EMS personnel employed by the City or other third parties, and those City employees involved in maintenance activities described below. Providence shall adopt its own employment policies and procedures. Providence agrees to select and hire an individual to serve as the Administrator of the Health Care Facilities (the “Administrator”). The City shall have the right to participate in, and ask for a review process regarding, the selection of an Administrator. The Administrator shall be Providence’s primary representative with respect to communications to the City. All of Providence’s employee costs related to the provision of services under this Agreement are deemed to be Reimbursable Expenses, except as otherwise noted in Section 4.

Notwithstanding any provision to the contrary in this Section 8, the Parties hereby agree that the City shall continue to employ its maintenance worker staff, including specifically the buildings, grounds, and maintenance workers primarily responsible for maintenance, repair and upkeep of the Health Care Facilities, who carry out the City’s retained responsibilities described in Section 1(c) above (the “Hospital Maintenance Staff”). The City shall ensure that the Hospital Maintenance Staff provide such services consistent with the terms of this Agreement throughout its Term and, in the event that any of the Hospital Maintenance Staff are unavailable for any reason including vacation or sick leave, provide suitable replacement staff for such services during such periods. All reasonable and ordinary non-salary costs associated with the Hospital Maintenance Staff, including specific

hospital-related training and uniform stipends, shall be paid for by the Hospital and constitutes a Reimbursable Expense.

9. Medicare and Medicaid Reimbursement. From and after the Effective Date, Providence shall maintain Medicare and Medicaid certification and shall prepare all Medicare/Medicaid cost reports relating to the Health Care Facilities in a timely manner. Providence will meet CMS deadlines and will make cost reports available to the City when complete. All expenses incurred within this Section 9 are considered Reimbursable Expenses and shall be paid as such. The City may elect, as an added Reimbursable Expense, to have the cost reports analyzed by a financial consultant.

10. Site Conditions and Environmental Matters.

- (a) The City will provide to Providence any and all requested documentation regarding the construction or expansion of the Hospital as laid out in the Master Facility Plan (MFP), as suggested by the Mayor's Task Force, and/or as may be approved by the Valdez City Council including but not limited to, plans, drawings, technical specs, and "punch lists" prior to completion. Providence assumes no liability with respect to construction or expansion of the Health Care Facilities, or the condition of the soil or subsoil, or any other conditions of the real property on which the Health Care Facilities are located.
- (b) Providence will not cause or permit the Health Care Facilities to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process any hazardous substances except in compliance with all applicable environmental laws, nor shall Providence cause or permit as a result of any intentional or unintentional act or omission on the part of Providence the release of any hazardous substances on the Property.
- (c) In undertaking their respective obligations under this Agreement, the Parties will at all times and in all respects comply with all applicable environmental laws.
- (d) Providence agrees to immediately notify the City if Providence becomes aware of (i) any hazardous substance or other environmental problem or liability with respect to the Health Care Facilities, or (ii) any lien, action or notice resulting from violation of any of the laws, regulations, ordinances, or orders defined as environmental laws. Providence shall take all actions that are necessary or desirable to clean up any and all hazardous substances released in, on, or under the Health Care Facilities after the Effective Date and, except as provided in Section 10(e) below, any costs associated thereto shall be a Reimbursable Expense.

(e) Providence shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, damages, losses, liens, costs, and expenses (including attorneys' fees and disbursements) which accrue to or are incurred by the City arising directly from (i) any activities within the Health Care Facilities during the term of this Agreement caused by Providence's negligence which directly resulted in the Health Care Facilities being contaminated with hazardous substance; (ii) the discovery of hazardous substances at the Health Care Facilities whose presence was caused during the term of this Agreement by Providence's negligence; and (iii) the clean-up of hazardous substances at the Health Care Facilities whose presence was caused during the term of this Agreement by Providence's negligence. Providence's negligence as used in this Section 10(e) includes actions by any officer, agents, contractor or employee of Providence.

(f) The City shall indemnify, defend, and hold Providence harmless from and against any and all claims, demands, damages, losses, liens, costs, and expenses (including attorneys' fees and disbursements) which accrue to or are incurred by Providence arising directly or indirectly from or out of or in any way connected with (i) any activities within the Health Care Facilities prior to the Effective Date which directly or indirectly resulted in the Health Care Facilities being contaminated with hazardous substances; (ii) the discovery of hazardous substances at the Health Care Facilities whose presence was caused prior to the Effective Date; (iii) the clean-up of hazardous substances on at the Health Care Facilities whose presence was caused prior to the Effective Date; and (iv) the clean-up of hazardous substances at the Health Care Facilities whose presence was caused during the term of this Agreement by the City's negligence. The City's negligence as used in this subsection 10(f) includes actions by any officer, agents, contractor or employee of the City.

