

Mayor
John K. Handeland

Manager
Glenn Steckman

Deputy Clerk
Jeremy Jacobson



Nome Common Council
Scot Henderson
Doug Johnson
Mark Johnson
Adam Martinson
Cameron Piscoya
M. Sigvanna Tapqaq

NOME COMMON COUNCIL
WORK SESSION & REGULAR MEETING AGENDA
MONDAY, SEPTEMBER 11, 2023 at 6:30 / 7:00 PM
COUNCIL CHAMBERS IN CITY HALL

102 Division St. ▪ P.O. Box 281 ▪ Nome, Alaska 99762 ▪ Phone (907) 443-6663 ▪ Fax (907) 443-5345

WORK SESSION - 6:30 PM

- [A.](#) Discussion of Man Camp for Port Construction,

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ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

COMMUNICATIONS

- [A.](#) September 7, 2023 Kegoayah Kozga Public Library PSA: Caldecott Winning Illustrator & Author Michaela Goade Meet & Greet, Workshop,

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- [B.](#) Letter of August 15, 2023 from Greg Smith/Nome Grown LLC to Nome Common Council re: Code Amendment,

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CITIZEN'S COMMENTS

UNFINISHED BUSINESS

NEW BUSINESS

- [A.](#) R-23-09-01 A Resolution Authorizing The City Manager To Execute MOD #002 Of Bristol Engineers' Task Order 54 To Engage Subcontractor Services To Design Repairs To The Cape Nome Jetty Damaged By Typhoon Merbok - Disaster DR4672AK,

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- [B.](#) R-23-09-02 A Resolution Authorizing The City Manager To Execute A Project Partnership Agreement (PPA) With The U.S. Army Corps Of Engineers (USACE) For Construction Of The Port Of Nome Modification Project (PONM) (aka; Arctic Deep Draft Port At Nome)

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- [C.](#) R-23-09-03 A Resolution Authorizing The City Manager To Award An Option To Lease Land For A Man Camp Facility To Bering Strait Native Corporation (BSNC) For Contractor Use During Construction Of The Port Of Nome Modification Construction (PONM) Project,

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UTILITY MANAGER'S REPORT

- A. Activity Report: August 25 - September 8, 2023,

VERBAL

CITY MANAGER'S REPORT

- [A.](#) Activity Report: August 25 - September 8, 2023,

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- [B.](#) September 2023 Port Director Report / Capital Projects Update,

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CITIZEN'S COMMENTS

COUNCIL MEMBER'S COMMENTS

MAYOR'S COMMENTS AND REPORT

- A. Activity Report: August 25 - September 8, 2023,

VERBAL

EXECUTIVE SESSION

- A. Discussion of Contractual Matters the Immediate Knowledge of Which May Have Adverse Impacts on City Finances,

VERBAL

ADJOURNMENT



NOTICE OF INTENT TO AWARD

TO: Proposers of Record

PROJECT DESCRIPTION: OPTION TO LEASE CAMP LAND

The City of Nome (City) received and opened proposals on August 24, 2023 for the subject project. Based on the scoring tabulation (attached) the City intends to execute an Option to Lease with Bering Strait Native Corporation (BSNC).

Any proposer who believes the award has been made improperly may file a protest no later than five (5) days from the date of this Notice of Intent.

Dated this 8th day of September 2023.

City of Nome
OWNER

By _____
Glenn Steckman – City Manager

Proposers of Record:

<u>Company</u>	<u>Representative</u>	<u>Contact Email</u>
Arctic Gold Mining, LLC	Cecil Connor	c.connor@arcticgoldmining.com
BSNC	Frank Johnson	frank.johnson@beringstraits.com
Alaska Gold Company	Frank Johnson	frank.johnson@beringstraits.com

Cc: Brooks Chandler, City Attorney

**PORT OF NOME (ADDP) MODIFICATION PROJECT
CAMP LAND LEASE**

Item A.

Proposers		Proposal			PROPERTY		CRITERIA SCORING						TOTAL SCORES
No.	Name	Acreage	Filled	Responsive?	Legal Description	Physical Address	Option Price (Lump Sum)	Score (up to 25)	Annual Rent (Lump Sum)	Score (up to 50)	Annual Rent (\$/SF)	Suitability (up to 15)	
1	Bill Potter	0.54	N/A	No									
2	Banner Romenesko	0.20	N/A	No									
3	Arctic Gold Mining	4.00	Not Entirely	Yes	See proposal (near old Camp 5)	2871 Nome Teller Highway	\$ 25,000.00	5	\$ 75,000.00	5	0.5739	14.375	24.375
4	BSNC	4.32	Not Entirely	Yes	See proposal (Spokane/7th-Steadman/W. Nugget)	6th Ave & Steadman Area	\$ 2,500.00	25	\$ 41,817.60	50	0.02	23.125	98.125
5a	Alaska Gold Co #1	4.30	Graveled and graded	Yes	See proposal East of Graphite One	Lot 3, Satellite field #2016-	\$ 2,500.00	25	\$ 41,817.60	50	0.02	14.375	89.375
5b	Alaska Gold Co #2	4.50	Graveled Needs grading	Yes	See proposal (Tumet Pit/south of AMCC)	Tract A2 Center Creek Subd	\$ 2,500.00	25	\$ 41,817.60	50	0.02	11	86
5c	Alaska Gold Co #3	4.45	Graveled Needs grading	Yes	See proposal (south of Perkinsville)	Tract C Center Creek Subd	\$ 2,500.00	25	\$ 41,817.60	50	0.02	11	86
5d	Alaska Gold Co #4	4.32	Graveled Needs grading	Yes	See proposal north of Nome Beltz	Windfall Area	\$ 2,500.00	25	\$ 41,817.60	50	0.02	4	79

Recommended Camp Site

Land Lease Option and Lease Agreement (Worker Housing)

BETWEEN:

_____, **LANDLORD**

AND the City of Nome (or Assigns), **TENANT**

**LAND LEASE OPTION AND LEASE AGREEMENT
(WORKER HOUSING)**

This Land Lease Option and Lease Agreement (the “Agreement”) is made this ____ day of _____, 2023, by and between City of Nome PO Box 281 Nome, Alaska 99762 (or assigns), (“Tenant”), and _____ PO Box _____ Nome, Alaska 99762 (“Landlord”).

1. The Option.

- a. For the sum of _____ Dollars (\$_____.00) (the “Option Fee”) to be paid to Landlord by Tenant upon execution of this Agreement and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants to Tenant the exclusive and irrevocable right and option to lease the Leased Premises (as defined below) on the terms and conditions set forth below (the “Option”).
- b. The term of the Option shall commence on the date hereof and shall continue in full force and effect for eighteen (18) months from the date of this agreement (the “Initial Option Period”). If Tenant desires to exercise the Option, it shall do so by written notice thereof to Landlord within the Option Period (the “Option Notice”), time being of the essence with respect to the giving of the Option Notice. If Tenant fails to deliver the Option Notice to Landlord during the Option Period in accordance with the terms hereof, the Option set forth herein shall terminate and be of no further force or effect and Tenant shall have no further right to lease the Leased Premises.
- c. Extension Option Periods. The option period may be extended by Tenant for two (2) six (6) month periods (the “Extension Option Period(s)”) upon Tenant’s written notice to Landlord before the end of the Initial Option Period or prior Extension Option Period, as applicable, together with payment of One Thousand Dollar (\$1000.00) (the Initial Option Period and

Extension Option Periods are hereinafter collectively referred to as the “Option Period”).

- d. Exercise of the Option. No later than 5:00 p.m. on the last day of the Option Period, Tenant shall have the right, in its sole and absolute discretion, to exercise the Option by giving Landlord written notice of such exercise in accordance with the Notice provision set forth in Section 15.
- e. During the Option Period, Landlord shall permit Tenant and its authorized agents and representatives to enter upon the Landlord Property (as defined below) at reasonable times during normal business hours to inspect the Landlord Property and perform surveys. Tenant shall notify Landlord of its intention, or the intention of its agents or representatives, to enter the Landlord Property at least twenty-four (24) hours prior to such intended entry. Tenant shall bear the cost of all inspections.
- f. Upon Tenant’s exercise of the Option, the terms of this Agreement relating to the lease of the Leased Premises (the “Lease”) that follows shall take effect. The date that the Option Notice is delivered shall be considered the “Lease Commencement Date”.
- g. In the event Landlord fails to perform its obligations under this Agreement for any reason other than Tenant’s breach, Tenant may pursue all remedies available at law and in equity. Landlord hereby acknowledges that Tenant will incur significant expenses in reliance on this Agreement.

2. Leased Premises. Upon Tenant’s exercise of the Option, Landlord shall lease to Tenant and Tenant shall lease from Landlord, pursuant to the terms of this Agreement, an approximately _____ acre parcel of real property, which property is more particularly described in Exhibit A-1 attached hereto (“Landlord Property”), together with ingress, egress, and utility easements providing access to and from a public road and the point of utility interconnection, as described in Sections 5 and 6 below (that portion of the Landlord Property being referred to herein as the “Leased Premises”). A legal description of the Leased Premises is attached hereto and incorporated herein as Exhibit A-2. Landlord grants to Tenant the right to survey the Leased Premises at Tenant’s cost, and the legal description of the Leased Premises, including any access or utility easements, provided in the survey shall then become Exhibit B, which shall be attached hereto and made a part hereof. In the event of any discrepancy between the description of the property contained herein and the survey, the survey shall control.

3. Term. The lease term (collectively, the “Term”) shall be as follows:

- a. The Primary Term shall be for two (2) years commencing on the Lease Commencement Date.
- b. Tenant shall have the option and right to elect to extend this lease for up to one (1) two (2) year extension (“Renewal Term”). Tenant shall give Landlord written notice of its election to extend the Lease no later than 60 days prior to the end of the Primary Term.

4. **Rent.** In consideration for Landlord leasing the Leased Premises to Tenant, Tenant agrees to pay during the Term to Landlord in lawful money of the United States of America, basic rent as follows (collectively, the “Basic Rent”):

- a. **Primary Term Rent.** Commencing on the Lease Commencement Date and continuing on each anniversary thereafter, with the last payment prorated based upon the number of days remaining in the Primary Term, annual rent of _____ dollars (\$_____). Annual rent is payable either in advance or in equal monthly installments at Tenant’s sole option with each such monthly payment being due on or before the 15th day of the month.
- b. **Renewal Term Rent.**
 - (i) Beginning on the first (1st) day of the Renewal Term the annual Rent for such renewal term shall be equal to 105% of the annual rent amount of the prior lease year. All such rent during Renewal Term(s), if applicable, shall be paid in equal monthly installments, in advance on or before the 15th day of each month.
- c. Any payment due under this Lease shall be timely if it is made on the due date or within thirty (30) calendar days thereof.

5. **Improvements of Leased Premises.**

- a. **Components.** Tenant shall have the right to bring onto the Leased Premises housing units of a style commonly used in remote areas of Alaska for worker housing with a capacity of up to 100 persons (“Worker Housing”) and to connect the same to utilities. (collectively the “Site Improvements and Infrastructure”). Landlord has no obligation to make improvements on the Leased Premises or Landlord Property to accommodate the worker housing.
- b. **Utility Easement.** Landlord agrees to execute any easement agreement required by a utility for interconnection in the form required by the utility.

6. **Ingress, Egress, Utility Easement.** The rights granted to Tenant in this Lease include, without limitation an access easement over and across the Landlord Property for ingress and egress to the Leased Premises, to and from a public road, and a construction and utility easement over Landlord Property adjacent to the Leased Premises for construction and maintenance of the Worker Housing.

