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THE HOME RULE CHARTER OF THE CITY AND BOROUGH OF YAKUTAT

PREAMBLE

We, the people of the Yakutat Borough area, in order to form an efficient, economical, and responsive government with just representation, and in order to provide for local government responsive to the will of the people and to the continuing needs of the communities within the Borough, hereby ratify and establish this Home Rule Charter.

ARTICLE I

NAME AND BOUNDARIES

Section 1.1: Name of Borough.

The Borough shall be a municipal corporation known as the "City and Borough of Yakutat." Whenever it deems it in the public interest to do so, the Borough may use the name "City and Borough of Yakutat Home Rule Borough".

Section 1.2: Boundaries and Borough Seat.

(a) The boundaries of the Borough shall be generally the coastline area between and including Cape Suckling and Cape Fairweather, or as legally modified hereafter.

(b) The Borough Seat shall be at Yakutat, Alaska.

ARTICLE II

POWERS

Section 2.1: Powers.

The Borough may exercise all powers of Home Rule not prohibited by law or by this Charter.

Section 2.2: Construction.

The powers of the Borough shall be liberally construed. The specific enumeration of a particular power in this Charter shall not be construed as limiting the powers of the Borough.

Section 2.3: Inter-Governmental Relations.

The Borough may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by agreement with any one or more

local governments, the State, the United States, or any agency or instrumentality of these governments.

ARTICLE III

THE ASSEMBLY

Section 3.1 Powers.

The governing body of the Borough shall be the Assembly. Except as otherwise provided by law or by this Charter, the Assembly shall exercise all powers of the Borough and shall provide for the performance of all duties and obligations of the Borough.

Section 3.2: Composition.

The Assembly shall be composed of seven Assembly members, one of whom shall be the Mayor.

Section 3.3: Qualifications.

(a) Only a qualified voter of the Borough, who has been a resident of the Borough for at least one year immediately preceding his or her election or appointment to office, shall be qualified for elective Borough office.

(b) No Assembly member may hold any other compensated Borough office or employment, or elected partisan political office, while serving on the Assembly, unless otherwise provided by an ordinance.

(c) An Assembly member who ceases to be a resident of the Borough shall immediately forfeit his or her office.

Section 3.4: Terms and Election of Assembly Members.

(a) All Assembly members, including the Mayor, shall be elected at large.

(b) The term of office of all Assembly members, including the Mayor, shall be two years and shall begin on the first Monday following certification of the election at which they are elected, with the proviso that three of the initial six Assembly members, excluding the Mayor, elected upon incorporation of the Borough, shall serve an initial term of one year. The identity of the three to serve this initial reduced term shall be determined by lot at the first meeting of the Assembly following certification of the election.

(c) The Assembly may, by ordinance, adopt additional procedures pertaining to the nomination and election of Assembly members and the terms for Assembly positions.

Section 3.5: Vacancies and forfeiture of office.

(a) The Assembly shall declare that an Assembly member has forfeited his or her office by a declaration of forfeiture. The Assembly member affected shall not vote upon the declaration.

(b) The grounds for forfeiture of an Assembly position are:

- (1) failure to comply with all qualifications prescribed by this Charter for an Assembly member;
- (2) knowing and willful violation of any express prohibition of this Charter;
- (3) failure to qualify and take office within thirty days after his or her election or appointment;
- (4) physical absence from the Borough for a ninety day period, unless excused by the Assembly;
- (5) failure to attend three consecutive regular meetings of the Assembly without being excused by the Assembly;
- (6) resignation and acceptance of that resignation;
- (7) physical or mental inability to perform the duties of office, as determined by a two-thirds vote of the Assembly;
- (8) removal from office in a manner authorized by law or by this charter;
- (9) conviction of a felony, or conviction of an offense involving a violation of the oath of office; and
- (10) death.

(c) Procedures governing the proposition, consideration, and implementation of a declaration of forfeiture may be adopted, by ordinance, by the Assembly.

(d) If a vacancy occurs in the Assembly, the remaining Assembly members, by majority vote, shall within thirty days appoint a qualified person to fill the vacancy. If less than thirty days remain in a term, the vacancy may not be filled.

(e) Notwithstanding (e) of this section, if the Assembly membership is reduced by vacancies to fewer than the number required to constitute a quorum, the remaining numbers shall, within seven days, appoint a number of qualified persons to constitute a quorum.

(f) A person appointed under this section serves until the next regular election, when a successor shall be elected to serve the balance of the term.

Section 3.6: Organization and Rules of Assembly.

(a) The Assembly may, by ordinance, determine its own rules and order of business and shall maintain a journal of its proceedings as a permanent public record.

Section 3.7: Compensation.

The Assembly, by ordinance, may provide for compensation of the Assembly members. An increase in compensation shall not take effect until the Assembly meeting following the next regular election after the ordinance has been adopted.

Section 3.8: Meetings.

(a) The Assembly shall hold at least one regular meeting every month at such time and place as it may prescribe.

(b) The Mayor or any two Assembly members may call a special meeting if four of the members are given at least twenty-four hours oral or written notice at their usual place of business or residence. A special meeting may be conducted with less than twenty-four hours notice if all Assembly members are present, or if all absent members have waived in writing the required notice. Waiver of notice may be made before or after the time of the meeting and any waiver shall be made part of the record of the special meeting.

(c) All meetings of Assembly shall be public and the public shall have reasonable opportunity to be heard. The Assembly may recess a meeting or proceeding for the purpose of discussion in closed or executive sessions, limited to its own membership and such other persons as Assembly designates, to discuss pending or threatened litigation, negotiations with labor organizations representing Borough employees, matters

which by law, this Charter or ordinance are required to be confidential, matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the Borough, or matters which tend to prejudice the reputation and character of any person, provided that the meeting is first convened as a public meeting, the question of holding an executive session is determined by a vote of the Assembly, and no action is taken on the subject matter by the Assembly in the executive session.

(d) Four members of the Assembly shall constitute a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later time or date.