11. Condition on Surrender. Upon termination or expiration of this Agreement, Providence shall surrender the Health Care Facilities to the City in substantially the same condition as exists on the Effective Date, except for reasonable wear and tear, depreciation, construction and demolition required or permitted under the terms of this Agreement or previous agreements between the Parties, and damage by fire and other risks covered by the insurance described in Section 12.

12. Insurance.

(a) Providence shall either obtain or continue occurrence-based, general liability insurance relating to the Health Care Facilities as Providence, in its sole opinion, deems necessary and sufficient, and maintain such liability insurance coverage for the Health Care Facilities during the term of this Agreement. Such

insurance shall provide coverage for personal injuries, death, or property damage to the Health Care Facilities in an amount of at least five million dollars (\$5 million) per occurrence and ten million dollars (\$10 million) annual aggregate; provided, however that Providence's reasonable allocated cost for providing or continuing such insurance on the City's behalf shall be deemed a Reimbursable Expense. In addition, Providence shall maintain insurance, in reasonable amounts, subject to reasonable terms, provisions and customary exclusions, for professional liability and workers' compensation for all Providence employees who provide services at the Health Care Facilities pursuant to this Agreement, as described more fully in Exhibit B. Providence shall also maintain automobile, crime, directors and officers, property earthquake and fiduciary insurance coverage (as requested by the City) relating to the Health Care Facilities, and maintain such insurance coverage for the Health Care Facilities during the term of this Agreement. Any insurance obtained or provided by Providence under this Section may be provided by insurance or alternative risk programs which may include self-insurance programs, provided such alternative risk or self-insurance programs are fully funded (as described in Exhibit B) for any reasonably projected liabilities, and contain customary and reasonable deductible and coinsurance amounts. The City hereby acknowledges that Providence has informed it of Providence's insurance's deductible/co-insurance amounts, as required under Exhibit B. The Reimbursable Expenses will include the payment of such deductible/coinsurance amounts. All costs incurred by Providence under the terms of this Section 12(a) shall be deemed Reimbursable Expenses payable by the City pursuant to the terms of this Agreement. The Reimbursable Expenses shall include the payment of such deductibles/co-insurance in the event of any loss or casualty covered under the insurance provided by Providence hereunder.

- (b) The City hereby acknowledges and agrees that upon the earlier of the termination or expiration of this Agreement, Providence shall no longer provide nor arrange for the provision of any insurance of any kind whatsoever to the Health Care Facilities.
- (c) The minimum amounts and types of insurance required under this section shall be subject to revision in accordance with standard insurance practices, in order to provide continuously throughout the Term of this Agreement, a level of protection consonant with good business practice and accepted standards in the industry. Such factors as increases in the cost of living shall be utilized in assessing whether the minimum insurance requirements should be increased.

All insurance policies shall include a waiver of subrogation and shall provide for thirty (30) days notice to the City of cancellation and/or material change in policy terms. All such policies shall be written either by insurance companies legally authorized to do business in the State of Alaska and acceptable to the



City, or by self-insurance under the same terms as the policies for healthcare centers or clinics owned or operated by Providence, and acceptable to the City. The City shall be named as an additional insured party on each such policy of insurance, and certificates thereof shall be furnished to the City. Nothing herein shall be construed as a representation by the City as to the sufficiency of any insurance coverage for any purpose.

13. No Assumption of Liability; Indemnification.

- (a) During the term of this Agreement, Providence shall not assume or be liable for any claim, liability, or obligation of the Health Care Facilities, whether known or unknown, fixed or contingent, accrued or unaccrued, arising from Providence's operation of the Health Care Facilities pursuant to this Agreement, except where such claim, liability or obligation arises from Providence's negligence or material breach of this Agreement.
- (b) During the term of this Agreement, the City shall not assume or be liable for any claim, liability or obligation arising from the Health Care Facilities, except where (i) otherwise provided or contemplated during this Agreement, or (ii) such claim, liability or obligation arises from the City's negligence or material breach of this Agreement.
- (c) The Parties will defend, indemnify and hold each other harmless from any loss, claim or damage arising from the negligent acts and omissions of their respective employees, officers and agents, including negligence connected with performing their obligations under this Agreement. In the event that loss or damage results from the conduct of more than one Party, each Party agrees to be responsible for its own proportionate share of the claimant's total damages under the laws of the State of Alaska.
- (d) Providence shall have no obligation for, and the City shall indemnify and hold Providence harmless from and against, any and all liability with respect to any claims resulting from the negligence of the City or its agents or employees, or any claims arising out of acts or omissions which occurred prior to the Effective Date.