7. **Maintenance and Security.**

- a. **Maintenance.** The Worker Housing shall be maintained by Tenant at its own expense. Tenant shall maintain, protect and preserve the Worker Housing in a safe, neat and attractive condition and in good and serviceable repair.
- b. **Snow Removal.** Snow removal on the Leased Premises, if needed, shall be the responsibility of Tenant as necessitated by Tenant’s operation of the Worker Housing. Any snow removal activities will minimize any damage to the existing ground surface of the site. Tenant will promptly repair any

damage caused by its snow removal activities. Tenant will only use the existing or new access roads via the access easement for vehicle access to the site.

- c. Security. Security for the Worker Housing shall be the responsibility of Tenant. Nothing in this Agreement shall be construed to impose security obligations upon Landlord, Landlord shall not be liable for any loss or damages suffered by Tenant or third parties residing in the Worker Housing due to Tenant’s and such third parties use and occupancy of and activities on the Leased Premises.

8. Title and Quiet Possession. Landlord represents and covenants that Landlord owns the Leased Premises and the Landlord Property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain. Tenant shall have the quiet use and enjoyment of the Leased Premises and the easements described herein in accordance with and subject to the terms of this Agreement, without any manner of hindrance, interference, or molestation of any kind by Landlord or any person claiming through Landlord.

9. Title to Site Improvements and Infrastructure.

- a. Site Improvements and Infrastructure. Title to the Site Improvements and Infrastructure remains with Tenant at all times during the Term. Upon expiration of this Agreement, title to the Site Improvements and Infrastructure shall be designated in accordance with Section 21 below.
- b. Repair of Landlord Property. In the event that Tenant causes any damage to the Landlord Property, including without limitation any above-ground or underground utilities, in the course of any activity undertaken by Tenant under this Agreement, Tenant shall facilitate the repair of such damage to return such property of Landlord to substantially the same condition as it existed prior to such damage, at Tenant’s sole expense.

10. Uses and Operations. Tenant shall construct, operate and maintain the Worker Housing to facilitate construction of the Deep Draft Arctic Port; (aka: Port of Nome Modifications Project), known as the “Project”. The Tenant’s uses under this Lease include the construction, maintenance, operation, use, repair, replacement and removal of the Worker Housing, and activities related thereto.

11. Governmental Approvals and Compliance. Tenant shall obtain any necessary governmental licenses or authorizations required for the construction and use of the Site Improvements and Infrastructure on the Leased Premises and shall comply with government laws and regulations applicable thereto including but not limited to site plan review by the City of Nome. Notwithstanding the foregoing, Tenant shall not be responsible for any matters arising in connection to Environmental Laws relating to the Leased Premises, except to the extent the need for compliance therefor arises directly out of the release by Tenant of any Hazardous Substances (as defined herein) on or about the Leased Premises.

12. Assignment. Assignment of this Agreement by Tenant requires the prior written consent of Landlord which shall not be unreasonably withheld, delayed or conditioned, and consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Notwithstanding the foregoing, Tenant is expressly permitted to assign its rights and responsibilities under this Agreement, without obtaining Landlord’s consent and in its sole discretion, to any entity (a) that has contracted to construct any portion of the “Project” in which case the Assignee shall be solely responsible for the obligations hereunder other than payment of rent which shall continue to be the obligation of Tenant, or (b) to any person or entity, provided that Tenant remains responsible for the obligations hereunder.

13. Notices. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord:

To Tenant; City of Nome
 PO Box 281
 Nome, AK 99762

The address to which any notice, demand, or other writing may be delivered to any party may be changed by written notice given by such party as provided above.

14. Insurance. At all times during the Term of this Lease, Tenant shall maintain in full force a liability insurance policy covering Tenant’s operations, activities, and liabilities on the Leased Premises, having singly or in combination limits not less than One Million Dollars (\$1,000,000) in the aggregate. Such policy shall name Landlord as an additional insured under such policy as the Landlord’s interests may appear. Upon Landlord’s request, Tenant shall give Landlord a certificate of insurance evidencing that the insurance required under the Agreement is in force.

15. Operating Expenses. Tenant shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Premises and used by Tenant throughout the Term hereof, and for all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Premises and all activities conducted thereon.

16. Taxes. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Leased Premises. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Leased Premises that is directly attributable to Tenant’s improvements to the Leased Premises. Landlord agrees to furnish proof of such increase to Tenant.

17. Liabilities to Third Parties: Risk of Loss. Tenant shall hold Landlord harmless from any liability (including reimbursement of Landlord’s reasonable legal fees and all costs) for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Tenant or any of Tenant’s agents, servants, employees, or licensees, and Landlord shall hold Tenant harmless from any liability (including reimbursement of Tenant’s reasonable legal fees and all costs) for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Landlord or any of Landlord’s agents, servants, employees, or licensees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored, or maintained in or upon the Leased Premises by Tenant shall be so installed, kept, stored, or maintained at the risk of Tenant, Landlord shall not be responsible for any loss or damage to equipment owned by Tenant that might result from tornadoes, lightning, windstorms, or other Acts of God. The covenants of this paragraph shall survive and be enforceable and shall continue in full force and effect for the benefit of the Parties and their respective subsequent transferees, successors, and assigns, and shall survive the termination of this Lease, whether by expiration or otherwise.

18. Tenant’s Performance and Surrender. Tenant shall pay the rent and all other sums required to be paid by Tenant hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all terms and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Lease, surrender to Landlord the Leased Premises subject to the other provisions of this Lease.

19. Default and Termination for Default. Landlord or Tenant shall be in default of this Lease if either party breaches any material provision hereof and said breach is not cured by the breaching party within sixty (60) days of receipt of notice of said breach from the nonbreaching party, or if such cure cannot reasonably be had within said sixty (60) day period, then if cure of such breach is not commenced within thirty (30) days of receipt of such notice and not thereafter completed using diligent efforts. Upon the breaching party’s failure to cure its breach within such time, as applicable, the non-breaching party shall have the right to terminate this Lease for default, and to pursue such remedies as may be available in law or equity.

20. Right to Terminate. Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days’ notice to Landlord, if:

- a. Any governmental agency denies a request by Tenant for or revokes a permit, license, or approval that is required for Tenant to construct or operate the Site Improvements and Infrastructure on the Leased Premises;
- b. Tenant determines that technical problems, which problems cannot reasonably be corrected, preclude Tenant from using the Leased Premises for its intended purpose;
- c. Tenant determines that Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Premises;
- d. Utilities necessary for Tenant’s use of the Leased Premises are not available to the Leased Premises; or

- e. The Leased Premises are damaged or destroyed to an extent that prohibits or materially interferes with Tenant’s use of the Leased Premises.

In the event of termination by Tenant pursuant to this provision, Tenant shall be relieved of all further liability hereunder except its obligation to remove its improvements as provided herein. Any rental fees paid prior to said termination date shall be retained by Landlord.

21. Rights to Site Improvements and Infrastructure Upon Termination.

- a. Removal. Upon expiration of the Term or any Renewal Term, Tenant shall remove the Worker Housing, including the Site Improvements and Infrastructure owned by Tenant. Such removal shall be completed within six (6) months following the expiration of the full term of this Agreement, during which time Tenant shall be subject to all terms and conditions in this Lease with respect to access and said removal as if still a tenant.
- b. Abandonment/Noncompliance with Section 21(a). If Tenant fails to remove the Worker Housing within the time set forth in Section 21(a), then Tenant shall be in default, and Landlord, after notice of default and expiration of the applicable cure periods set forth in Section 20 hereof, may remove the Worker Housing at Tenant’s cost.

22. Binding on Successors. The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

23. Governing Law. The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Alaska.

24. Entire Agreement. All of the representations and obligations of the parties are contained herein, and no modification, waiver, or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement.

25. Survey and Testing. Tenant shall have the right during the Option Period and any extension to survey, soil test, and make any other investigations necessary to determine if the surface of the Leased Premises is suitable for construction of the Worker Housing. If Tenant, within the above-stated time, determines that for any reason the Leased Premises is not suitable, this Agreement, upon written notice given by Tenant to Landlord, shall become null and void; provided that at Tenant’s sole expense any damage to the Leased Premises caused by such testing and investigations of Tenant shall be promptly repaired.

26. Hazardous Waste.

- a. The term Hazardous Materials shall mean any substance, material, waste, gas, or particulate matter that is regulated by any local governmental authority, the State of Alaska, or the United States Government, including,

but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of state or local law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. Section 1317), (vii) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq. (42 U.S.C. Section 6903), or (viii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq. (42 U.S.C. Section 9601). The term Environmental Laws shall mean all statutes specifically described in the foregoing sentence and all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials.

- b. Landlord represents and warrants that, to the best of Landlord’s knowledge, (i) the Leased Premises have not been used for the use, manufacturing, storage, discharge, release, or disposal of Hazardous Materials, (ii) neither the Leased Premises nor any part thereof is in breach of any Environmental Laws, (iii) there are no underground storage tanks located on or under the Leased Premises, and (iv) the Leased Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the term of this Agreement (collectively, a “Breach”), and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Landlord shall promptly take any and all remedial and removal action as required by law to clean up the Leased Premises and mitigate exposure to liability arising from, and keep the Leased Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.
- c. The following indemnities are provided hereunder by Landlord and Tenant:
 - i. Tenant agrees to indemnify, defend, and hold harmless Landlord, its officers, partners, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys’ fees and expenses, consultants’ fees and expenses, court costs, and all other out-of-pocket expenses, to the extent any such items arise out of the release of any Hazardous

Substances on or about the Leased Premises by Tenant or Tenant's employees, contractors, agents, successors, or assigns.

Item A.

- ii. Landlord agrees to indemnify, defend, and hold harmless Tenant, its officers, partners, agents, lenders, contractors, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out of pocket expenses, to the extent any such items (a) arise out of the release of any Hazardous Substances on or about the Leased Premises except by Tenant or Tenant's employees, contractors, agents, successors, or assigns, or (b) arise out of any Breach by Landlord, or (c) arose prior to or during the Term of this Lease and that failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.
- iii. Landlord agrees to indemnify, defend, and hold harmless Tenant, its officers, partners, agents, lenders, contractors, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out of pocket expenses, suffered or incurred by Tenant and its affiliates, successor or assigns as a result of (a) any Breach by Landlord, or (b) any matter or condition of the Leased Premises involving Environmental Laws or Hazardous Materials that was not caused by Tenant or its officers, partners, successors, or assigns and that existed on or arose prior to or during the Term of this Lease and that failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.
- d. Landlord represents and warrants to Tenant that Landlord has received no notice that the Leased Premises or any part thereof is, and, to the best of its knowledge and belief, no part of, the Leased Premises is located within, an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers, or any other governmental body as being subject to special hazards, including floodplains.
- e. The covenants of this Section shall survive and be enforceable and shall continue in full force and effect for the benefit of Tenant and its subsequent transferees, successors, and assigns and shall survive the Term of this Lease and any renewal periods thereof.

27. **Mechanic's Liens.** Tenant will not cause any mechanic's or materialman's lien to be placed on the Leased Premises, and Tenant agrees to indemnify, defend, and hold harmless Landlord from any such lien from a party claiming by, through, or under Tenant; provided that Tenant shall be permitted to remove any such lien by bond or other suitable instrument.

28. **Headings.** The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

29. **Time of Essence.** Time is of the essence for Landlord's and Tenant's obligations under this Agreement.

30. **Severability.** If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Agreement, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

31. **Real Estate Broker.** Landlord represents and warrants that Landlord has not signed a listing agreement, dealt with, or otherwise agreed to pay a broker's commission, finder's fee, or other like compensation to anyone in connection with the lease of the Leased Premises or the transaction contemplated by this Agreement.

32. **Further Assurances.** Each of the parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Agreement or any other agreement contained herein in the manner contemplated hereby.