(e) Actions of the Assembly are adopted by four members of the body. The Mayor may vote only in the case of a tie. The final vote of each member on each ordinance, resolution or substantive motion is a recorded roll call vote. Each member present shall vote on each question, unless required to abstain from voting on a question by rule of this Charter or ordinance or unless the Assembly, for special reasons, permits a member to abstain. If an Assembly member wishes to abstain based upon a conflict of interest, he or she shall declare a substantial financial interest in the official action and ask to be excused from a vote on the matter. The Mayor shall rule on a request by a member of the Assembly to be excused from a vote. The decision of the Mayor on a request by a member of the Assembly to be excused from a vote may be overridden by three votes of the Assembly.

Section 3.9: Clerk, Finance Director and Special Advisors.

(a) There shall be a Borough clerk, appointed by the Borough Manager and confirmed by the Assembly. The clerk shall attend all Assembly meetings and keep the journal, give notice of Assembly meetings to the Assembly and to the public, and perform such other duties as may be assigned.

(b) There shall be a Borough finance director, appointed by the Borough Manager and confirmed by the Assembly. The finance director is the custodian of Borough funds and shall keep an itemized account of money received and disbursed, and perform such other duties as may be assigned.

(c) There shall be a Borough attorney, appointed by the Mayor and subject to Assembly confirmation.

Section 3.10: Personnel System.

The Assembly, by ordinance, may provide for a comprehensive personnel system, including but not limited to, regulating all appointments, promotions, demotions, suspensions, and removals of Borough officers and employees.

Section 3.11: Mayor and Mayor Pro Tempore.

(a) The executive power in the Borough is vested in the Mayor. The Mayor shall perform all duties required by law, this Charter or the Assembly. The Mayor is the head of the Borough for ceremonial purposes and executes official documents upon the authorization of the Assembly.

(b) The Assembly shall elect a Mayor Pro Tempore from its membership at the first Assembly meeting following certification of the regular election. Should the office of the Mayor become vacant, or the existing Mayor disabled or unable to act, the Mayor Pro Tempore shall serve until the Mayor resumes his or her official duties or until a new Mayor is qualified.

Section 3.12: Boards and Commissions.

(a) Boards and Commissions may be established by the Assembly by ordinance which shall prescribe their purpose, function, rules and procedures, terms of office, and method of selection of members.

(b) Board or Commission meetings shall be conducted as provided for the Assembly in Section 3.8(c) of this Charter.

ARTICLE IV

LEGISLATION

Section 4.1: Ordinances.

Each proposed ordinance shall be in the form required by the Assembly. The subject of each ordinance shall be expressed in its title. Each ordinance shall be confined to one subject unless it is an appropriation ordinance or one codifying, revising or reorganizing existing ordinances.

Section 4.2: Actions Requiring Ordinances.

The Assembly shall use ordinances to:

- (1) establish, alter, or abolish Borough Departments;

- (2) provide for fine or other penalty, or establish rules or regulations for violations of which a fine or other penalties is imposed;
- (3) propose the levying of taxes or establishment of a service area;
- (4) grant, renewal or extend a franchise;
- (5) make appropriations, including supplemental appropriations or transfer of appropriations;
- (6) adopt, modify or repeal the comprehensive plan, land use and subdivision ordinances, building and housing codes, and the official maps;
- (7) establish procedures for the acquisition and disposal of lands or rights in lands;
- (8) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of Borough public works projects within the limitations set out in A.S. 36.25.025; and
- (9) to accomplish any matter required to be performed by ordinance under this Charter.

Section 4.3: Ordinance Procedure.

(a) An ordinance may be presented for consideration only by a member or committee of the Assembly including the Mayor, or the manager at any regular or special meeting of the Assembly. Upon presentation of an ordinance, copies will be furnished to each Assembly member including the Mayor, and the ordinance shall be rejected, deferred, referred to committee, or accepted as being introduced. Promptly after introduction, the Assembly shall set the ordinance for a public hearing, and post or publish public notice setting out a summary of the ordinance and the time and place for public hearing on the ordinance. The public hearing on the ordinance shall follow posting or publication by at least five days. It may be held at a regular or special meeting and may be adjourned from time to time. At the public hearing, copies of the ordinance shall be distributed to all persons present who request them, or, in the alternative, the ordinance shall be read in full. All persons shall have a reasonable opportunity to be heard. After the hearing, the Assembly shall consider the ordinance and may adopt it with or without amendment. The Assembly shall print and make available copies of the adopted ordinances.

(b) Ordinances take effect upon adoption, or at a later date specified in the ordinance.

(c) The term "post or publish" means the ordinance, in whole or in summary, along with the notice of hearing shall appear at least once in a newspaper of general circulation in the Borough or be posted in at least three public locations for at least five days. Copies of the ordinance shall be made available at the Borough clerk's office for public inspection.

Section 4.4: Emergency Ordinance.

(a) To meet an emergency, the Assembly may adopt emergency ordinances. Each emergency ordinance shall contain a specific finding of emergency based on a statement of facts. An emergency ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of four members is required for adoption of an emergency ordinance. The Assembly shall make available copies of adopted emergency ordinances.

(b) An emergency ordinance shall not be used to levy taxes, to grant, renew, or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) An emergency ordinance shall expire sixty days after adoption.

Section 4.5: Signature.

Each ordinance shall be signed by the Mayor at its adoption and attested by the clerk.

Section 4.6: Codification.

The Borough clerk or the clerk's designee shall have prepared and shall maintain a general codification of all Borough ordinances of general applicability having the force and effect of law.

Section. 4.7: Mayor's Vote.

The Mayor may vote only in the case of a tie.

Section 4.8: Veto.

The Mayor may veto any ordinance, resolution, motion or other action of the Assembly and may, by veto, strike or reduce items in appropriation ordinances, except for School Board

education items. The Mayor shall submit to the Assembly at its next regular meeting a written statement advising of the veto and giving the reasons for the veto. A veto is overridden by the vote of five members of the Assembly.

ARTICLE V

MANAGER

Section 5.1: Manager.

There shall be a Manager of the Borough. The Assembly shall appoint him or her by a majority vote of its membership. The Manager serves at the pleasure of the Assembly.