14. Assignment. This Agreement may not be assigned by Providence except in whole to an affiliate of Providence, as "affiliate" is defined in AS 10.06.990(2). Each and every provision of this Agreement shall inure to the benefit of and shall be binding upon the successors in interest of Providence and the City.

15. Termination. This Agreement may be terminated as follows:

- (a) Without Cause. Either Party shall have the option, in its sole discretion, to terminate this Agreement by giving the other Party at least twelve (12) months prior written notice of termination.
- (b) Termination by Providence Based on Religious and Ethical Directives. Providence shall not be obligated to provide any services at the Health Care Facilities that are in conflict with the Providence Health & Services Mission and Core Values and the Roman Catholic moral tradition as articulated in such documents as *"The Ethical and Religious Directives for Catholic Health Care Services,"* as amended from time to time. Providence shall at all times have the right, power and duty to operate the Health Care Facilities in accordance with, and to make decisions that in Providence's reasonable discretion are necessary or desirable to comply with such Mission and Core Values. If at any time during the Term, as a result of changes to federal or Alaska law or regulations, Providence shall be required to operate the Health Care Facilities in a manner that is not consistent with such Mission and Core Values, then at its option, Providence may terminate this Agreement upon sixty (60) days advance written notice.
- (c) Termination for Cause.
- 1) In the event of a material breach of this Agreement by either Party, other than as described in Section 15(c)(2)-15(c)(5) below, this Agreement may be terminated for cause by providing written notice to the breaching Party, describing the breach that has occurred. The breaching Party shall have thirty (30) days from receipt of such notice to cure the breach and provide evidence of the cure to the other Party. This cure period may be extended by mutual written agreement. If the breach is not cured during such cure period to the reasonable satisfaction of the non-breaching Party, the Agreement will terminate thirty (30) days following the end of the cure period.
  - 2) This Agreement shall automatically terminate, unless otherwise agreed to by both Parties, in the event either Party files a petition in voluntary bankruptcy, makes an assignment for the benefit of creditors, or takes any other action voluntarily or involuntarily under any state or federal statute for the protection of its debtors.
  - 3) This Agreement may be terminated immediately if: (i) either Party attempts to limit or otherwise avoid its obligations set forth in Section 13 of this Agreement; (ii) either Party becomes debarred, suspended or otherwise ineligible to participate in any federal or state health care program, including the Medicare and Medicaid programs; or (iii) the City may immediately terminate this Agreement if it is determined that Providence is in breach of Section 22.

- 4) The dissolution or liquidation of Providence, other than as the result of merger, affiliation, or consolidation under conditions permitting continued full compliance with the terms of this Agreement, shall be cause for termination by the City.
- 5) The cessation by Providence of use of the Health Care Facilities for the purposes contemplated hereunder for a period of thirty (30) consecutive days, except for periods when the same may be untenable or where Providence is prevented from carrying out such operations due to circumstances beyond its reasonable control (e.g., war, government enactment, public disaster), shall be cause for termination by the City, and no pro-rated portion of the Annual Fixed Fee shall be owed following such cessation of use.

16. Winding Up. Upon the termination or expiration of this Agreement, the following procedure shall be followed after the effective date of expiration or termination ("Termination Date"):

- (a) Providence shall work cooperatively with the City to facilitate a smooth transition of the operation/management of the Health Care Facilities.
- (b) The City shall retain as its property any equipment at the Health Care Facilities as of the Termination Date to the extent that such equipment was acquired with the City's funds. The City may purchase, free and clear of any encumbrances, any equipment owned by Providence and used and located primarily at the Health Care Facilities at its then net book value. Notice of the City's exercise of this option shall be effected by notice given at any time before the Termination Date. Providence shall have the right to remove from the Health Care Facilities, at its expense, any or all equipment owned by Providence that the City has not elected to retain under this paragraph.
- (c) Consistent with the terms of Section 22, Providence shall give the City, or such other person identified by the City, all records required for continued operations of the Health Care Facilities, provided that the City shall ensure that the recipient of any such records complies with, and takes such steps as may be necessary to permit the transfer of such records under, applicable federal or state laws and rules governing the security and the confidentiality of individually identifiable patient healthcare information.
- (d) The Parties shall cooperate so that all licenses and permits incident to operation of the Health Care Facilities can be transferred or changed to an operator identified by the City, including, but not limited to

transfer of ,or change in information on, permits for and inventories of alcohol, narcotics and dangerous drugs. Providence will file a final cost report within forty-five (45) days after termination.