33. **Dispute Resolution.** Any dispute between Landlord and Tenant arising under this Agreement shall in the first instance be addressed by taking the following steps; 1) by informal negotiations between Landlord and Tenant following an exchange of written notice of and response to said dispute and for a period of time not to exceed 45 days unless extended by mutual agreement; and if not resolved by negotiations, then 2) by any other such remedy at law that may be available.

34. **Attorneys' Fees.** The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

35. **Interpretation.** Each party to this Agreement have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

36. **Date of Agreement.** The parties acknowledge that certain obligations of Landlord and Tenant are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Agreement. The parties therefore agree that wherever the

term “date of execution of this Agreement,” or words of similar import are used herein, they shall mean the date upon which this Agreement has been duly executed by Landlord or Tenant, whichever is the later to so execute this Agreement. The parties further agree to specify the date on which they execute this Agreement beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact the date on which each duly executed this Agreement.

Item A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as a sealed instrument, as of the day and year first above written.

Item A.

LANDLORD:

TENANT:

City of Nome (or Assigns)

By:

By: _____

Title:

Title: _____

Date:

Date: _____

STATE OF ALASKA

) ss

SECOND JUDICIAL DISTRICT

On this ____ day of _____, 20__, before me, the undersigned notary public in and for the State of Alaska, personally appeared _____ proved to me on the basis of satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily for its stated purpose (as Landlord).

WITNESS my hand and official seal.

Notary Public

STATE OF ALASKA

) ss

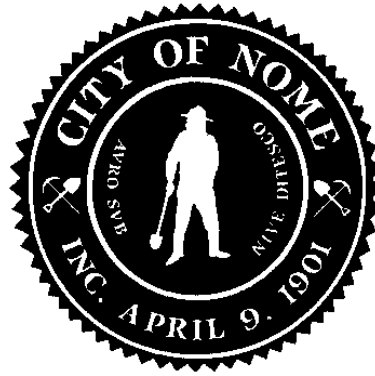
SECOND JUDICIAL DISTRICT

On this ____ day of _____, 20__, before me, the undersigned notary public in and for the State of Alaska, personally appeared _____ proved to me on the basis of satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily on behalf of the City of Nome for its stated purpose (as Tenant).

WITNESS my hand and official seal.

Notary Public

EXHIBIT A-2 LEGAL DESCRIPTION OF THE LEASED PREMISES



CITY OF NOME
Port of Nome
PO Box 281
102 Division Street
NOME, AK 99762

Request for Proposals

Date of Issue: August 3, 2023

Option to Lease Camp Land

The City of Nome will receive sealed proposals from qualified proposers for a contract giving the City an OPTION to lease vacant real property for up to four (4) years to use for temporary worker housing during construction of the Deep Draft Arctic Port, (aka: Port of Nome Modifications Project). The United States Army Corps of Engineers has required the City secure an option to lease property for this purpose prior to the project going out to bid.

Interested persons may receive a proposal package by registering with the City Clerk by email jjacobson@nomealaska.org, phone at 907-443-6663, or by fax at 907-443-5345. RFP Documents will be available on August 8, 2023

The deadline for submission of sealed proposals is Thursday, August 24, 2023 at 3:00 p.m. AKT local time and shortly thereafter the proposals will be opened publicly. Proposals must be submitted to the City Clerk at City Hall and arrive before the time specified. Proposals must be submitted in a sealed envelope and marked clearly on the envelope as:

“City of Nome Option to Lease Camp Land Proposal”

The name and address of the proposer shall also be clearly marked on the envelope. Fax and email submissions are not allowed.

The City intends to award a contract based on the proposal that represents the best value to the City, determined by the City. The City of Nome reserves the right to reject any and all proposals, to waive informalities, and to reject non-conforming, non-responsive, and proposals from unqualified proposers.

INSTRUCTIONS

TO PROPOSERS

1.00 Section One – Introduction and Instructions

1.01 Mailing Address, Contact Person, Contact Phone and Proposal Deadline

Offerors must submit three copies of their technical proposal in writing to the City Clerk in a sealed package. The cost proposal can be included with the package but must be sealed separately and must be clearly identified. The sealed proposal package should be addressed as follows:

City Clerk
City of Nome
City of Nome Option to Lease Camp Land Proposal

Mailing Address:
P.O. Box 281
NOME, AK 99762

Physical Address:
102 Division St., City Clerk’s Office
NOME, AK 99762

Proposals must be received no later than 3:00 p.m. (Alaska Time) on August 24 2023. Proposals may NOT be faxed or e-mailed. Failure to submit the proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

All questions regarding this RFP must be directed in writing to the Port Director:
Joy Baker
E-mail: jbaker@nomealaska.org

1.02 Purpose of the RFP

The City of Nome (City) is requesting proposals from property owners willing to lease property to the City of Nome for use as worker housing during the upcoming Deep Draft Arctic Port project. The City will pay a lump sum to acquire an option to lease the proposer’s real property for this purpose for a two-year term with a right to renew for an additional two years for a total lease term of up to four (4) years. The City will assign the use of the property to the person awarded the contract to construct the project. The City is being required to secure the property by the Army Corps of Engineers in advance of the project going out to bid.

Our objective is to contract with a property owner able to provide a minimum of 4 acres of vacant land upon lease terms acceptable to the City. The land would be made available by the City to the contractor awarded the construction contract. The contractor would be responsible to bring in ATCO style housing units, connect the units to City utilities and remove the units and restore the property to its pre-lease condition at the conclusion of the lease. The City would be responsible to pay the rent.

1.03 Lease Term

The initial 2-year term would begin approximately May 1, 2024 with one two-year option to renew, exercised at the sole option of the City.

The approximate schedule is as follows:

- Issue RFP – August 3, 2023
- RFP available to proposers – August 8, 2023
- Deadline for receipt of proposals – 3:00 p.m. (Alaska time) on August 24, 2023
- Notice of Intent to Award August 29, 2023
- City Council approval of contract September 11, 2023
- Deadline for City Exercise of Option to Lease April 15, 2025
- Lease Term Begins (based on current plan for award of contract) May 1, 2024

1.04 Questions Received Prior to Opening Proposals

All questions must be in writing and sent to the Port Director via e-mail at jbaker@nomealaska.org. Two types of questions generally arise; one may be answered by directing the questioner to a specific section of the RFP. Other questions may be more complex and/or may necessitate a change to the RFP. All questions will be compiled into a Q&A document which will be distributed to all those who have requested a proposal packet from the City Clerk’s Office.

1.05 Amendments

If an amendment is issued, it will be provided to all who registered with the City Clerk.

1.06 Right of Rejection

Offerors must comply with all of the terms of the RFP, the City of Nome Code of Ordinances, and all applicable local, state, and federal laws, codes, and regulations. The City may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP. Offerors may not qualify the proposal nor restrict the rights of the City or the proposal may be considered non-responsive and rejected.

Minor irregularities may be waived by the City. The City reserves the right to reject any and all proposals if the City determines that to be in its best interest. A proposal from a debarred or suspended Offeror shall be rejected.

1.07 City Not Responsible for Preparation Costs

The City will not pay any cost associated with the preparation, submission, presentation or evaluation of any proposal.

1.08 Disclosure of Proposal Contents

All proposals and other materials submitted become the property of the City of Nome and may be returned only at the City’s option. All proposal information including detailed price and cost information will be held in confidence during the evaluation process and prior to the time the Notice of Intent to Award is issued. Thereafter, proposals will become public information.

2.00 Section Two – Standard Proposal Information

2.01 Authorized Signature

All proposals must be signed by an individual authorized to bind the Offeror to the provisions of the RFP. Proposals must remain open and valid for at least 90 days from the opening date.

2.02 Amendments to Proposals

Amendments to or withdrawals of proposals will only be allowed if received prior to the deadline set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the City’s request.

2.03 Clarification of Offers

To determine if a proposal is responsive and responsible, the Port Director is permitted to communicate with the Offeror to clarify uncertainties or eliminate confusion concerning the contents of the proposal. Clarifications may not result in a material or substantive change to the proposal. The Port Director may adjust an evaluation as a result of a clarification under this section.

2.04 Evaluation of Proposals

The Port Director and a Proposal Evaluation Committee (PEC) will evaluate proposals. The evaluation will be based solely on the evaluation factors set out in this RFP. After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

2.05 Notice of Intent to Award

Upon completing contract negotiations, the City Manager will issue a written Notice of Intent to Award which shall be contingent on the contract’s approval by the Nome City Council.

3.00 Section Three – Standard Contract Information

3.01 Fixed Price Contract

This contract is a Fixed-Price Fee which has 2 components: 1) A Lump Sum payment from the City to the Proposer for the Option to Lease; and 2) a fixed rental rate subject to adjustments based on this Agreement.

3.02 Standard Contract Provisions

The property owner selected by the City will be required to sign and submit the attached Option to Lease Agreement and must comply with the provisions in this Contract. No alteration of the Contract is permitted without prior written approval from the City Manager. Objections to any of the provisions must be set out in the Offeror’s proposal.

3.03 Proposal as Part of the Contract

This RFP and the successful proposal may be incorporated into the Contract.

3.04 Additional Terms and Conditions

The City reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

3.05 Contract Funding and Payment

Approval or continuation of a contract resulting from this RFP is contingent upon City Council appropriation. No payment will be made until the contract is signed by the City Manager. The City will not be liable for interest charges or the payment of local, state or federal taxes.

4.00 Section Four – Background Information

4.01 The Project

The United States Army Corps of Engineers (ACOE) and the City of Nome anticipate entering into a Project Partnering Agreement for construction of a significant extension to the existing causeway at the Port of Nome. When this project is completed the Port of Nome will be America’s first deep draft Arctic port. This is a large construction project which will require dozens of workers to live temporarily in Nome during construction. ACOE is requiring the City to have secured an option for the contractor to house workers in ATCO-type buildings in Nome. Nome will assign use of the property to the successful bidder on the project. It is possible the contractor will not use this option. The contractor will be responsible to extend utilities to the site as needed.

4.02 Minimum Property Size

Based on a need for housing 80-100 works, Respondents must offer at least one 4-acre parcel for lease. Proposals to lease more than 4 acres will be considered, however the final size of the leased parcel will be subject to negotiation. Proposals to lease less than 4 acres will be considered non-responsive.

4.03 Desired Property Characteristics

A site that is already level and filled is required. Proposals for property that require fill will be rejected as non-responsive. Sites closest to existing utilities will be preferred to those further from existing utilities.

5.00 Section Five – Proposal Format, Content & Evaluation Criteria

5.01 Proposal Format – To assure consistency, proposals must be submitted using the attached form. Proposers may include photographs of the property.

Section 5.01 – Cost

Cost will not be the sole factor in evaluating qualified proposals. There are two cost components:

Option Price
Annual Rent

Option Price- Stated as a lump sum payable upon Council approval of the Contract.

Annual Rent- Stated as both a lump sum and per square foot basis.

Section 5.02 – Location

Location will be a significant factor in evaluating qualified proposals. Provide both a legal description and physical address of the property being proposed for lease.

5.03 Evaluation, Scoring Criteria, and Methodology

All proposals will be reviewed to determine if they are responsive and responsible. They will then be evaluated using the criteria within this section.