Section 5.2: Qualifications.

The Manager shall be appointed on the basis of executive and administrative qualifications, education and training, experience as a professional administrator, and other qualifications as the Assembly shall determine. No member of the Assembly may be appointed Manager unless at least two years have intervened since the expiration of his or her last term on the Assembly and date of appointment.

Section 5.3: Powers and Duties of the Manager.

The Manager shall:

- (1) except as otherwise provided by this Charter or by ordinance, appoint and remove all Borough employees and administrative officers, subject to such personnel regulations and rules as the Assembly may adopt;
- (2) direct the care and custody of all Borough property;
- (3) direct and supervise the construction, maintenance and operation of Borough Public Works;
- (4) keep the Assembly fully advised on the financial condition and needs of the Borough;
- (5) supervise enforcement of Borough law;
- (6) prepare the annual budget and capital improvement program for the consideration of the Assembly;

- (7) execute the budget and capital improvement program as adopted;
- (8) make monthly financial reports to the Assembly on Borough finances and operations;
- (9) report to the Assembly at the end of each fiscal year on the finances and administrative activities of the Borough;
- (10) prepare and make available for public distribution an annual report on Borough affairs;
- (11) perform such other duties and powers specified by the Assembly.

Section 5.4: Acting Manager.

If the Manager is absent from the Borough and is unable to perform his duties, if the Assembly suspends the Manager, or if there is a vacancy in the office of Manager, the Assembly may appoint an Acting Manager to serve until the Manager returns, until his disability or suspension ceases, or until another Manager is appointed. The Assembly shall replace the Acting Manager with a permanent Manager within a reasonable length of time, and in no case may a person serve as Acting Manager for more than one year.

ARTICLE VI

ELECTIONS

Section 6.1: Administration.

The Assembly shall prescribe the rules of conducting Borough elections.

Section 6.2: Regular Elections.

A regular election shall be held annually on the third Tuesday in October, or on such other date as the Assembly may provide by ordinance. At least twenty days notice shall be given of a regular election.

Section 6.3: Special Elections.

The Assembly shall provide, by resolution, for the holding of special elections. At least twenty days notice shall be given of a special election.

Section 6.4: Qualifications of Voters.

To be eligible to vote in any Borough election, at the time of the election a person shall be:

- (1) qualified to vote in state elections under A.S. 15.05.010;
- (2) a resident of the Borough for at least thirty days immediately proceeding the election;
- (3) registered to vote in state elections at a resident address within the Borough at least thirty days before the election at which the person seeks to vote; and
- (4) is not disqualified under Article 5 of the State Constitution.

Section 6.5: Nominations.

Nominations for initial Borough officials are to be made as required by law under Title 29. For elections following the election of initial officers, a person who seeks to become a candidate for an elected Borough office shall execute and file a declaration of candidacy. The procedures and form of a declaration of candidacy shall be established by the Assembly.

Section 6.6: Determination of Election Results.

(a) In a Borough election, the top vote getting candidate for the office of Mayor, or for the unexpired term of a specific school board or Assembly vacancy, shall be declared elected, whether or not any candidate receives greater than 40% of the votes cast for the office.

(b) In Borough elections in which multiple school board or Assembly seats are being filled, the candidate(s) receiving the greatest number of votes, and whose standing in the vote count is at least equal to the number of seats to be filled, shall be declared elected, whether or not such candidate(s) receive greater than 40% of the votes cast for that office.

(c) If after a recount and appeal, or if after a recount without appeal or the time for appeal has run, two or more candidates tie in having the highest number of votes for the same office, the Mayor shall notify the candidates who are tied of a reasonably suitable time and place to determine the successful candidate by lot.

ARTICLE VII

INITIATIVE, REFERENDUM AND RECALL

Section 7.1: Initiative, Referendum and Recall.

The powers of initiative and referendum are reserved to the voters of the Borough, except that the powers of initiative and referendum shall not apply to matters restricted by art. XI, §7 of the state constitution.

Section 7.2: Application for Petition.

An initiative or referendum is proposed by filing an application with the Borough clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be challenged by referendum and the address to which all correspondence relating to the petition may be sent. An application must be signed by at least ten persons who are registered to vote, or are eligible to register to vote, in the Borough who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two weeks, the clerk shall certify the application if the clerk finds that it is in proper form, and for an initiative petition, that the matter:

- (1) is not restricted by Section 7.1 of this Chapter;
- (2) includes only a single object;
- (3) relates to a legislative rather than to an administrative matter; and
- (4) would be enforceable as a matter of law.

Section 7.3: Contents of Petition.

(a) Within two weeks after certification of an application for an initiative or referendum petition, a petition shall be prepared by the Borough clerk. Each copy of the position shall contain:

- (1) a summary of the ordinance or resolution to be initiated or the ordinance or resolution to be challenged by referendum;
- (2) the complete ordinance or resolution sought to be initiated or challenged by referendum as submitted by the sponsor;

- (3) the date on which the petition was issued by the Clerk;
- (4) notice that signatures must be secured within thirty days after the date the petition is issued.
- (5) spaces for each signature, the printed name of each signor, the date each signature is affixed, and the residence and mailing addresses of each signor;
- (6) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and
- (7) a space for indicating the total number of signatures on the petition.

(b) If a petition consists of more than one page, each page shall contain the summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

Section 7.4: Signature Requirement.

(a) The petition shall be signed by the number of qualified Borough voters equal to at least 25% of the votes cast in the Borough at the last regular election held before the date the petition was issued. Signatures shall be in ink or indelible pencil and shall be secured within thirty days after the petition is issued. Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible resident address shall be rejected.

(b) A petition signor may withdraw his or her signature on written application to the Borough clerk at any time before certification of the petition.

Section 7.5: Sufficiency of Petition.

(a) All copies of an initiative or referendum petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the Borough Clerk shall:

- (1) certify on the petition whether it is sufficient;
or
- (2) if the petition is insufficient, identify the insufficiency and notify the sponsors at the address provided by certified mail.