- (e) All accrued revenues and expenses related to the ordinary course of business of the Health Care Facilities shall be the City's. Such expenses shall include any fees owed to Providence under this Agreement and an amount equal to the final biweekly payroll costs. Subject to Section 8 of this Agreement, the City shall not be responsible for (i) accrued but unused leave related to Providence employees rendering services to the Health Care Facilities, except to the extent that such leave was earned during the term of this Agreement; and (ii) sick leave earned prior to the Term of this Agreement. Subject to Section 8 of this Agreement, the City shall be responsible only to pay the regular pension, insurance, and retirement contributions related to Providence employees rendering services to the Health Care Facilities during the Term of this Agreement, but not to pay additional pension benefits, retirement benefits, or any other claims, obligations or liabilities with respect to Providence's employees.

17. Notices. Any notice permitted or required hereunder shall be in writing and shall be deemed given on the date delivered in person, sent by electronic mail or fax, or deposited in the United States certified or registered mail, postage prepaid, and addressed as follows:

To the City:	City of Valdez P.O. Box 307 Valdez, Alaska 99686 ATTN: City Manager Fax: 907.835.4313
To Providence:	Providence Health & Services - Washington dba Providence Health & Services Alaska 3200 Providence Drive P.O. Box 196604 Anchorage, Alaska 99519-6604 ATTN: Chief Executive, Alaska Region Fax: 907-212-2884

Such addresses may be changed by either Party by ten (10) days prior written notice to the other Party.

18. Authority. Each individual executing this Agreement on behalf of Providence or the City represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, that all actions by such organization have been taken to authorize execution, delivery and performance of this Agreement, and that this Agreement is binding upon such Party. The individuals signing on behalf of Providence further

warrant and represent that they are authorized to act on behalf of Providence in all matters relating to this Agreement.

19. Representations and Warranties of Providence. As of the Effective Date, Providence hereby represents and warrants to its knowledge as follows:

- (a) Providence is a Washington non-profit corporation in good standing under the laws of the State of Washington and authorized to do business in Alaska.
- (b) Providence has full corporate power and authority to carry on its business as now conducted and to enter into this Agreement. The execution and delivery of this Agreement has been authorized by proper corporate action, and this Agreement constitutes a valid and legally binding obligation of Providence.
- (c) Except as may have already been obtained, no consent or approval of any trustee or holder of any indebtedness or obligation of Providence, and no consent, approval, permission, authorization, order, or license of any governmental authority, is required to be obtained by Providence for the execution and delivery of this Agreement or any other instrument or agreement required of Providence under this Agreement.
- (d) Providence is not subject to any charter, bylaw, or contractual limitation or provision of any nature whatsoever which in any way limits, restricts, or prevents Providence from entering into this Agreement or from performing any of its obligations hereunder.
- (e) Neither the execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions hereto, materially conflicts with, violates, or breaches any charter, bylaw, or stock provision of Providence, any of the material terms, conditions, or provisions of any indenture, instrument, or agreement to which Providence is a party or by which Providence is bound, any statute, rule or regulation, or any judgment, decree, or order of any court or agency binding on Providence, or constitutes a default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, or results in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the property or assets of Providence not permitted under the terms of any restriction, agreement, instrument, statute, governmental rule or regulation, court order, judgment, or decree.

- (f) To the knowledge of Providence, there is no action, suit, proceeding, inquiry, or investigation by or before any court, governmental agency, or public board or body pending or threatened against Providence which (i) affects or seeks to prohibit, restrain, or enjoin the execution and delivery of this Agreement, (ii) affects or questions the validity or enforceability of this Agreement, or (iii) questions the power or authority of Providence to carry out the transactions contemplated by, or to perform its obligations under, this Agreement.
- (g) When duly executed, this Agreement will be enforceable against Providence according to its terms, except as may be limited by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally as amended from time to time.
- (h) Any certificate signed by an officer of Providence duly authorized to execute such certificate and delivered pursuant to this Agreement shall be deemed to be a representation and warranty by Providence as to the statements made therein.
- (i) The execution, delivery, or performance of this Agreement or consummation of the transactions contemplated by this Agreement or compliance by Providence with any of the provisions of this Agreement will not violate any statute (including Alaska's Certificate of Need laws), rule, regulation, ordinance, code, order, judgment, ruling, writ, injunction, decree, or award.

20. Representations and Warranties of the City. The City hereby represents and warrants that neither the execution, delivery nor performance of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor compliance by the City with any of the provisions of this Agreement, will:

- (a) Violate or conflict with any provision of Valdez's City Charter or any Valdez City Council resolution;
- (b) Violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any material contract, plan, indebtedness, note, bond, indenture, security or pledge agreement, commitment, license, lease, franchise, permit, agreement, or other instrument or obligation (i) to which the City is a party or (ii) by which the assets relating to the Health Care Facilities are bound; or

- (c) Violate any statute (including Alaska's Certificate of Need laws), rule, regulation, ordinance, code, order, judgment, ruling, writ, injunction, decree or award.