Proposals will be scored according to four criteria, as follows:

Points	Percent	Evaluation Criteria
25	25%	Option Price
50	50%	Rent
15	15%	Overall suitability of property
10	10%	Estimated cost of extending utilities
100	100%	Total

Proposals will be rated comparatively against one another by evaluators, assigning scores of either 1, 5, or 10 (1 representing the lowest score, 5 an average score and 10 the highest), to each of the two Evaluation Criteria categories (excluding Option Price and Rent). Each evaluator’s score on estimated cost of extending utilities will then be multiplied by 1 in order to assign a score of either 1, 5 or 10 to the estimated cost of extending utilities criteria. Each evaluator’s score on overall suitability of the property will then be multiplied by 1.5 in order to assign a score of either 1.5 (1.5 x 1), 7.5 (1.5 x 5) or 15 (1.5 x 10) to the overall suitability criteria. Scores in each category will then be summed for all evaluators, and divided by the number of evaluators, to determine an overall score for each proposer. The Port Director or PEC will then add the score for the Option Price and Rent based on the formula in Section 5.04 Scoring of Cost Proposals. The total number of points used to score each proposal is 100.

5.04 Scoring of Cost Proposals: All proposals deemed responsive will be further rated on the cost proposal. Cost proposals will be evaluated as follows:

Lowest total cost of Option Price of all proposals submitted

Total cost of proposal evaluated X 25 = Option Cost Points

Lowest total cost of Rent of all proposals submitted

Total cost of proposal evaluated X 50 = Rent Cost Points

5.05 Deductions

Respondents are required to identify any changes to the Option to Lease Agreement being proposed at the time of submitting their proposal. Up to 20 points may be deducted at the option of the Port Director or PEC based on requested changes to the Option to Lease Agreement. The number of points deducted to be based on the magnitude of the proposed change to the agreement.



PROPOSAL FORM

Property Owner: _____
Address: _____

Phone: _____
Fax: _____
Email: _____

PROPERTY

1) Legal Description

2) Physical Address

PRICE PROPOSAL (required)

1) Option Price (Lump Sum) \$ _____

2) Annual Rent (Lump Sum per year) \$ _____

3) Annual Rent (Unit Price per sq. ft. per year) \$ _____

By signing below, you acknowledge that you have received and reviewed all RFP Documents and agree to enter the Option to Lease Agreement* on the basis of your proposal if selected by the City.

Date: _____

Name: _____

Title: _____

Signature: _____

**Identify any provisions in Option to Lease Agreement you want modified:*

Land Lease Option and Lease Agreement (Worker Housing)

BETWEEN:

_____, **LANDLORD**

AND the City of Nome (or Assigns), **TENANT**

**LAND LEASE OPTION AND LEASE AGREEMENT
(WORKER HOUSING)**

This Land Lease Option and Lease Agreement (the “Agreement”) is made this ____ day of _____, 2023, by and between City of Nome PO Box 281 Nome, Alaska 99762 (or assigns), (“Tenant”), and _____ PO Box _____ Nome, Alaska 99762 (“Landlord”).

1. The Option.

- a. For the sum of _____ Dollars (\$_____.00) (the “Option Fee”) to be paid to Landlord by Tenant upon execution of this Agreement and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants to Tenant the exclusive and irrevocable right and option to lease the Leased Premises (as defined below) on the terms and conditions set forth below (the “Option”).
- b. The term of the Option shall commence on the date hereof and shall continue in full force and effect for eighteen (18) months from the date of this agreement (the “Initial Option Period”). If Tenant desires to exercise the Option, it shall do so by written notice thereof to Landlord within the Option Period (the “Option Notice”), time being of the essence with respect to the giving of the Option Notice. If Tenant fails to deliver the Option Notice to Landlord during the Option Period in accordance with the terms hereof, the Option set forth herein shall terminate and be of no further force or effect and Tenant shall have no further right to lease the Leased Premises.
- c. Extension Option Periods. The option period may be extended by Tenant for two (2) six (6) month periods (the “Extension Option Period(s)”) upon Tenant’s written notice to Landlord before the end of the Initial Option Period or prior Extension Option Period, as applicable, together with payment of One Thousand Dollar (\$1000.00) (the Initial Option Period and

Extension Option Periods are hereinafter collectively referred to as the “Option Period”).

- d. Exercise of the Option. No later than 5:00 p.m. on the last day of the Option Period, Tenant shall have the right, in its sole and absolute discretion, to exercise the Option by giving Landlord written notice of such exercise in accordance with the Notice provision set forth in Section 15.
- e. During the Option Period, Landlord shall permit Tenant and its authorized agents and representatives to enter upon the Landlord Property (as defined below) at reasonable times during normal business hours to inspect the Landlord Property and perform surveys. Tenant shall notify Landlord of its intention, or the intention of its agents or representatives, to enter the Landlord Property at least twenty-four (24) hours prior to such intended entry. Tenant shall bear the cost of all inspections.
- f. Upon Tenant’s exercise of the Option, the terms of this Agreement relating to the lease of the Leased Premises (the “Lease”) that follows shall take effect. The date that the Option Notice is delivered shall be considered the “Lease Commencement Date”.
- g. In the event Landlord fails to perform its obligations under this Agreement for any reason other than Tenant’s breach, Tenant may pursue all remedies available at law and in equity. Landlord hereby acknowledges that Tenant will incur significant expenses in reliance on this Agreement.

2. Leased Premises. Upon Tenant’s exercise of the Option, Landlord shall lease to Tenant and Tenant shall lease from Landlord, pursuant to the terms of this Agreement, an approximately _____ acre parcel of real property, which property is more particularly described in Exhibit A-1 attached hereto (“Landlord Property”), together with ingress, egress, and utility easements providing access to and from a public road and the point of utility interconnection, as described in Sections 5 and 6 below (that portion of the Landlord Property being referred to herein as the “Leased Premises”). A legal description of the Leased Premises is attached hereto and incorporated herein as Exhibit A-2. Landlord grants to Tenant the right to survey the Leased Premises at Tenant’s cost, and the legal description of the Leased Premises, including any access or utility easements, provided in the survey shall then become Exhibit B, which shall be attached hereto and made a part hereof. In the event of any discrepancy between the description of the property contained herein and the survey, the survey shall control.

3. Term. The lease term (collectively, the “Term”) shall be as follows:

- a. The Primary Term shall be for two (2) years commencing on the Lease Commencement Date.
- b. Tenant shall have the option and right to elect to extend this lease for up to one (1) two (2) year extension (“Renewal Term”). Tenant shall give Landlord written notice of its election to extend the Lease no later than 60 days prior to the end of the Primary Term.

4. **Rent.** In consideration for Landlord leasing the Leased Premises to Tenant, Tenant agrees to pay during the Term to Landlord in lawful money of the United States of America, basic rent as follows (collectively, the “Basic Rent”):

- a. **Primary Term Rent.** Commencing on the Lease Commencement Date and continuing on each anniversary thereafter, with the last payment prorated based upon the number of days remaining in the Primary Term, annual rent of _____ dollars (\$_____). Annual rent is payable either in advance or in equal monthly installments at Tenant’s sole option with each such monthly payment being due on or before the 15th day of the month.
- b. **Renewal Term Rent.**
 - (i) Beginning on the first (1st) day of the Renewal Term the annual Rent for such renewal term shall be equal to 105% of the annual rent amount of the prior lease year. All such rent during Renewal Term(s), if applicable, shall be paid in equal monthly installments, in advance on or before the 15th day of each month.
- c. Any payment due under this Lease shall be timely if it is made on the due date or within thirty (30) calendar days thereof.

5. **Improvements of Leased Premises.**

- a. **Components.** Tenant shall have the right to bring onto the Leased Premises housing units of a style commonly used in remote areas of Alaska for worker housing with a capacity of up to 100 persons (“Worker Housing”) and to connect the same to utilities. (collectively the “Site Improvements and Infrastructure”). Landlord has no obligation to make improvements on the Leased Premises or Landlord Property to accommodate the worker housing.
- b. **Utility Easement.** Landlord agrees to execute any easement agreement required by a utility for interconnection in the form required by the utility.

6. **Ingress, Egress, Utility Easement.** The rights granted to Tenant in this Lease include, without limitation an access easement over and across the Landlord Property for ingress and egress to the Leased Premises, to and from a public road, and a construction and utility easement over Landlord Property adjacent to the Leased Premises for construction and maintenance of the Worker Housing.

7. **Maintenance and Security.**

- a. **Maintenance.** The Worker Housing shall be maintained by Tenant at its own expense. Tenant shall maintain, protect and preserve the Worker Housing in a safe, neat and attractive condition and in good and serviceable repair.
- b. **Snow Removal.** Snow removal on the Leased Premises, if needed, shall be the responsibility of Tenant as necessitated by Tenant’s operation of the Worker Housing. Any snow removal activities will minimize any damage to the existing ground surface of the site. Tenant will promptly repair any

damage caused by its snow removal activities. Tenant will only use the existing or new access roads via the access easement for vehicle access to the site.

- c. Security. Security for the Worker Housing shall be the responsibility of Tenant. Nothing in this Agreement shall be construed to impose security obligations upon Landlord, Landlord shall not be liable for any loss or damages suffered by Tenant or third parties residing in the Worker Housing due to Tenant’s and such third parties use and occupancy of and activities on the Leased Premises.

8. Title and Quiet Possession. Landlord represents and covenants that Landlord owns the Leased Premises and the Landlord Property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain. Tenant shall have the quiet use and enjoyment of the Leased Premises and the easements described herein in accordance with and subject to the terms of this Agreement, without any manner of hindrance, interference, or molestation of any kind by Landlord or any person claiming through Landlord.

9. Title to Site Improvements and Infrastructure.

- a. Site Improvements and Infrastructure. Title to the Site Improvements and Infrastructure remains with Tenant at all times during the Term. Upon expiration of this Agreement, title to the Site Improvements and Infrastructure shall be designated in accordance with Section 21 below.
- b. Repair of Landlord Property. In the event that Tenant causes any damage to the Landlord Property, including without limitation any above-ground or underground utilities, in the course of any activity undertaken by Tenant under this Agreement, Tenant shall facilitate the repair of such damage to return such property of Landlord to substantially the same condition as it existed prior to such damage, at Tenant’s sole expense.

10. Uses and Operations. Tenant shall construct, operate and maintain the Worker Housing to facilitate construction of the Deep Draft Arctic Port; (aka: Port of Nome Modifications Project), known as the “Project”. The Tenant’s uses under this Lease include the construction, maintenance, operation, use, repair, replacement and removal of the Worker Housing, and activities related thereto.

11. Governmental Approvals and Compliance. Tenant shall obtain any necessary governmental licenses or authorizations required for the construction and use of the Site Improvements and Infrastructure on the Leased Premises and shall comply with government laws and regulations applicable thereto including but not limited to site plan review by the City of Nome. Notwithstanding the foregoing, Tenant shall not be responsible for any matters arising in connection to Environmental Laws relating to the Leased Premises, except to the extent the need for compliance therefor arises directly out of the release by Tenant of any Hazardous Substances (as defined herein) on or about the Leased Premises.

12. Assignment. Assignment of this Agreement by Tenant requires the prior written consent of Landlord which shall not be unreasonably withheld, delayed or conditioned, and consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Notwithstanding the foregoing, Tenant is expressly permitted to assign its rights and responsibilities under this Agreement, without obtaining Landlord’s consent and in its sole discretion, to any entity (a) that has contracted to construct any portion of the “Project” in which case the Assignee shall be solely responsible for the obligations hereunder other than payment of rent which shall continue to be the obligation of Tenant, or (b) to any person or entity, provided that Tenant remains responsible for the obligations hereunder.

13. Notices. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord:

To Tenant; City of Nome
 PO Box 281
 Nome, AK 99762

The address to which any notice, demand, or other writing may be delivered to any party may be changed by written notice given by such party as provided above.

14. Insurance. At all times during the Term of this Lease, Tenant shall maintain in full force a liability insurance policy covering Tenant’s operations, activities, and liabilities on the Leased Premises, having singly or in combination limits not less than One Million Dollars (\$1,000,000) in the aggregate. Such policy shall name Landlord as an additional insured under such policy as the Landlord’s interests may appear. Upon Landlord’s request, Tenant shall give Landlord a certificate of insurance evidencing that the insurance required under the Agreement is in force.