(b) A petition that is insufficient may be supplemented with additional signatures obtained and filed within ten days after the date on which the petition was rejected.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within ten days after supplemental filing, the clerk shall certify on the petition whether it is now sufficient. If it is still insufficient, the petition is rejected and filed as a public record.

Section 7.6: Protest.

If the Borough clerk certifies an initiative or referendum petition is insufficient, a signor of the petition may file a protest with the Mayor only if done within seven days after such certification of insufficiency. The Mayor shall present the protest at the next regular meeting of the Assembly and the Assembly shall herein decide the protest.

Section 7.7: Initiative Election.

(a) When an initiative petition has been determined sufficient, the clerk immediately shall submit it to the Assembly. If the Assembly fails to adopt the proposed initiative measure without any change in substance within forty five days after the date the petition was determined sufficient, it shall submit the proposed initiative to the voters of the Borough. If the Assembly adopts substantially the same measure, the petition is void and the matter initiated may not be placed before the voters.

(b) The election on a proposed initiative shall be held no later than seventy five nor sooner than forty five days from the last date on which the Assembly action may be completed on the proposed initiative. If no regular election occurs within this period, the Assembly shall hold a special election. The notice

of election shall contain at least a summary of the proposed initiative and the initiative may be summarized on the ballot.

(c) If a majority favors the ordinance or resolution, it becomes effective upon certification of the election, unless a different effective date is provided in the ordinance or resolution.

Section 7.8: Referendum Election.

(a) When a referendum petition has been determined sufficient, the clerk immediately shall submit it to the Assembly. If the Assembly fails to repeal the ordinance or resolution challenged in the referendum petition measure within forty five days after the date the petition was determined sufficient, it shall submit the proposed referred measure to the voters of the Borough. If the Assembly repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(b) The election on the referred matter shall be held no later than seventy five nor sooner than forty five days from the last date on which the Assembly action may be completed on the proposed preferred measure. If no regular election occurs within this period, the Assembly shall hold a special election. The notice of election shall contain at least a summary of the referred matter on the ballot and it may be summarized on the ballot.

(c) If a majority vote favors the repeal of the ordinance or resolution challenged in the petition, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective on certification of the election.

Section 7.9: Effect.

(a) The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted by an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

(b) If an ordinance or resolution is repealed in a referendum election or by the Assembly after a petition that contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the Assembly for a period of two years.

(c) If an initiative or referendum measure fails to receive voter approval, a new petition application for

substantially the same measure may not be filed sooner than two years after the election results are certified.

Section 7.10: Suspension.

Filing of a referendum petition suspends the ordinance or resolution only if the petition is filed and certified as sufficient within ninety days after the effective date of the ordinance or resolution. The suspension terminates upon certification of a majority vote against repeal.

Section 7.11: Recall.

The Assembly may provide, by ordinance, rules and procedures regarding recall.

ARTICLE VIII

EDUCATION

Section 8.1: Public School System.

There shall be a system of public education for the Borough conducted in a manner prescribed in Title 14 of the Alaska Statutes. It shall be operated by a school board of five (5) elected members, except that the Assembly may, by ordinance concurred in by a majority of the school board, provide for a school board of seven (7) members.

Section 8.2: School Board:

(a) Members of the school board are elected at the regular election held annually on the third Tuesday of October. The members of the school board are elected at large.

(b) To be eligible for nomination for office of school board member and to serve in that capacity, a person shall have the qualifications of a Borough voter under Section 6.4 of this Charter and shall reside in the Borough.

(c) The term of school board member shall be three years and said term shall be staggered by lot to allow for uninterrupted continuation of the school board functions.

(d) The office of school board member shall become vacant upon death, resignation, removal from office in any manner authorized by law or by this Charter, or by forfeiture of office as prescribed for Assembly members in Section 3.5 of this Charter. If a vacancy occurs on the school board, the remaining members shall within thirty days fill the vacancy. The person

selected shall serve until the next regular election when a successor shall be elected to serve the balance of the term.

(e) Within seven days after the certification of the results of an election at which school board members are elected, the school board shall meet and elect one of its members as president, one as clerk, and, if necessary, one as treasurer.

(f) The powers and duties of the school board shall be those set forth in Title 14 of the Alaska Statutes.

Section 8.3: Public Meetings.

All meetings of the school board shall be conducted as provided for the meetings of the Assembly in Section 3.8(c) of this Charter.

Section 8.4: Budget.

The superintendent of schools shall submit an annual budget, which shall first be approved by the school board, at such time as the board may direct, but in no case at a date later than that prescribed by state law. The proposed school budget shall be a public record available from the time of its submission to the board for public inspection and distribution. The board shall hold public hearings on the budget before approval and submission to the Assembly for final action.

Section 8.5: Capital Improvements.

The board shall make recommendations to the Assembly concerning the necessity for school construction and other capital improvements, site selection, employment of architects, and building plans. The board shall submit preliminary plans to the Assembly for suggestions before recommending final plans.

Section 8.6: Duties of the School Board.

(a) The school board shall be responsible for:

- (1) operating the public school system for the Borough, subject to state statutes;
- (2) supervising the maintenance of all school buildings in the Borough; and
- (3) instituting and maintaining an accounting system and treasury as specified in (1) of this Section.

- (b) (1) The school board shall be responsible for instituting and maintaining an accounting system and treasury for the public school system. All checks drawn on the treasury of the public school system shall be signed by two members of the school board, or by one school board member and the superintendent of schools. All checks shall be supported by a purchase order prior to issuance.
- (2) A copy of the annual audit of the accounting system and treasury, and any other audit of the public school system, shall be furnished to the Assembly at the first Assembly meeting following issuance of the audit.

ARTICLE IX

PLANNING

Section 9.1: Planning Commission.

There shall be a planning commission consisting of five (5) members, appointed by the Mayor and subject to confirmation by the Assembly. The powers and duties of the planning commission, and the terms, compensation and qualifications of its members, shall be established by the Assembly.

Section 9.2: Comprehensive Plan.