21. Parties in Interest. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, other than the Parties hereto, any right, remedy or claim, legal or equitable, under or by reason of this Agreement, this Agreement being intended to be and being for the sole and exclusive benefit of the Parties hereto.

22. Confidential Information. Providence shall comply with all laws, regulations, directives or requirements in any form related to operating and managing hospitals and health care facilities, including, but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), or the American Recovery and Reinvestment Act of 2009 ("ARRA"), and regulations adopted thereunder. The City shall not have access to Protected Health Information as defined by HIPAA, other than as provided for in Section 16. The City has read 45 C.F.R. 164.504(e), understands Providence's position is that 45 C.F.R. 164.504(e) applies to this Agreement, and that Providence therefore has the following obligations:

Providence agrees to hold all Protected Health Information that may be shared, transferred, transmitted, or otherwise obtained pursuant to this Agreement strictly confidential, and provide all reasonable protections to prevent the unauthorized use or disclosure of such information, including, but not limited to the protection afforded by applicable federal, state and local laws and/or regulations regarding the security and the confidentiality of patient health care information. Providence further agrees to make every reasonable effort to comply with any regulations, standards, or rules promulgated pursuant to the authority of the HIPAA, including those provisions listed below. Providence may use and disclose Protected Health Information when necessary for Providence's proper management and administration (if such use or disclosure is the minimum necessary), to carry out Providence's specific legal responsibilities pursuant to this Agreement, or as required by law. Specifically, Providence agrees as follows to:

- (a) Maintain administrative, physical, and technical safeguards as necessary to ensure that the Protected Health Information is not used or disclosed except as provided herein and to protect the confidentiality, integrity, and availability of Protected Health Information including implementing required and procedures with respect to Protected Health Information and the privacy and security rules implementing HIPAA, HITECH, or the ARRA;

- (b) Mitigate, if possible, any harmful effect known to Providence of a use or disclosure of Protected Health Information by Providence or any subcontractor of Providence;
- (c) Ensure that any subcontractors or agents to whom it provides Protected Health Information will agree in writing to substantially similar restrictions and conditions that apply with respect to such information;
- (d) Make available respective internal practices, books and records relating to the use and disclosure of Protected Health Information obtained pursuant to this Agreement to the Department of Health and Human Services or its agents;
- (e) Incorporate any amendments or corrections to Protected Health Information when notified that the information is inaccurate or incomplete;
- (f) Return or destroy all Protected Health Information obtained pursuant to this Agreement that Providence still maintains in any form and not to retain any such Protected Health Information in any form upon termination or expiration of this Agreement, if feasible or, if not feasible, Providence agrees to limit any uses of Protected Health Information after this Agreement's termination or expiration to those specific uses or disclosures that make it necessary for Providence to retain the information;
- (g) Ensure applicable policies are in place for providing access to Protected Health Information to the subject of that information;
- (h) To report to the City, by no later than thirty (30) days, any acquisition, access, use or disclosure of Protected Health Information, including successful breaches of unsecured Protected Health Information, which is not provided for in the Agreement, and if requested by the City, to report unsuccessful security incidents; and
- (i) Make Protected Health Information and an accounting of disclosures available to the individual who is the subject of the information, to the extent required by HIPAA/HITECH or the ARRA.

Breach of this section shall be considered material.

23. Access to Books and Records. Pursuant to 42 U.S.C. § 13995x(v)(1), until the expiration of four (4) years after the furnishing of services under this Agreement, Providence shall make available, upon written request



by the City, the Comptroller of the United States Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the services furnished by Providence under this Agreement. If Providence carries out any of its duties under this Agreement through a subcontract, with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization of Providence, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary of the United States Department of Health and Human Services or upon request by the City, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records as are necessary to verify the nature and extent of such costs.

24. Miscellaneous.

- (a) This Agreement constitutes the entire agreement between the Parties with respect to the operation of the Health Care Facilities. Any prior representations and agreements are of no effect. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or Providence unless reduced to writing and executed by the Parties.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, and venue for all disputes shall be in Anchorage, Alaska.
- (c) If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons and circumstances shall be valid and enforceable to the fullest extent permitted by law.
- (d) The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns.
- (e) The Parties have agreed to form a Health Advisory Council ("HAC"), which shall be comprised of those members as specified in the Health Advisory Council's Bylaws, as currently in effect or hereinafter amended. During the Term of this Agreement, one HAC member will be eligible to participate as a voting member on the Providence Alaska Region Community Ministry Board, which will vote on the operations of the Health Care Facilities. Such person is designated by the Chairperson of the HAC and its

members, but must be approved by Providence. The Parties hereby acknowledge and agree that Providence may require the City to replace its appointee to the Providence Alaska Region Community Ministry Board at any time during the Term of the Agreement. In such event, any such replacement shall be designated by the City, on the recommendation of the HAC Chairperson, and subject to approval by Providence. The City may replace its appointees to the HAC at any time during the Term of the Agreement, provided it provides Providence with at least thirty (30) days advance written notice of such action, and identifies in such notice the replacement person or persons. During the Term of this Agreement, the HAC will provide feedback and guidance to Providence regarding the operation of the Health Care Facilities, provided, however, that all such guidance received shall be non-binding and advisory in nature only.