15. Operating Expenses. Tenant shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Premises and used by Tenant throughout the Term hereof, and for all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Premises and all activities conducted thereon.

16. Taxes. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Leased Premises. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Leased Premises that is directly attributable to Tenant’s improvements to the Leased Premises. Landlord agrees to furnish proof of such increase to Tenant.

17. Liabilities to Third Parties: Risk of Loss. Tenant shall hold Landlord harmless from any liability (including reimbursement of Landlord’s reasonable legal fees and all costs) for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Tenant or any of Tenant’s agents, servants, employees, or licensees, and Landlord shall hold Tenant harmless from any liability (including reimbursement of Tenant’s reasonable legal fees and all costs) for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Landlord or any of Landlord’s agents, servants, employees, or licensees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored, or maintained in or upon the Leased Premises by Tenant shall be so installed, kept, stored, or maintained at the risk of Tenant, Landlord shall not be responsible for any loss or damage to equipment owned by Tenant that might result from tornadoes, lightning, windstorms, or other Acts of God. The covenants of this paragraph shall survive and be enforceable and shall continue in full force and effect for the benefit of the Parties and their respective subsequent transferees, successors, and assigns, and shall survive the termination of this Lease, whether by expiration or otherwise.

18. Tenant’s Performance and Surrender. Tenant shall pay the rent and all other sums required to be paid by Tenant hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all terms and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Lease, surrender to Landlord the Leased Premises subject to the other provisions of this Lease.

19. Default and Termination for Default. Landlord or Tenant shall be in default of this Lease if either party breaches any material provision hereof and said breach is not cured by the breaching party within sixty (60) days of receipt of notice of said breach from the nonbreaching party, or if such cure cannot reasonably be had within said sixty (60) day period, then if cure of such breach is not commenced within thirty (30) days of receipt of such notice and not thereafter completed using diligent efforts. Upon the breaching party’s failure to cure its breach within such time, as applicable, the non-breaching party shall have the right to terminate this Lease for default, and to pursue such remedies as may be available in law or equity.

20. Right to Terminate. Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days’ notice to Landlord, if:

- a. Any governmental agency denies a request by Tenant for or revokes a permit, license, or approval that is required for Tenant to construct or operate the Site Improvements and Infrastructure on the Leased Premises;
- b. Tenant determines that technical problems, which problems cannot reasonably be corrected, preclude Tenant from using the Leased Premises for its intended purpose;
- c. Tenant determines that Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Premises;
- d. Utilities necessary for Tenant’s use of the Leased Premises are not available to the Leased Premises; or

- e. The Leased Premises are damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Leased Premises.

In the event of termination by Tenant pursuant to this provision, Tenant shall be relieved of all further liability hereunder except its obligation to remove its improvements as provided herein. Any rental fees paid prior to said termination date shall be retained by Landlord.

21. Rights to Site Improvements and Infrastructure Upon Termination.

- a. Removal. Upon expiration of the Term or any Renewal Term, Tenant shall remove the Worker Housing, including the Site Improvements and Infrastructure owned by Tenant. Such removal shall be completed within six (6) months following the expiration of the full term of this Agreement, during which time Tenant shall be subject to all terms and conditions in this Lease with respect to access and said removal as if still a tenant.
- b. Abandonment/Noncompliance with Section 21(a). If Tenant fails to remove the Worker Housing within the time set forth in Section 21(a), then Tenant shall be in default, and Landlord, after notice of default and expiration of the applicable cure periods set forth in Section 20 hereof, may remove the Worker Housing at Tenant's cost.

22. Binding on Successors. The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

23. Governing Law. The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Alaska.

24. Entire Agreement. All of the representations and obligations of the parties are contained herein, and no modification, waiver, or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement.

25. Survey and Testing. Tenant shall have the right during the Option Period and any extension to survey, soil test, and make any other investigations necessary to determine if the surface of the Leased Premises is suitable for construction of the Worker Housing. If Tenant, within the above-stated time, determines that for any reason the Leased Premises is not suitable, this Agreement, upon written notice given by Tenant to Landlord, shall become null and void; provided that at Tenant's sole expense any damage to the Leased Premises caused by such testing and investigations of Tenant shall be promptly repaired.

26. Hazardous Waste.

- a. The term Hazardous Materials shall mean any substance, material, waste, gas, or particulate matter that is regulated by any local governmental authority, the State of Alaska, or the United States Government, including,

but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of state or local law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. Section 1317), (vii) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq. (42 U.S.C. Section 6903), or (viii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq. (42 U.S.C. Section 9601). The term Environmental Laws shall mean all statutes specifically described in the foregoing sentence and all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials.

- b. Landlord represents and warrants that, to the best of Landlord’s knowledge, (i) the Leased Premises have not been used for the use, manufacturing, storage, discharge, release, or disposal of Hazardous Materials, (ii) neither the Leased Premises nor any part thereof is in breach of any Environmental Laws, (iii) there are no underground storage tanks located on or under the Leased Premises, and (iv) the Leased Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the term of this Agreement (collectively, a “Breach”), and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Landlord shall promptly take any and all remedial and removal action as required by law to clean up the Leased Premises and mitigate exposure to liability arising from, and keep the Leased Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.
- c. The following indemnities are provided hereunder by Landlord and Tenant:
 - i. Tenant agrees to indemnify, defend, and hold harmless Landlord, its officers, partners, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys’ fees and expenses, consultants’ fees and expenses, court costs, and all other out-of-pocket expenses, to the extent any such items arise out of the release of any Hazardous

Substances on or about the Leased Premises by Tenant or Tenant's employees, contractors, agents, successors, or assigns.

Item A.

- ii. Landlord agrees to indemnify, defend, and hold harmless Tenant, its officers, partners, agents, lenders, contractors, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out of pocket expenses, to the extent any such items (a) arise out of the release of any Hazardous Substances on or about the Leased Premises except by Tenant or Tenant's employees, contractors, agents, successors, or assigns, or (b) arise out of any Breach by Landlord, or (c) arose prior to or during the Term of this Lease and that failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.
- iii. Landlord agrees to indemnify, defend, and hold harmless Tenant, its officers, partners, agents, lenders, contractors, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties, and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out of pocket expenses, suffered or incurred by Tenant and its affiliates, successor or assigns as a result of (a) any Breach by Landlord, or (b) any matter or condition of the Leased Premises involving Environmental Laws or Hazardous Materials that was not caused by Tenant or its officers, partners, successors, or assigns and that existed on or arose prior to or during the Term of this Lease and that failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.
- d. Landlord represents and warrants to Tenant that Landlord has received no notice that the Leased Premises or any part thereof is, and, to the best of its knowledge and belief, no part of, the Leased Premises is located within, an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers, or any other governmental body as being subject to special hazards, including floodplains.
- e. The covenants of this Section shall survive and be enforceable and shall continue in full force and effect for the benefit of Tenant and its subsequent transferees, successors, and assigns and shall survive the Term of this Lease and any renewal periods thereof.

27. **Mechanic's Liens.** Tenant will not cause any mechanic's or materialman's lien to be placed on the Leased Premises, and Tenant agrees to indemnify, defend, and hold harmless Landlord from any such lien from a party claiming by, through, or under Tenant; provided that Tenant shall be permitted to remove any such lien by bond or other suitable instrument.

28. **Headings.** The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

29. **Time of Essence.** Time is of the essence for Landlord's and Tenant's obligations under this Agreement.

30. **Severability.** If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Agreement, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

31. **Real Estate Broker.** Landlord represents and warrants that Landlord has not signed a listing agreement, dealt with, or otherwise agreed to pay a broker's commission, finder's fee, or other like compensation to anyone in connection with the lease of the Leased Premises or the transaction contemplated by this Agreement.

32. **Further Assurances.** Each of the parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Agreement or any other agreement contained herein in the manner contemplated hereby.

33. **Dispute Resolution.** Any dispute between Landlord and Tenant arising under this Agreement shall in the first instance be addressed by taking the following steps; 1) by informal negotiations between Landlord and Tenant following an exchange of written notice of and response to said dispute and for a period of time not to exceed 45 days unless extended by mutual agreement; and if not resolved by negotiations, then 2) by any other such remedy at law that may be available.

34. **Attorneys' Fees.** The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

35. **Interpretation.** Each party to this Agreement have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

36. **Date of Agreement.** The parties acknowledge that certain obligations of Landlord and Tenant are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Agreement. The parties therefore agree that wherever the

term “date of execution of this Agreement,” or words of similar import are used herein, they shall mean the date upon which this Agreement has been duly executed by Landlord or Tenant, whichever is the later to so execute this Agreement. The parties further agree to specify the date on which they execute this Agreement beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact the date on which each duly executed this Agreement.

Item A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as a sealed instrument, as of the day and year first above written.

Item A.

LANDLORD:

TENANT:

City of Nome (or Assigns)

By:

By: _____

Title:

Title: _____

Date:

Date: _____

STATE OF ALASKA

) ss

SECOND JUDICIAL DISTRICT

On this ____ day of _____, 20__, before me, the undersigned notary public in and for the State of Alaska, personally appeared _____ proved to me on the basis of satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily for its stated purpose (as Landlord).

WITNESS my hand and official seal.

Notary Public

STATE OF ALASKA

) ss

SECOND JUDICIAL DISTRICT

On this ____ day of _____, 20__, before me, the undersigned notary public in and for the State of Alaska, personally appeared _____ proved to me on the basis of satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily on behalf of the City of Nome for its stated purpose (as Tenant).

WITNESS my hand and official seal.

Notary Public

EXHIBIT A-2 LEGAL DESCRIPTION OF THE LEASED PREMISES

Caldecott Winning Illustrator and Author

Item A.

MICHAELA GOADE

MEET & GREET

**Sunday,
September 10th
2:00 p.m.**

(Doors open at 1:45 p.m.)

Will be located in the
Richard Foster building at the
Katirvik Cultural Center

WORKSHOP

**Monday,
September 11th
6:00 p.m. - 8:00 p.m.**

Will be located in the
Richard Foster building at the
Katirvik Cultural Center

**REGISTRATION IS REQUIRED &
LIMITED TO 40 PARTICIPANTS.**

*For registration e-mail Janet at
Email: jsteppe@nomealaska.org
If you have any questions, please call
Kegoayah Kozga Public Library at
907-443-6628*



**KATIRVIK
CULTURAL CENTER**



We Serve
Serving Sex Lions Club

Dear Council Members,

I'd like to thank you for your dedication to the wonderful city we call Nome.

On March 16th, 2017 Nome Grown LLC opened it's doors for business; featuring a retail marijuana dispensary and a limited cannabis cultivation facility (the only cannabis cultivation in western Alaska).

Despite the taboo stereotypes and antiquated beliefs which are often based on emotion rather than reason surrounding the nascent marijuana industry, Nome Grown LLC has grown to employ 5 full time employees and 3 part time employees. We hope to increase the number of full-time/ part-time positions and sales tax revenue for the city.

The total U.S. economic impact from marijuana sales in 2023 is expected to reach \$100 billion- up more than 12% from last year, according to the recently published MJBiz Factbook.