The Assembly, by ordinance, shall adopt and implement, and from time to time modify, a comprehensive plan setting forth goals, objectives, and policies governing the future development of the Borough.

Section 9.3: Platting Regulation and Subdivision Regulation.

There shall be a platting authority constituted as provided by the Assembly. The Assembly, by ordinance, shall provide for the regulation of the subdivision of land within the Borough.

ARTICLE X

FINANCE

Section 10.1 Fiscal Year.

The fiscal year of the Borough shall begin on the first day of July and end on the last day of June of the following year.

Section 10.2: Submission of Budget, Capital Improvements Program and Message.

(a) The Manager shall submit to the Assembly a budget for the following fiscal year, a capital improvements program and an accompanying message of both.

(b) Upon submission, the budget, the capital improvements program and the message shall be a public record available for public inspection.

(c) The Assembly may, by resolution, provide for procedures regarding submission, preparation and adoption of the budget.

Section 10.3: Scope of Budget.

(a) The budget shall be a complete financial plan for all operations of the Borough, including the education function, showing all reserves, all estimated revenues from all sources, and the proposed expenditures for all purposes.

(b) The budget shall contain at least the following:

- (1) a comparative statement of actual expenditures and actual revenues for the preceding fiscal year; and
- (2) estimated expenditures and estimated revenues for the current fiscal year.

(c) The proposed expenditures shall not exceed total estimated revenues and reserves.

Section 10.4: Scope of Capital Improvements Program.

(a) The capital improvements program shall be a plan for capital improvements proposed for the following six fiscal years, together with the estimated cost of each improvement and the proposed method of financing. It shall contain at least the following:

- (1) a summary of current capital improvements which are unfinished;
- (2) a summary of the detailed contents of the program; and
- (3) a list of capital improvements pending or proposed to be undertaken within the ensuing

fiscal year, together with the estimated cost of each improvement and the proposed method of financing.

(b) Capital improvements to be financed in the following fiscal year shall be included in the budget as well as in the capital improvements program.

Section 10.5: Hearing.

(a) The Assembly shall hold a public hearing on the budget as submitted. The Assembly shall determine the place and time of the public hearing and shall cause such to be published in a newspaper of general circulation, or if there is no such newspaper in the Borough, post such notice in three public places in the Borough. This notice shall be published at least two weeks prior to the hearing. All interested persons shall be given reasonable opportunity to be heard.

(b) After the conclusion of such public hearing, the Assembly may insert new items and increase or decrease the items of the budget, except items in proposed expenditures fixed by law or otherwise prescribed by ordinance. The Assembly may not vary the titles, descriptions or conditions of administration specified in the budget.

Section 10.6: Assembly Action.

The Assembly, by ordinance, shall adopt the budget by a majority vote of all members of the Assembly, no later than June 15.

Section 10.7: Certification and Effective Date of Budget.

Upon adoption of the budget, the budget shall be in effect for the budget year. A copy of the budget, as finally adopted, shall be certified by the Mayor and the clerk and filed in the office of the clerk. The budget as so certified shall be made available at the clerk's office.

Section 10.8: Supplemental and Emergency Appropriation.

(a) If during any fiscal year there are available revenues received from sources not anticipated in the budget estimates, the Assembly, by ordinance, may make supplemental appropriations for the year up to the amount of the additional revenues.

(b) Upon declaration by the Assembly of a public emergency and describing the emergency, the Assembly may make emergency

appropriations. Such appropriations may be made by emergency ordinances.

Section 10.9: Reduction and Transfer of Appropriations.

(a) If during the fiscal year it appears that revenues available will be insufficient to meet the amount appropriated, the Assembly, by ordinance, may reduce any appropriation, except for debt service. No appropriation may be reduced by more than the amount of the unencumbered balance.

(b) The Assembly may, by resolution, transfer part or all of any unencumbered balance between classification of expenditures within a department, office or agency or from one department to another, excluding the education function. No transfer may be made from appropriations for debt service.

Section 10.10: Lapse of Appropriations and Surpluses.

Every unencumbered surplus of the general fund or a service area shall lapse at the close of the fiscal year to the general fund or service area, respectively. An appropriation for capital improvement, or in connection with requirements of federal or state grants, shall not lapse until its purpose has been accomplished or abandoned.

Section 10.11: Administration of Budget.

(a) No payment may be made and no obligation incurred against the Borough except in accordance with appropriations duly made. No payment may be made and no obligation incurred against any appropriation unless the Manager or Mayor ascertains that there is a sufficient unencumbered balance in the appropriation and that sufficient funds are or will be available to cover the obligation.

(b) Every obligation incurred and every authorization of payment in violation of the provisions of this Charter shall be void. Every payment made in violation of the provisions of this Charter shall be illegal. All officers or employees of the Borough who knowingly authorize or make such payment shall be jointly and severally liable to the Borough for the full amount so paid. The Manager shall proceed forthwith to collect the indebtedness unless otherwise directed by the Assembly.

(c) Notwithstanding Section 10.11 (a) of this Charter, the Assembly, by ordinance, may require payment of funds from appropriations of a later fiscal year or of more than one year for any contract, lease, note or bond obligation, or any other grant or program.

(d) Except as otherwise provided by the Assembly by ordinance, the Assembly shall provide for centralized accounting for all functions of the Borough, and shall provide that all funds of the Borough from whatever source, including the education function, shall be deposited in the central treasury.

(e) Except as otherwise provided by the Assembly, by ordinance, the Assembly shall provide for centralized purchasing of supplies, materials, and equipment for the Borough and its departments, offices, and agencies, including the education function.

Section 10.12: Purchasing (Contract Approval).

(a) The Assembly, by ordinance, shall provide for competitive bidding for purchase of goods and services by the Borough and sales of surplus Borough property, and for any exceptions thereto.

(b) The Assembly, by ordinance, shall establish provisions for Assembly approval of Borough contracts, and for any exceptions thereto.

Section 10.13: Audits.

The Assembly may provide annually for an independent audit of the accounts of the Borough. The audit shall be made by a certified public accountant designated by the Assembly.

Section 10.14: Ordinances.