- (f) Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm, or corporation, other than the Parties hereto, any right, remedy or claim, legal or equitable, under or by reason of this Agreement, this Agreement being intended to be and being for the sole and exclusive benefit of the Parties hereto.
- (g) Nothing in this Agreement, and no performance of either Party hereunder shall cause the relationship of the Parties to be that of principal and agent, partners, or joint ventures, or cause the Parties to be associated in any manner other than as independent contractors. Each Party shall be solely responsible for the workers' compensation, retirement, insurance or other benefits, if any, afforded to their respective employees.
- (h) The Parties to this Agreement will perform their obligations hereunder consistent with applicable federal, state and local laws.
- (i) The representations, warranties, and covenants of each Party set forth in this Agreement, including, without limitation, the indemnities and obligations provided for in Sections 5(f), 10(e)- (f), 13, 16, 19, and 20 are separate and distinct obligations of the respective Party, independent of that Party's obligations otherwise provided herein, and shall continue in effect after any termination or expiration of this Agreement, until the completion of those obligations or the expiration of the applicable statute of limitations (with extensions) relating to the causes of action at issue, as applicable.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

SIGNATURES:

**PROVIDENCE HEALTH & SERVICES - WASHINGTON  
dba Providence Health & Services Alaska**

By: Bruce Lamoureux  
Bruce Lamoureux

Its: Vice President/Chief Executive Officer,  
Providence Alaska Region

Date: 1-14-2015

**CITY OF VALDEZ**

By: John Hozey  
John Hozey  
Its: City Manager

Date: 12/18/14

By: Larry Weaver  
Larry Weaver  
Its: Mayor

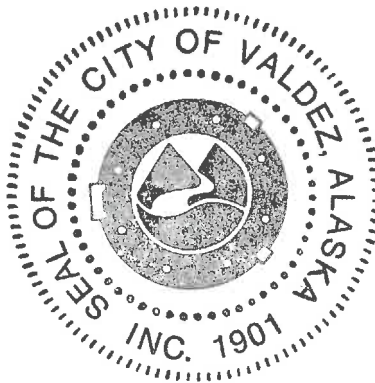
Date: 12/30/14

**ATTEST:**

Sheri L. Pierce  
Sheri L. Pierce, CMC/AAC, City Clerk

**APPROVED AS TO FORM:**

ASR  
Attorney for the City of Valdez



## **EXHIBIT A**

### **Working Capital and Supplement Calculation Methodology**

#### **Daily Operating Expense Calculation:**

Providence will calculate the total value of one (1) day's operating expenses as follows and report this to the City with each annual budget request:

Actual audited operating expenses for the Health Care Facilities for the two (2) immediate preceding years will be averaged together and then divided by three hundred sixty-five (365) days to obtain a base daily number. This base number will then be adjusted for inflation by six percent (6%). This inflation adjusted daily value will be used to determine the adequacy of cash balances for compliance with Section 6 of this Agreement.

#### **Annual City Supplement Calculation:**

Providence will calculate the annual City supplement for the Health Care Facilities using the following methodology:

1. Providence prepares a detailed annual operating budget approximately four (4) months before the beginning of the new fiscal year.
2. Assumptions and forecasts are made about the Health Care Facilities' operations (number of patient visits, reimbursement rates, operating expenses, price increases, etc.) for the coming year, as well as gross revenue, contractual deductions and expenses. Rationale supporting these assumptions and forecasts (i.e. historical trends, etc.) will be reported to the City each year.
3. A resultant net profit or net loss is projected for the upcoming fiscal year.
4. If a net profit is projected the City will not supplement the Health Care Facilities, and excess profits will be used in conformance with Section 6 of this agreement.
5. If a net loss is projected the City will supplement as follows:

Gross Revenue	\$X
Less: Contractuals	\$Y
Less: Expenses (excluding Depreciation)	<u>\$Z</u>
City Supplement Amount (X – Y – Z)	Total

Note: The Annual Fixed Fee is separate from the City supplement calculation and will be paid each year except as provided in Section 6(e).

## **EXHIBIT B**

### **Insurance Deductible & Co-Insurance Amounts**

Pursuant to the Agreement, Providence has agreed to procure or provide certain insurance coverage in connection with its operation of the above facilities on behalf of the City (described herein and in Section 12), which are Reimbursable Expenses under the Agreement.