The economic impact to the state of Alaska is listed at \$1.1 billion. For each state the economic impact per person varies based on factors such as population size, etc. For Alaska, the marijuana market will deliver roughly \$1431 of economic impact per person this year (MJ BizDaily, "US cannabis industry's \$100 million economic impact varies by state"; Andrew Long, 5/11/23). On the local level, the city of Nome collected \$287,630.64 in total sales tax and any penalty and interest in 2022 for cannabis. That roughly translates into \$80 per Nome citizen of economic impact. (City Clerk's Office/ US Census Bureau)

Over the past several months I have been engaged with the SOA Marijuana Control Board on legislation that will allow dispensaries to employ the use of a exterior pick up window for cannabis transactions. On July 14th, the Lieutenant Governor, Nancy Dalstrom; signed it into law with an effective date of August 13th, 2023. This specifically permits the use of a walk-up or drive through exterior window as part of the operation plan for a particular dispensary with proper permits in place.

In effort to see the recently passed aforementioned legislation implemented on the local level and to update city ordinance to be in line with state statutes; I would like to propose an amendment to City of Nome code of ordinances for your consideration. Specifically under Title 3; section 3.4.080 Hours of Sale I propose to amend Section (b) to possibly read: The exception to subsection (a) a retail marijuana establishment may employ the use of an exterior window pick up that is compliance with all applicable state statutes and local ordinances between the hours of ten a.m. to three a.m.. Perhaps re- lettering the existing exception under (b) to (c) and the existing section (c) to (d) may prove prudent.

I Have attached pertinent letters that provide the backdrop to the process with the Marijuana Control Board that has led us here. I truly look forward to working with the city council and officials to see this to fruition. Please feel free to contact me to seek clarification and/ or answer any questions or concerns.

Warmest Regards,



Gregory Smith/ Nome Grown LLC

Dear Honorable Members of the Alaska Marijuana Control Board,

I am writing to you today as a licensee of a retail marijuana store and as a member of the public who sees the safety reasons for this proposed regulation. I would thank the board for this regulation project and the AMCO examiners for all their hard work bringing this regulation draft to us for public comment. As I'm sure you recall, I have been in front of this board on a couple of occasions regarding this exact matter. I am here today to express my support for the majority of the proposed regulation, 3AAC 306.380, Walk-up or Drive-through Exterior Window Pick-up for Retail Marijuana Stores. This new regulation will give customers a simple, secure, and safe way to buy marijuana and marijuana-related products.

All of us Alaskans have to value our safety and security. As much as we love and cherish our town and State, it is not lost on us that our weather and geographical conditions are harsh. The conditions are extreme for anyone, but the concern is heightened for our elders. Accessibility is crucial to keep us safe and healthy. One of the main benefits of drive-through locations is the convenience it provides to legal marijuana consumers, particularly those with mobility limitations or disabilities. Some of us have trouble walking, some of us can't walk, and we rely on wheelchairs or other walking/mobility aids. Some of us have such major accessibility hindrances that we're too afraid to leave our houses regularly, knowing we must get out of our vehicles and walk through parking lots and areas that can be directly affected by the extreme weather Alaska has to get to our destination. Sometimes the weather can be too much, high winds/blizzards, rain, heat, etc., so instead, we go without because we cannot get from the car to the building without having safety issues. Now, some people will say, "so what, don't buy or smoke weed if you can't get to the store" this statement doesn't take into consideration that some people have either physical or moral reasons to take marijuana as an alternative to opiates or other pharmaceuticals, just because the State of Alaska has recreationally legal marijuana doesn't negate the fact that marijuana has medicinal benefits.

When 3 AAC 306.380 is passed, it will allow these individuals to purchase their desired products without physically entering the store; consumers will still be on the licensed premises, they will still follow the identification regulations, the required signage will still be visible to customers while making their way through the drive through thus, making marijuana more accessible and more convenient for elders and other-abled individuals while remaining legal.

Drive-through locations at retail marijuana stores in Nome and statewide would significantly reduce our safety risks, especially in winter or inclement weather. Elders, in particular, will benefit from this option as they can access their desired products without physically entering the store, which is crucial for their safety. The harsh weather conditions in Nome can be extremely challenging for anyone, especially those who rely on wheelchairs or other mobility aids. The drive-through option will reduce the safety risks for these individuals, as they no longer have to walk through windy, rainy, snowy, and slippery conditions to access the store.

In addition to convenience, drive-through locations also offer enhanced safety measures. All transactions will be recorded through video surveillance and kept on file for at least 40 days, ensuring the legality of each sale and verifying the customer's identification. The requirement for payment to be made through an electronic platform or mobile point-of-sale system also adds an extra layer of security, further reducing the risk of theft.

I appreciate the proposed regulations' consideration of the requirements and restrictions imposed by local governments; this shows the MCB's commitment to responsible regulation and respect for local communities and their concerns. The City of Nome and its elders have also shown their support for this regulation, demonstrating the importance of this proposed change.

All this being said, I do think that 3 AAC 306.380 (e) needs to be adjusted, "Prior to completing a sale at a walk-up or drive-through exterior window, the licensee or the employee shall physically view and inspect the consumer's photo identification" – this part is 100% acceptable however, "Each person in a vehicle at the drive-through exterior window must be 21 years of age or older unless the person is the consumer's own child, grandchild, or ward who is not older than seven years of age seated or otherwise required by local or state law to be seated in a car seat or booster seat." First and foremost, adding this to the proposed regulation completely defeats the purpose. Parents do not want to leave their children in unattended running vehicles in the long cold Alaskan winter. The board hears this, so we get a reg project drafted only for the regulation to say that only parents of children in car seats can use the drive through, all other parents need to leave their children unattended in a running vehicle or get a babysitter to run to the retail marijuana store, and this should not be the case. Also, not many parents carry ID for their children, so how does a parent of a tall or large child and not in a booster or car seat prove their age? Not only does this pose a problem, but it is a bit of a government over-reach over a product that, under 3 AAC 306.345(a)(3) at the point of sale, marijuana or a marijuana product sold is packaged in resealable, child-resistant packaging designed to be constructed to be significantly difficult for children under five years of age to open, but not normally difficult for adults to use properly; and (4) unless already packaged by the cultivation facility or the manufacturing facility in an opaque package for final retail sale, any marijuana or marijuana product purchased by the consumer is placed in an opaque package by the retail marijuana store or the consumer before the consumer exits the retail marijuana store. Parents can drive through a pharmacy drive-through with a van load of children and pick up hundreds or thousands of milligrams of opiates without question or take their children into a liquor store where children can clearly see every item for sale, but a parent can't drive through a pot shop drive through and pick up "some weed" that's in an opaque container because their over-seven child is in the car is non-sensical. . Allowing parents to make their own choices for their families is a human right and may open up the conversation they all need to have with their families.

In conclusion, the proposed regulation, 3AAC 306.380, Walk-up or Drive-through Exterior Window Pick-up for Retail Marijuana Stores, with some minor changes, is a positive step forward for the retail marijuana industry in Alaska. It will provide customers with more convenient and safe access to marijuana and marijuana-related products while also ensuring the legality and security of each transaction.

Thank you for considering my comments and for your commitment to the responsible regulation of the retail marijuana industry. I strongly support the proposed regulation and hope it will be implemented soon.

Sincerely,

Greg Smith



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 Main Office 907-231-3750
 JDW, LLC
 jana@jdw-counsel.com

March 17, 2022

Re: MJ14 request for Nome Grown Retail License

Dear: Honorable Marijuana Control Board,

As a background refresher on this MJ14 request, this Board denied a previous submission of a MJ14 for Nome Grown Retail License at the October 2021 MCB meeting in Anchorage, Alaska. The Board provided feedback to the applicant to review in detail Enforcement's Memo authored by Chief Hoelscher that outlined regulatory concerns and considerations as the applicant also recognized that there were some regulatory issues identified by Chief Hoelscher that needed further clarification. The Board then directed the applicant to re-apply with a plan that addressed all items identified by Chief Hoelscher. Please see below for a detailed outline of Nome Grown's plan to address each regulatory concern raised by Chief Hoelscher and the Enforcement Team:

1. "Approval of this diagram would not be in accordance with 3AAC 306.705, the "conex" is separate and may be considered adjacent if the fence is taken into consideration. Even with that consideration the "conex" would be a restricted access area." Nome Grown response to this concern is that the term "conex" was a simplified way to denote a structure and to convey its approximate size and added security to the facility. The building that houses the drive-up window is a traditional wood structure that was originally part of the cultivation building. Access to the restricted access area of the drive-up window work area is through the cultivation building. We are unsure why this item was listed as a concern for enforcement. This building structure has been approved by the local government and a connecting sight-obscuring fencing enclosure shown on the diagram set increases security for the entire facility and ensures no marijuana is seen by the public outside the licensed premises.
2. "Would be an act prohibited as a retail marijuana store may only sell marijuana or a marijuana product to a consumer who is physically present on the licensed premises." Nome Grown addressed this regulatory concern by including a slight additional expansion of the licensed premises area directly outside the pick-up window as part of the licensed premises. As you can see on the attached MJ14 diagram set, an area measuring in size of 6 feet by 8 feet has been added to the walk-up/drive area as licensed premises area. Per 3AAC 306.990(23), a licensed premises may include outdoor areas. Additionally, part of



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the drive-up/walk-up plan is to clearly mark the outside licensed premises area with barriers. These 6' x 8' barriers will be in place when the walk-up/drive-up is not open to the public.

3. Enforcement also noted concerns that it would be difficult to assess if a person was under the age of 21 in this walk-up/drive-up model. However, we disagree – to our knowledge, during the emergency declaration period when the 3 AAC 306.995 were in place, there were no incidents of underage sales made to walkup/drive-up consumers. Additionally, unlike the emergency declaration regulations, Nome Grown will require all persons in the vehicle be 21. This will be required as the space right outside of the window will be licensed premises. Therefore, Greg shall have additional signage on the exterior of the building clearing stating, “No persons under the age of 21 years old past this point” and “Area under surveillance” to defer attempts by persons under 21 years of age from entering the outside licensed area. There will also be cameras monitoring the area of the walk-up/drive-up area and the drive way before the window to ensure the staff knows how many persons are in the vehicle so they know if any under age person is hiding when the vehicle drives up to the window.
4. Moreover, Nome is a small community, the folks that work at Nome Grown have been there on average for over 2 years. The staff at Nome Grown have lived in Nome for at least 5 years, but most were born and raised in Nome. Hence, Nome Grown staff knows its customers, its community, and they are uniquely situated to quickly identify any persons attempting to make a purchase who are not under the age of 21. Additionally, the idea that its more difficult to assess a person’s identity and age just because it’s a drive up model is inconsistent with the use of drive-ups in other *highly* regulated industries such as banking and pharmacies.
5. Another point raised by Enforcement is the concern that it’s difficult to assess whether a person is under the influence of an intoxicating substance if that person is in a vehicle vs. coming into the store. To address this concern, Greg has added extra training and protocols for his staff to make a purposeful effort to engage in conversation with each person in the vehicle and exchange in dialogue to watch for signs of inebriation. Greg is a highly trained drug and alcohol addiction health provider and whom as an adjunct faculty of UAF to this endeavor has the knowledge, the training, and the skill set to create protocols and procedures for staff who do work the window to purposefully engage with customers and watch for telltale signs of inebriation. Additionally, during the emergency declaration period, there were no incidents of increased marijuana sales to inebriated persons or an increased rate of retail stores having to refuse to sell to consumers because they tried to go through drive-ups inebriated. Presumably, if a person is intoxicated and driving a vehicle



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- through a narrow driveway, its going to be easier to tell if they are drunk then it would be if they were just having to walk into the store.
6. Another concern raised by enforcement is that because there may be minors in the vehicle that all occupants would need to show valid ID proving that they are all over the age of 21. We agree and have modified the plan to ensure all occupants of any vehicle that goes through the driveway show valid identification proving they are 21 years of age or older.
 7. Enforcement, recognizing the rural nature of Nome, voiced concerns about how staff would ensure that the identification a customer provides to them is actually their own identification in the event that customer traveled to the store on a four-wheeler or snow machine and was wearing facemasks, hats, helmets, etc. This is a good point, but this is already addressed in the Nome Grown procedures for the store as it currently is operated and would extend to the window walk-up/drive-up outside licensed premises as well. Currently, folks drive their snow machines and 4-wheelers to Nome Grown all the time. Customers know that they still have to remove their facemasks and helmets and show their face when they have their ID checked by the retail staff in order to purchase marijuana from the retail facility. This is currently the practice and will remain the practice.
 8. Lastly, Enforcement's memo rightfully pointed out that the plan for the drive-up/walk-up did not address the requirement for posting the required consumer notices within the licensed premises area. The revised MJ15 and MJ14 attached clearly address this regulatory component and all consumer notices will be posted on the exterior of the building. The postings will be of such size to ensure clear visibility at all times to all consumers who utilize the walk-up/drive-up area.