To the extent not inconsistent with this Charter, the Assembly may set forth, by ordinance, a fiscal procedure to be followed by the Borough.

ARTICLE XI

BORROWING

Section 11.1: Authority.

(a) The Borough may borrow money and issue such evidence thereof, herein called obligations, as the Assembly may determine necessary.

(b) The Assembly shall, by ordinance, prescribe the purposes, forms, terms, conditions, contents, denominations, maturities, manner of execution, covenants, security, options of redemption, and such other matters relating to the issuance and

sale of obligations as are deemed necessary and advisable by the Assembly.

Section 11.2: Restrictions on Borrowing.

(a) No general obligation bond indebtedness of the Borough may be incurred unless authorized for capital improvements by the Assembly and ratified by a majority vote of those in the Borough voting on the question; provided however that the Assembly, by ordinance, may issue notes in anticipation of the issuance of general obligation bonds without a vote when such bonds have been so ratified.

(b) No obligation by a pledge of taxes to be levied in the service area may be issued unless authorized for capital improvements by the Assembly and ratified by a majority of the qualified voters in the service area voting on the question; provided however that the Assembly, by ordinance, may issue notes in anticipation of the issuance of bonds so secured without a vote when such bonds have been ratified by the voters. In a service area where there are no qualified voters to vote on the question, voter ratification shall not be required.

Section 11.3: Notice of Bond Election.

(a) Before a general obligation bond indebtedness election, the Assembly shall have published a notice at least once a week for three consecutive weeks. The first notice shall be published at least twenty (20) days before the date of the election, in a newspaper of general circulation, or if there is no such newspaper, posted in at least three public locations. The notice shall include

- (1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the Borough;
- (2) the cost of the debt service on the general indebtedness; and
- (3) the total assessed value of property in the Borough.

Section 11.4: Revenue Anticipation Notes.

(a) A Borough may borrow money in a fiscal year to meet appropriations in anticipation of collection of the revenues for that year, and may issue revenue anticipation notes as evidence of the borrowing.

(b) The Assembly may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and detail of the notes and the manner of their execution. The Assembly may delegate to the Borough's finance director the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale. Revenue anticipation notes and notes issued to renew notes previously issued mature not later than the end of the fiscal year in which they are issued.

(c) (1) The Assembly may, upon adoption of a capital improvements program, by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of state or federal grants finally committed to for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvements program.

(2) If the state or federal grants for capital improvement projects have not been paid to the Borough before maturity of the notes issued in anticipation of the receipt of the revenue, the Assembly may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Section 11.5: Bond Anticipation Notes.

(a) The Borough may borrow money in anticipation of the sale of general obligation and revenue bonds if:

- (1) the general obligation bonds to be sold have been authorized by ordinance and ratified by a majority vote at an election;
- (2) the revenue bonds to be sold have been authorized by ordinance.

(b) The Assembly shall issue negotiable or non-negotiable notes for the amounts borrowed with the maturity date not to exceed one year from the date of issue. All notes and the interest thereon are payable at fixed places on or before a fixed time from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds

have not been sold by the maturity date of the notes. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the Assembly shall issue new notes in order to meet payment of the notes then maturing, or shall renew the outstanding bond anticipation notes. New notes issued or renewals of notes bear a maturity date not to exceed one year from the date of issue.

(c) Every note is payable from the proceeds of the sale of bonds of the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

(d) A total amount of notes issued and outstanding may at no time exceed the total amount of bonds authorized to be issued.

Section 11.6: Sale to Financial Consultants Prohibited.

No person retained by the Borough to perform services relating to financial programming or the issuance and sale of obligations may bid on such obligations, directly or indirectly. In the event any such person violates this provision, his or her contract for such services shall be null and void and he or she shall not be entitled to any compensation for services rendered; and, in addition, he or she shall be liable for any damage sustained by the Borough in connection with such purchase and sale. Violations of the provisions of this section shall not invalidate the obligations. Nothing contained in this paragraph shall be construed to prohibit the issuance of bonds through orthodox underwriting practices.

Section 11.7: Revenue Bonds.

(a) The Borough may issue negotiable or non-negotiable revenue bonds for a public enterprise or a public corporation of the Borough where the only security is the revenue of the public enterprise or corporation.

(b) No election is required to authorize the issuance and sale of revenue bonds.

Section 11.8: Refunding Bonds.

(a) The Borough may provide, by ordinance or resolution, for the issuance of negotiable or non-negotiable general obligation refunding bonds or revenue refunding bonds. The procedure for the issuance of such bonds shall be in the manner prescribed by the Assembly.

Section 11.9: Actions Challenging the Validity of Obligations.

No action challenging the validity of any obligations may be maintained unless instituted within thirty days from the effective date of certification of the results of the election ratifying the issuance of such obligation or thirty days from the effective date of the ordinance authorizing the issuance of such obligation when ratification is not required.

Section 11.10: General Obligation Not Requiring Ratification

The Assembly may authorize general obligation bonds and notes without ratification by Borough voters for disaster bonds or notes issued in case of calamity which has caused great loss. In this instance, obligations are to be used for the preservation, rehabilitation, or reconstruction of Borough capital improvements.

Section 11.11: Sale.

Bonds and notes issued under this article may be sold at either public or private auction by the Borough in the manner and at the price it determines.

Section 11.12: Interest Rate.

The interest rate payable on a bond or note issued under this article shall be determined by the Borough and is not subject to the usury rate limitations set forth in state law.

ARTICLE XII

TAXATION

Section 12.1: Taxing Authority and Limitations.

(a) The Assembly shall have the sole authority and power to tax. The Assembly shall prescribe by ordinance the procedures for tax assessment and collection.

(b) Any property tax, together with any collection charges, penalties, and interest, has a first lien upon the property.

(c) The Assembly may provide, by ordinance, that a new sales or use tax, or an increase in the rate of levy of a sales or use tax, does not take effect until ratified by a majority of the voters at an election.

(d) The Assembly may, by ordinance, provide that a sales or use tax, together with any interest, penalties and collection charges, is a lien on real or personal property.