The facilities are:

- **Providence Valdez Medical Center**  
A Critical Access Hospital and nursing home.
- **Providence Valdez Counseling Center**  
A community mental health and substance abuse treatment and prevention agency.

The insurance coverage detailed below as in effect on the Effective Date will need to be acknowledged in writing by the following City officials, and information on annual increases in deductibles or premiums payable for such coverage, if any, shall be made available to the City upon request:

1. City Manager
2. Mayor
3. City Attorney

#### **A. General and Professional Liability**

Providence has a program of self-insurance that is fully funded to a 75% confidence level, confirmed by an actuarial consulting firm which specializes in self-insurance programs for healthcare entities. This program will cover up to \$10 million per claim with a \$55 million annual aggregate for all negligent acts of Providence employees within the course and scope of their employment at the above facilities throughout the Term of this Agreement. No tail coverage will be required since this program will remain in full force and effect. There is also an additional \$100 million in reinsurance coverage for General and Professional Liability with “A-” or better Best Rated reinsurers. Providence will keep this or similar coverage in full force and effect.

Insurance-related Reimbursable Expenses will be calculated based upon a System-wide premium allocation formula, which factors in loss payments and open reserves. Insurance has been purchased for the purpose of lowering the amount considered in the premium allocation formula. The premium allocation formula will be presented and explained by Providence Health & Services Alaska’s Chief Financial Officer.

The deductible amount is **\$-0-**.

#### **B. Automobile Coverage**

Providence maintains self-insurance coverage for any Providence-owned automobiles. The System-wide premium is calculated per year, per vehicle, including excess insurance. Premiums will vary each year and **renewals occur on June 1 of each year**. Additional premium will be required if there are more or new vehicles subject to coverage. Providence Commercial Reinsurance Coverage sits on top of the self-insurance automobile policy as set for the above.

The deductible amount for this coverage as of the Effective Date is **\$2000** per event, but will increase to \$5000 per occurrence on June 1, 2015.

### **C. Property / Earthquake Insurance**

Providence has replacement value property / earthquake coverage (contents and business interruption) with an “A-” rated carrier. The City will cover and separately insure the structures and buildings.

For most losses, the deductible amount for this coverage as of the Effective Date is **\$500,000**, with a formula-driven (5% of the total values at risk, subject to a minimum of \$500,000) earthquake deductible for any Alaska location.

### **D. Helipad Coverage**

This Providence coverage of up to \$20,000,000 is placed with a commercial insurer, and is based on the number of anticipated helipad landings.

Premium cost is allocated to the facility based on the number of landings. The deductible amount for this coverage is **\$-0-**.

### **E. Directors and Officers**

Providence has commercial coverage through an “A” rated carrier. This policy covers all Providence Director and Officer malfeasance or non-feasance (except illegal or intentional wrong), with a deductible of \$500,000 per claim, as of the Effective Date. The policy also covers employment practices above \$750,000 per claim (including defense costs); amounts above \$250,000 per claim (including defense costs), up to \$750,000 per claim (including defense costs) are covered by the Providence Self-Insured Trust. There are separate deductibles and limits for class actions and antitrust.

The applicable deductible amounts for this coverage as of the Effective Date are:

D&O	<b>\$500,000</b> for the facility (however this depends on the allegation; in some instances, such as an antitrust allegation there is also a co-insurance amount that is the responsibility of the facility.)
EPL	<b>\$500,000</b> (\$1,000,000 for physician claims)
Antitrust	<b>\$1,000,000</b>
Class Actions	<b>\$1,500,000</b>

### **F. Crime (Employee Theft)**

Commercial crime coverage is provided through a commercial insurer. The deductible amount for this coverage as of the Effective Date is **\$500,000**.

### **G. Fiduciary (Employee Benefits.)**

Commercial coverage is provided through a commercial insurer. The deductible amount for this coverage as of the Effective Date is **\$100,000**.

## **H. Workers' Compensation**

Providence has a fully funded self-insured trust for its workers' compensation liabilities. There is excess coverage above \$1 million per claim.

Premium allocation will be adjusted by Providence during the year according to loss payments and open claim reserves. Additional information can be obtained from System Risk.

The deductible amount for this coverage is **\$-0-**.

**PROVIDENCE VALDEZ MEDICAL CENTER COMMUNITY ADVISORY COUNCIL  
CHARTER  
EFFECTIVE DATE JULY 1, 2021**

**Purpose**

- Enhance Providence Valdez Medical Center's (PVMC) ability to promote healthier communities and advance its mission and vision.
- Serve as a forum for engaging community leaders in a discussion about the health of the Valdez communities.
- Deepen understanding of the unique healthcare needs of the Valdez communities and inform the Providence Alaska Region Board (PARB) as it strives to build healthier communities across our service area.