Additionally, please see the list of elders who have indicated that they would very much like to have a drive through option when coming to Nome Grown. Given that the Nome Grown plan has addressed all regulatory and safety concerns raised by Enforcement, we respectfully request the Marijuana Control Board consider this unique proposal, the rural nature of the community, and the intent to provide ease of access to person over the age of 21 who chose to consume tested and regulated marijuana products.

Truly and Sincerely Yours,



Jana D. Weltzin, Esq.

NOME GROWN ELDER SUPPORT SIGNATURES ---- WALK-UP / DRIVE-UP WINDOW

PRINT FULL NAME

SIGNATURE

1	Daniel Komok	Daniel Komok	12/1/21
2	Richard Okinello	Richard Okinello	
3	Sterling Gologergen, Sterling Gologergen		
4	Hilda Sacher	Hilda Sacher	
5	SEAN EDWARD LONG	Sean Long	
6	Kenneth Waltz	Kenneth Waltz	
7	Evelyn Omick	Evelyn Omick	
8	Elijah Ditega	Elijah Ditega	
9	Amyssa Gray	Amyssa Gray	
10	Andrew [unclear]	Andrew [unclear]	
11	Sandra Annogiuk	Sandra Annogiuk	
12	Andrew Durigo	Andrew Durigo	
13	Eileen R Beechbl	Eileen Beechbl	
14	Shakia [unclear]	Shakia Amiyerson	
15	Mikal Henry	Mikal Henry	
16	William Kier	William Kier	
17	Debra Seetok	Debra Seetok	
18	Nancy Iyapana	Nancy Iyapana	
19	Carol Henry	Carol Henry	
20	Garb Gray	Garb Gray	
21	Jeanne KOST	Jeanne KOST	
22	Norma Todd Hoag	Norma Todd Hoag	
23	David Kowley	David Kowley	
24	Cheryl Kowchec	Cheryl Kowchec	
25			
26			
27			
28			
29			
30			

Presented By.
Port Director

Action Taken:
Yes ___
No ___
Abstain ___

CITY OF NOME, ALASKA

RESOLUTION NO. R-23-09-01

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE MOD #002 OF BRISTOL ENGINEERS' TASK ORDER 54 TO ENGAGE SUBCONTRACTOR SERVICES TO DESIGN REPAIRS TO THE CAPE NOME JETTY DAMAGED BY TYPHOON MERBOK - DISASTER DR4672AK

WHEREAS, the Cape Nome Jetty (Jetty) is part of the Port of Nome Facilities, owned by the City of Nome (City) and serves as an important alternate facility for the movement of cargo and equipment, as well as the exporting of gravel, armor stone, and other aggregate products; and,

WHEREAS, the Jetty was significantly damaged in the September 2022 storm known as Typhoon Merbok, leaving the facility in such poor condition that it is unable to be operated at even a partial, much less full capacity for which it was designed; and,

WHEREAS, the City of Nome has been working with the Alaska Department of Home Security Division of Emergency Management (ADHSEM) and the Federal Emergency Management Agency (FEMA) to develop a temporary scope of work and approximate costs until a full repair design and estimate can be provided to FEMA to inform the necessary post-storm disaster relief funding agreement needed to repair the Jetty; and,

WHEREAS, the City has executed a Task Order with Bristol Engineering Services (Bristol) to facilitate and coordinate repair design services, recently obtaining subcontractor services from PND Engineers, Inc., known as an experienced coastal engineering firm to provide these services in the amount of \$406,980 to return the Jetty structure to pre-storm condition; and,

NOW, THEREFORE, BE IT RESOLVED, the Nome Common Council hereby authorizes the City Manager to execute Mod #002 of Bristol's Task Order 54 in the amount of \$406,980 to allow PND to expedite work on the Jetty repair design and cost estimate necessary.

APPROVED and **SIGNED** this 11th day of September 2023.

JOHN K. HANDELAND,
Mayor

ATTEST:

JEREMY JACOBSON,
Deputy City Clerk

TASK ORDER AMENDMENT

This Task Order pertains to an Agreement by and between the City of Nome, (“OWNER”), and Bristol Engineering Services Company, LLC, (“ENGINEER”), dated January 11, 2011 as amended February 8, 2023, (“the AGREEMENT”). Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: **54**

AMENDMENT NO: **02**

PROJECT NAME: **Cape Nome FEMA Repair – 2022 Merbok Storm**

PART 1.0 PROJECT DESCRIPTION: City engineer contract management for engineering services to design a repair of damage resulting from the 2022 Merbok Storm at Cape Nome.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER:

The ENGINEER will:

- Review pre- and post-storm survey data.
- Compile existing facility documents.
- City Engineering contract management and coordination with the Port Director and design engineer who will prepare an initial rough order of magnitude (ROM) construction cost estimate to repair the jetty back to its as-built state prior to Typhoon Merbok. This ROM estimate will include construction cost, costs to provide design, engineer’s estimate, permits, and construction administration services. Additional scope items include conducting a damage assessment and development of plans, specifications, and estimates of the necessary repairs to return the facility to pre-storm conditions as required for FEMA reimbursement.
- Permit applications and agency coordination.
- Development of a bid package for construction services.

PART 3.0 OWNER’S RESPONSIBILITIES: OWNER will provide access to facilities, lodging and provide a loaner vehicle for any site visit activities.

PART 4.0 DELIVERABLES

Deliverables for this project will include:

- 65% Draft, 95% Draft and 100% Final plans, specifications and construction cost estimates.

- Develop permit drawings and permit applications for applicable permit agencies.
- Responses to review comments.
- Bid documents and advertisement.

PART 5.0 PAYMENTS TO ENGINEER (Estimate of not-to-exceed costs):
 Bristol's effort will be invoiced monthly on a percent complete basis.

Task Order 054 original Contract and Amend 01: \$16,170

Task Order 054, Amendment No.2
 Estimate of not-to-exceed costs: **\$406,980**

Total Task Order 054 Contract Amount: \$423,150

PART 6.0 OTHER:
 Not Used

This Task Order is executed this _____ day of September, 2023.

City of Nome
 "OWNER"

Bristol Engineering
 Services Company, LLC
 "ENGINEER"

By: Glenn Steckman

By: John Bles, P.E.

Signature: _____
 Title: City Manager

Signature:  _____
 Title: Project Manager

Digitally signed by John Bles
 Date: 2023.09.08 15:16:08 -08'00'

Attachments: PND Merbok Repair Proposal, Sept. 8, 2023



ENGINEERS, INC.

Item A.

Mr. John Blees
Bristol Engineering Services Company, LLC
111 W. 16th Ave
Anchorage, AK 99501

September 8, 2023
PND 23A-027

Subject: Cape Nome Jetty – Merbok Repair Proposal (Rev 03)

Dear Mr. Blees:

PND Engineers, Inc. (PND) is pleased to provide this proposal to provide a design for repair of the armor rock face at the Cape Nome Jetty which suffered damage during Typhoon Merbok in September, 2022. A detailed scope of work is outlined below.

Task A – Initial ROM Construction Estimate – Fixed Fee \$10,100

The City has provided pre and post storm survey drawings in electronic format for PND use on this project. PND's first task for this project will be to calculate armor stone quantities to repair the jetty back to it's as-built state and provide an initial rough-order-magnitude (ROM) construction cost estimate .

Initial ROM estimate will be provided within two (2) weeks of notice to proceed.

Task B – Plans Specifications and Estimates (PS&E) – Fixed Fee \$163,000

PND understands that this project will be funded under the Federal Emergency Management Agency (FEMA) similar to the repairs made from the 2011 storm at the same location.

Our proposed scope of work for the repair design includes the following;

- Coordinate and attend weekly coordination meetings with the City to ensure the project is on schedule and information needed by either party is being communicated.
- Project Specifications and stamped design drawings
 - 65% Draft
 - 95% Draft
 - 100% Final
- Construction Cost Estimates
 - 65% Draft
 - 95% Draft
 - 100% Final
- Bid Support
- FEMA Review Comment Response
 - PND will respond to up to two (2) rounds of FEMA review comments on the 95% design package.

Schedule:

Permitting Deliverables – Provided five (5) weeks following NTP

65 % Deliverables – Provided five (5) weeks following NTP

95% Deliverables – Provided nine (9) weeks following NTP

100% Deliverables – Provided three (3) weeks following receipt of FEMA and/or City review comments.

Cape Nome Jetty – Merbok Repair Proposal (Rev 03 – September 8, 2023)

PND understands that the FEMA process can be lengthy and that funding applications for this damage repair may not be approved for several years. It is possible that future storm damage will occur between this design submittal and the actual repair. This scope of work does **NOT** include any additional survey to update repair details prior to construction should additional damage occur.

Task C – Sheet Pile and Bollard Replacement – Fixed Fee \$40,000

PND will develop replacement design for the damaged south sheet pile bulkhead at the Cape Nome Jetty and the damaged south mooring bollard

Our proposed scope of work for the replacement design includes the following;

- Coordinate and attend weekly coordination meetings with the City to ensure the project is on schedule and information needed by either party is being communicated.
- Project Specifications and stamped design drawings
 - 65% Draft
 - 95% Draft
 - 100% Final
- Construction Cost Estimates
 - 65% Draft
 - 95% Draft
 - 100% Final
- Bid Support
- FEMA Review Comment Response
 - PND will respond to up to two (2) rounds of FEMA review comments on the 95% design package.

Schedule:

Permitting Deliverables – TBD Based on permitting requirements.

65 % Deliverables – Provided five (5) weeks following NTP

95% Deliverables – Provided nine (9) weeks following NTP

100% Deliverables – Provided three (3) weeks following receipt of FEMA and/or City review comments.

Task D – Permitting for Armor Stone Repair – Fixed Fee \$24,500

PND will develop permit drawings, prepare permit applications and coordinate with applicable permit agencies on behalf of the City. Permitting application fees are excluded from this budget and will be billed at cost at the time of submission.

Task E – Permitting for Sheet Pile and Bollard Replacement – Fixed Fee \$150,000

Permitting requirements for the replacement of the sheet pile and bollard are currently unknown. There is potential for agency negotiations to facilitate an "emergency" designation for the sheet pile work, which would enable a streamlined process. However, until discussions commence, the specific requirements remain uncertain.

The fixed fee above covers the necessary expenses if the project were to proceed without any emergency authorization. This assumes that an Incidental Take Authorization (IHA) will still be required and that National Environmental Policy Act (NEPA) categorical exclusion will be granted, as it is not guaranteed, even under FEMA authorization, that emergency status will be granted for any pile driving work.

Fee Summary

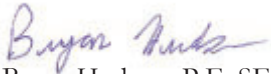
Task	Fee	Fee Structure
A	\$10,100	Fixed Fee
B	\$163,000	Fixed Fee
C	\$40,000	Fixed Fee
D	\$24,500	Fixed Fee
E	\$150,000	Fixed Fee

Total Task A through E = \$387,600

We look forward to working with you on this project. Should you have any questions or wish to discuss, please feel free to contact us.