(e) No lien authorized by this Charter or by law precludes the Borough from exercising any other lawful remedy for the collection of taxes.

Section 12.2: Property Tax.

(a) The Assembly may, by ordinance, levy real and personal property taxes, and may provide, by ordinance, for exemptions thereto.

(b) The borough may not, during the year, levy a tax for any purpose in excess of the amount so allowed by law.

ARTICLE XIII

SERVICE AREAS

Section 13.1: Purpose.

Service areas may be established to provide services not provided on an area-wide basis or to provide a higher level of service than that provided on an area-wide basis.

Section 13.2: Establishment.

(a) The Assembly, by ordinance, may establish, alter, consolidate, or abolish service areas. The Assembly, by ordinance, may add or eliminate services to a service area. The ordinance shall contain the following:

- (1) the boundaries and area to be included; and
- (2) the service to be provided or be eliminated;

(b) Procedures for the establishment by petition of a service area shall be in accordance with the service area petition procedure established by the Assembly. Any protest to the establishment or abolishment of a service area shall be prepared, submitted and processed as set forth in Sections 7.2 - 7.8 of this Charter, however, the petition shall be signed by a number of qualified voters residing within the service area or proposed service area equal to at least twenty five percent of the votes cast in the service area or proposed service area at the last regular election.

Section 13.3: Criteria.

A service area shall be established according to criteria of need and economic operating efficiency and shall comprise the area to which services shall be provided. A new service area

shall be established only after Assembly determination that such services cannot be reasonably provided by an existing service area or by alteration of an existing service area.

Section 13.4: Financing.

The Assembly may levy taxes, assessment or other charges within a service area to finance the services, and funds thereby raised shall not be used for any purpose outside of the service area.

ARTICLE XIV

LOCAL IMPROVEMENT DISTRICTS

Section 14.1: Purpose:

Local improvement districts may be established in a limited and determinable area to confer the special benefits of any Borough improvement. All or any part of the costs of the improvement may be paid out of the proceeds of special assessments levied against the benefited property.

Section 14.2: Procedure.

(a) The Assembly shall prescribe, by ordinance, the procedures for establishing local improvement districts and for levying special assessments on benefited property to finance all or a part of the costs of the public improvement.

(b) All real property in the improvement district, whether or not exempt from general property taxation, shall be assessed for local improvements unless specifically exempted by ordinance pertaining to the local improvements and having general effect.

(c) The Assembly, by ordinance, shall establish the method of apportioning and assessing the cost of improvements upon the real property benefited in proportion to the benefits.

Section 14.3: Lien.

A special assessment, together with collection, interest and penalty charges, is a lien on the property assessed second in priority only to property taxes and prior special assessments. The assessment lien shall be enforceable in the same manner as a lien for Borough taxes.

Section 14.4: Protest.

If protest as to the necessity for any local improvement is made within the time allowed by ordinance by the owners of real property that will bear at least fifty percent of the estimated cost to be borne by the benefited property, the improvement shall not proceed until the protests have been reduced below fifty percent.

Section 14.5: Limitation on Actions.

No special assessment procedure may be contested by an action at law or in equity unless commenced within sixty days after the confirmation of the special assessment roll.

Section 14.6: Accounts.

Accounts for local improvement districts shall be kept separate from other Borough accounts. Revenues from a special assessment shall be used solely to pay the cost of the improvements or the principal and interest on an indebtedness incurred for the improvements.

ARTICLE XV

CHARTER AMENDMENT

Section 15.1: Proposal.

Amendments to this Charter may be proposed by:

- (1) ordinance of the Assembly containing the full text of the proposed amendment;
- (2) report of an elected Charter commission created by Assembly ordinance or by initiative ordinance;
or
- (3) initiative petition in accordance with Article VII of this charter.

Section 15.2: Election.

(a) Proposed amendments shall be submitted to the qualified voters of the Borough.

(b) An election shall be held not less than sixty days after adoption of the ordinance, issuance of the final report of the Charter commission, or certification of the initiative petition.

(c) A notice containing the full text of each proposed amendment shall be published.

(d) If a majority of the qualified voters voting on a proposed amendment approve it, the amendment shall become effective at the time fixed in the amendment, or if no time is fixed, thirty days after certification of the election.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.1: Personal Financial Interest.

(a) A member of the Assembly shall declare a substantial financial interest a member has in an official action and ask to be excused from a vote on the matter. The Mayor shall rule on a request by a member of the Assembly to be excused from a vote. The decision of the Mayor on a request by a member of the Assembly to be excused from a vote may be overridden by the majority vote of the Assembly.

(b) A Borough employee or official may not participate in an official action in which the employee or official has a substantial financial interest.

(c) The Assembly, by ordinance, may prescribe additional rules and penalties to prevent conflicts of interest.

Section 16.2: Prohibitions.

(a) No person shall be discriminated against in any Borough appointment, employment or promotion because of race, sex, color, political or religious affiliation, or national origin.

(b) No person may willfully falsify any test, certification or application under the personnel regulations or in any manner commit or attempt to commit any fraud to prevent the impartial execution of such regulations.

(c) No person may offer, give or receive any money, service or other valuable thing to influence or attempt to influence any action of an officer or employee in the performance of their Borough duties.

(d) No Assembly member, Borough officer or employee shall directly or indirectly solicit a contribution for any political party or purpose from any person holding a compensated Borough position.

(e) No Assembly member, Borough officer or employee shall campaign while on official business.

Section 16.3: Surety Bonds.

The Borough Manager, the Borough clerk, and such other officers and employees as the Assembly may designate, before entering upon their duties, shall be bonded, by individual or group bonds, for the faithful performance of their respective duties, payable to the Borough, in such form and in such amounts as the Assembly may prescribe, with a Surety Company authorized to operate within the state. The Borough shall pay the premiums on such bonds.

Section 16.4: Oath of Office.

Every officer of the Borough, before entering upon his or her duties, shall take the oath or affirmation required by Section 5, Article XII of the Constitution of the State of Alaska. The Assembly may require designated employees to take such oath before entering upon employment. Oaths of office shall be filed with the Borough clerk.