**Roles and Responsibilities**

Provide advice and community leadership in the areas of mission alignment and community engagement, including:

***Mission alignment, community health and community engagement***

- Review and provide comment on the Community Health Needs Assessment (CHNA) process, the CHNA report and the Community Health Improvement Plan (CHIP) to address unmet community health needs identified in the CHNA, especially those impacting the poor and vulnerable.
- Help advance an integrated community health investment strategy aligned with population health, system and regional strategies.
- Identify and champion key community stakeholders and organizations for partnership.
- Prioritize the engagement and partnership of diverse stakeholders and representatives of underserved communities to raise the visibility of Providence's work in communities it hopes to influence.
- Ensure that the needs of the poor and vulnerable are prominently reflected in the priorities and plans of PVMC.
- Advise on PVMC's effectiveness at reducing community health disparities and promoting health equity and culturally informed care in the communities we serve.
- Provide periodic updates to the PARB on the local effectiveness at reducing community health disparities and promoting health equity and culturally informed care in the communities served.
- Participate in the philanthropic activities of the Providence Alaska Foundation as requested.

***Quality Oversight***

- Consult with the PVMC medical staff leader and administration periodically on matters related to the quality of medical care provided to hospital patients.
- Regularly receive reports and provide input on patient, staff, and provider engagement and satisfaction.



## **Roles and Responsibilities (continued)**

### ***Council Development***

- Assist in identifying other community members who would be a good fit for Council membership.

### ***Governance Effectiveness***

- Council shall follow good governance practices as applicable to its role.
- Council shall conduct regular self-assessment of its performance, annually if feasible.
- Participate in the recruitment, selection, and evaluation of PVMC Administrator.

## **Purpose, Role, and Reporting Relationship**

- Council serves an advisory role in policy formation, strategic direction, and oversight of the healthcare programs and services of PVMC.
- Council serves a governance role, advising the PARB, in consultation with the PVMC's Administrator.
- As part of the Providence Alaska region's governance structure, the Council Chair will interact from time to time with other advisory councils' chairs across the region.

## **Nomination and Appointment**

- The Council shall be comprised of between nine to 13 Council members including both voting and non-voting members.
- Ex officio, non-voting members of the Council shall include the PVMC Administrator, the Valdez City Manager or designee, the Chief of Medical Staff for Health Facilities and Counseling Center Director.
- Prospective Council members shall be identified by current Council members. The Council shall endeavor to maintain a broad representation of professionally diverse members and shall represent the age, gender, race and ethnic profile of the geographic service area, as identified on the member demographic attribute profile matrix.
- Nominations for vacant Council seats shall be presented to the Valdez City Council and the PARB for appointment. Should the Valdez City Council or the PARB decline to seat a nominee, the Council will withdraw that recommendation and propose alternate nominee.
- One Council member shall be appointed to the PARB. This individual shall be designated by the Council Chair and its members with approval from the PARB.

## **Term of Service**

- Terms for voting members shall be three years in duration.
- Members shall be limited to three consecutive three-year terms. After one-year off the Council, individuals may be eligible for appointment to a new cycle of terms.

## **Term of Service (continued)**

- Members shall be divided into three cohorts. Terms shall be staggered to assure that the term of each of the three groups will expire every third year with one such group being appointed each year.
- If there is difficulty in finding sufficient prospective council members, members whose terms are expiring may be extended to facilitate continuity while candidates are being sought.

## **Acting as a Committee of the Whole**

- Council shall conduct its work as a committee of the whole and refrain from appointing standing committees.
- If needed, ad hoc task forces may be considered around specific activities for a limited period of time.
- The possible exception is that the Council may employ an executive committee comprised of the Council's Chair and Vice Chair, with limited responsibilities, to establish the agenda.

## **Meetings**

- The Council shall meet a minimum of 10 times per year or as needed and requested by the Council Chair in collaboration with the PVMC Administrator.

## **Officers**

### ***Chair***

- Elected annually to serve for one year or until successor is elected. Should he/she vacate office mid-term the Vice Chair shall serve as Chair for the remainder of the unexpired term.
- Shall preside Council meetings and represent the Council when requested.

### ***Vice Chair***

- Elected annually to serve for one year or until successor is elected. Should he/she vacate office mid-term the Chair shall appoint a Council member to serve as Vice Chair for the remainder of the unexpired term.
- The Vice Chair shall serve as the Chair when the Chair is unable to act or be present.

## **Amendments**

This Charter may be amended by an affirmative vote of two-thirds of the Council members present at a duly-constituted meeting where a quorum has been established. Any amendments to the Charter must be confirmed by the PARB in order to become effective.