Section 16.5: Continued Office.

Every officer who is elected or appointed for a term ending in a definite time shall continue to serve until their successor qualifies and takes office, except in the case of death, resignation or termination by law or this Charter.

Section 16.6: Borough Proceedings.

The Assembly, by ordinance, shall establish procedures governing administrative proceedings in which the legal rights, duties, privileges or penalties of persons are to be determined or; ensure fair and equal treatment of all persons involved in such proceedings; and provide for the conduct of such proceedings in an orderly uniform fashion.

Section 16.7: Records to be Published.

All records of the Borough shall be public except as otherwise provided by law. Records shall be available at the Borough offices for Borough inspection and for distribution at such price as the Assembly may direct. Copies certified by the clerk shall be prima facie evidence of their contents.

Section 16.8: Adverse Possession.

The Borough may not be divested of title to real property by adverse possession.

Section 16.9: Dedication of Borough Property.

Dedication of streets, rights-of-ways, easements, or other areas for public use by the Assembly may not be construed to require the Borough to maintain, improve, or provide for Borough services in the area dedicated and the dedication does not impose any liability on the Borough for the condition of the area dedicated.

Section 16.10: Actionable Claims.

Except as provided in Sections 16.11 of this Charter, provisions of law governing claims against Borough corporations apply to claims actionable against the Borough.

Section 16.11: Claims for Injuries.

(a) The Borough shall not be liable for damages for injury to person or property by reason of negligence or gross negligence unless, within four months after the injury occurs, the person damaged or his or her representative serves written notice to an officer upon whom process may be served. The notice shall state that the person intends to hold the Borough liable for damages and shall set forth with clarity the time and place of the injury, the manner in which it occurred, the nature of the act, or defect complained of, the extent of the injury so far as known, and the names and addresses of witnesses known to the claimant.

(b) No person may bring an action against the Borough for damages to person or property by reason of negligence or gross negligence unless the action is brought within the period prescribed by law, and the Borough is presented the notice of injury referenced in paragraph (a) above, and has first presented to the Manager a claim in writing under oath setting forth specifically the nature and extent of the injury and the amount of damages claimed.

(c) Failure to give notice of injury or to present a claim within the time and in the manner provided shall bar an action upon the claim.

(d) This section does not waive any defense of immunity which the Borough may have from claims for damages to persons or property.

Section 16.12: Separability.

If any provision of this Charter is held invalid, other provisions shall not be affected. If the application of this or any of its provisions to a person or circumstance is held invalid, the application of this Charter or any of its provisions to other persons or circumstances shall not be affected.

Section 16.13: Community Participation.

The Assembly may make provision for non-voting representatives from committee not represented by an elected person on the Assembly to attend regular meetings of the Assembly.

Section 16.14: Definitions.

Words used in this Charter shall have their ordinary dictionary meanings, except where defined otherwise in this Charter or in Title 29 of the Alaska Statutes.

ARTICLE XVII

TRANSITIONAL PROVISIONS

Section 17.1: Effective Date.

This Charter shall be made effective immediately upon ratification.

Section 17.2: Composition of Assembly Upon Adoption of this Charter.

The initial Borough Assembly shall be elected as set forth in A.S. 29.05.110 and .120, and Section 3.4 of this Charter.

Section 17.3: Organization of Assembly.

The Assembly shall meet as provided in Section 3.6 of this Charter and organize and carry out duties as provided in that Section.

Section 17.4: Transitional Provisions for Borough Manager.

The initially elected Assembly may appoint an Interim Manager until such time that a Manager is appointed. No person may serve as Interim Manager for more than one year.

Section 17.5: Composition of School Board Upon Adoption of this Charter.

The initial Borough School Board shall be elected as set forth in A.S. 29.05.110 and .120. Those elected at that election shall draw lots as follows: two one-year terms, two two-year terms and one three-year term.

Section 17.6: Continuation of Employment.

All employees of the REAA shall continue in employment until the Assembly, as the case may be, provides otherwise. Salaries and benefits enjoyed by current REAA employees shall continue unless provisions are made to the contrary.

Section 17.7: Board's Committees and Commissions.

Except for those provided for by this Charter, all appointed committees, commissions and boards in effect at the time of this Charter and providing service to the region shall be dissolved one year after the effective date of this Charter unless sooner abolished or specifically continued by ordinance.

Section 17.8: Budget.

Following adoption of this Charter, the Borough shall operate under the budget of the Borough proposed in the incorporating petition and under the Budget for the following fiscal year, if one has been proposed in the incorporating petition.

Section 17.9: City of Yakutat

The Borough shall assume and succeed to all of the rights, powers, duties, assets, and liabilities of the City. All rights and obligations of the City relating to Yakutat Power, Inc. shall become the rights and obligations of the Borough. The Borough shall be bound, by virtue of this charter, to the same extent as the City was bound prior to dissolution of the City, by the terms of all contracts, agreements, covenants, or other undertakings relating to Yakutat Power, Inc., including but not limited to the lease dated September 27, 1990 between Yakutat Power, Inc. and the City of Yakutat, and an agreement respecting revenues dated September 27, 1990 between the City of Yakutat and Yakutat Power, Inc. The provisions of Yakutat Ordinance 90-276 and 90-279, relating to the issuance of bonds and payment of certain funds in connection with the acquisition of the stock of Yakutat Power, Inc. shall, by virtue of this Charter, constitute part of the organic law of the Borough, subject to repeal or amendment by Borough ordinance to, but only to, the extent that said ordinances could have been repealed or amended by City ordinances. The provisions of Ordinance 90-275 of the City of

Yakutat, relating to the Yakutat Utility Board, shall, by virtue of this Charter, be part of the organic law of the Borough, subject to amendment or repeal by Borough ordinance. The membership and composition of the Yakutat Utility Board shall be unaffected by Borough incorporation. The above described ordinances shall be read as if references to the City of Yakutat, the area encompassed by it, and officials or bodies of the City of Yakutat were references to the Borough, the area encompassed by the Borough, and officials or bodies of the Borough.