Sincerely,

PND Engineers, Inc. | Anchorage Office



Bryan Hudson, P.E., SE.
Principal

Attachments:

Action Taken:
Yes _____
No _____
Abstain _____

CITY OF NOME, ALASKA

RESOLUTION NO. R-23-09-02

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROJECT PARTNERSHIP AGREEMENT (PPA) WITH THE U.S. ARMY CORPS OF ENGINEERS (USACE) FOR CONSTRUCTION OF THE PORT OF NOME MODIFICATION PROJECT (PONM) (aka; ARCTIC DEEP DRAFT PORT AT NOME)

WHEREAS, the City of Nome (City) has prioritized port expansion and facility improvements to meet the growing demands of industry, the opening of Arctic waters, and the vast increase in vessel traffic, believing that Nome is best positioned to serve as the U.S. Arctic port site to facilitate resource development, search and rescue response, marine environment protection, and to provide a practical location for strategic defense of the country; and,

WHEREAS, the Port of Nome serves as the regional maritime hub facility for over fifty (50) Alaska villages from the Yukon River to the Arctic Ocean, transshipping fuel, cargo, equipment, gravel and rock, and is well-known to be the only publicly-owned coastal port north of the Aleutians for the refueling and resupply of Arctic vessels, the number of which has grown exponentially since 2012; and,

WHEREAS, the Nome Port Commission has acted on these initiatives through continued pursuit of strategic development and construction of additional facilities to meet demands of industry, the U.S. Coast Guard (USCG), the National Oceanic & Atmospheric Administration (NOAA), and the region; and,

WHEREAS, the Alaska Congressional Delegation, successfully championed the passage of federal legislation with an appropriation of \$250M in federal funding, followed by the Governor of Alaska and Alaska Legislature awarding \$175M in grant funds in FY2022 to serve as the City's cost-share to the USACE, both efforts to support construction of an Arctic Deep Draft Port at Nome; and,

WHEREAS, in 2021, the USACE and the City signed a cost-shared *Design Agreement* for the design of the PONM Project, which was fully funded and is nearing completion, with a solicitation package being prepared by the USACE for release on 1 November 2023, but first requires PPA execution; and,

NOW, THEREFORE, BE IT RESOLVED that the Nome Common Council hereby authorizes the City Manager to execute a PPA with the USACE for the construction of the PONM.

APPROVED and **SIGNED** this 11th day of September 2023.

JOHN K. HANDELAND,
Mayor

ATTEST:

JEREMY JACOBSON,
Deputy City Clerk

PROJECT PARTNERSHIP AGREEMENT
 BETWEEN
 THE DEPARTMENT OF THE ARMY
 AND
 CITY OF NOME, ALASKA
 FOR
 PORT OF NOME MODIFICATIONS, ALASKA

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Alaska District (hereinafter the “District Commander”) and the City of Nome, Alaska (hereinafter the “Non-Federal Sponsor”), represented by the City Manager.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor previously executed a project cooperation agreement on May 28, 2002, for construction of the Harbor of Nome, Alaska (hereinafter the existing Federal project);

WHEREAS, the Port of Nome Modifications, Alaska (hereinafter the “Project”, as defined in Article I.A. of this Agreement), authorized by Section 401(1) of the Water Resources Development Act (WRDA) of 2020, as amended, modified the existing Federal project;

WHEREAS, Section 8312 of WRDA 2022, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, as of the effective date of this Agreement, Federal funds in the amount of \$250,000,000 have been provided for construction of the Project in Division J, Title III, of the Bipartisan Infrastructure Law, Public Law 117-58;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor’s full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means the general navigation features, which includes constructing a new deep water basin by extending the existing west breakwater by approximately 3,484 ft to a depth of -40 ft Mean Lower Low Water (MLLW); and constructing outer basin modifications consisting of removing the existing breakwater stub (spur) from the south end of the existing west breakwater and extending the breakwater to deep water, removing the existing east breakwater and replacing it with a new approximately 3,900 ft east breakwater that extends to approximately -25 ft MLLW, increasing the outer basin channel entrance width to approximately 670 ft, and deepening the outer basin from -22 ft to -28 ft, as generally described in the Integrated Feasibility Report and Environmental Assessment for the Port of Nome Modification Feasibility Study, Nome Alaska dated March 2020 and approved by the Chief of Engineers on May 29, 2020, with any subsequent modifications developed by the Alaska District that are approved by the Division Commander for Pacific Ocean Division, if such modifications are determined to be within the Chief of Engineers’ discretionary authority.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to design and construction of the general navigation features of the Project. The term includes the Government’s costs and the Non-Federal Sponsor’s creditable contributions pursuant to the terms of the Design Agreement executed on June 16, 2021; the Government’s engineering, design, and construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any highway or railroad bridges over navigable waters of the United States); the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing in-kind contributions, if any; the costs of mitigation, including monitoring and adaptive management if applicable; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; additional work, if any; or the Non-Federal Sponsor’s cost to negotiate this Agreement or for providing relocations, removal of obstructions, or real property interests. It also does not include any costs for local service facilities or for aids to navigation.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities that are required for construction, operation, and maintenance of the Project. Acquisition of real property interests, if necessary, may require the performance of relocations and removal of obstructions.

E. The term “relocation” means the alteration, lowering, raising, or replacement and attendant demolition of a utility (including privately and publicly owned pipelines, cables, and related facilities located in or under navigable waters of the United States, regardless of whether they serve the general public), cemetery, highway or railroad (including any bridge thereof), or public facility that interferes with construction, operation, and maintenance of the Project, excluding any highway or railroad bridges over navigable waters of the United States.

F. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

G. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for Pacific Ocean Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

H. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

I. The term “Maximum Cost Limit” means the statutory limitation, as applicable, on the total cost of the Project, as determined by the Government in accordance with Section 902 of WRDA 1986, as amended (33 U.S.C. 2280), and Government regulations issued thereto.

J. The term “obstruction” means any utility or structure located in or under navigable waters of the United States that must be removed to construct, operate, and maintain the Project but that does not require relocation.

K. The term “additional work” means items of work related to, but not cost shared as part of, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil

Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Non-Federal Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. The Non-Federal Sponsor shall provide 10 percent of construction costs, as follows.

a. In providing in-kind contributions as part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work. The Government shall verify and credit the Non-Federal Sponsor's eligible costs for in-kind contributions in accordance with the following procedures, requirements, and conditions to determine reasonableness, allocability, and allowability. Such costs shall be subject to audit in accordance with Article X.B.

(1) The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

(2) No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; any in-kind contributions performed prior to the effective date of this Agreement, unless such in-kind contributions were provided pursuant to the Design Agreement; or costs that exceed the Government's estimate of the cost for such in-kind contributions.

(3) Credit afforded for in-kind contributions under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

b. After considering the contributions provided pursuant to the Design Agreement and the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its 10 percent cost share. The Government shall notify the Non-Federal Sponsor of the funds required for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article IV.C.1.

c. No later than August 1st prior to each subsequent fiscal year of construction, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article IV.C.1.

2. As of the effective date of this Agreement, the Government anticipates that the Project can be constructed, operated, and maintained utilizing the real property interests previously acquired by the Non-Federal Sponsor for the existing Federal project and no additional real property interest, relocations, or removal of obstructions will be required. However, if the Government subsequently determines that additional relocations, removal of obstructions, or real property interests will be required for the Project, the Non-Federal Sponsor, in accordance with Federal laws and regulations, shall provide such additional relocations, removal of obstructions, or real property interests, at no cost to the Government and without credit or reimbursement. Prior to the Government initiating construction, the Non-Federal Sponsor, in accordance with Article III, shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of the Project. The Non-Federal Sponsor shall provide the Government with authorization for entry thereto according to the Government's construction schedule for the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

3. The Non-Federal Sponsor shall ensure that the local service facilities are constructed, operated, and maintained, at no cost to the Government, and that all applicable licenses and permits necessary for construction, operation, and maintenance of such work are obtained.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including the identification and treatment of historic properties as those

properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. The Government, as it determines necessary and subject to the availability of funds, shall operate and maintain the Project using funds appropriated by the Congress. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Non-Federal Sponsor shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Non-Federal Sponsor shall not otherwise modify or improve the dredged material placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408.

F. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

H. The Non-Federal Sponsor may request in writing that the Government perform additional work on the Non-Federal Sponsor's behalf. Each request shall be subject to review

and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article IV.D., must provide funds sufficient to cover the costs of such work, in advance of the Government performing the work. In addition, the Non-Federal Sponsor is responsible for providing, at no cost to the Government, any additional real property interests and relocations determined by the Government to be required for construction, operation, and maintenance of such work.

ARTICLE III - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered in, on, or under real property interests that the Non-Federal Sponsor currently owns or controls or after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

ARTICLE IV - PROVISION OF NON-FEDERAL COST SHARE

A. As of the effective date of this Agreement, construction costs are projected to be \$662,569,000, with the Government’s share of such costs projected to be \$596,312,000 and the Non-Federal Sponsor’s share of such costs projected to be \$66,257,000, which includes creditable in-kind contributions projected to be \$0, and the amount of funds to be provided during construction to meet its 10 percent cost share projected to be \$66,082,000. The costs for additional work are projected to be \$244,423,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. While undertaking construction, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government’s and Non-Federal Sponsor’s estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide funds by delivering a check payable to “FAO, USAED, Alaska (J4)” to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal cost share as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s required share of such costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

3. Upon completion or termination of construction of the Project, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor to meet its cost share, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to “FAO, USAED, Alaska (J4)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its cost share, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its cost share, the Government shall refund such excess amount, subject to the availability of funds for the refund.

D. If the Government agrees to undertake additional work on the Non-Federal Sponsor's behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days after receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article IV.C.3. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE V - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction if the Maximum Cost Limit is exceeded.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article III.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VI - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

ARTICLE IX - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

City Manager
P.O. Box 281
102 Division St.
Nome, Alaska 99762-0281

If to the Government:

District Commander
U.S. Army Corps of Engineers, Alaska District
P.O. Box 6898
Joint Base Elmendorf-Richardson, Alaska 99506-6898

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Nome City Council, where creating such an obligation would be inconsistent with NCO 17.40.060 and Art. IX, Sec. 13 of the Alaska Constitution. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

THE CITY OF NOME, ALASKA

BY: _____
Jeffrey S. Palazzini
Colonel, U.S. Army
District Commander

BY: _____
Glenn Steckman
City Manager
City of Nome

DATE: _____

DATE: _____



Memo

To: Glenn Steckman – City Manager
 From: Joy L. Baker – Port Director *JLB*
 CC: Mayor Handeland & Common Council; Port Commission
 Date: September 8, 2023
 Re: Camp Land Option to Lease RFP – Proposal Evaluation Committee Recommendation

The City of Nome solicited for an option to lease 4 acres of property to place a man camp to support the workforce of the contractor that will be awarded construction of Phase 1 of the Arctic Deep Draft Port (ADDP) – Port of Nome Modification Project. Proposals were due on 24 August 2023, with a total of 8 received by the Clerk's Office, and 2 deemed non-responsive for offering alternatives outside the RFP.

As described in the RFP, a Proposal Review Committee (PEC) was created to review and score those proposals deemed as responsive, and make recommendation to the City Manager for consideration. The PEC completed their review, and makes the following recommendation (details shown in attached):

Recommendation: Based on the four evaluation criteria in the RFP solicitation, Proposal #4, submitted by the Bering Strait Native Corporation (BSNC), is recommended as the best site overall with the highest-ranking score of 98.125 out of 100 points. The property is located within Block 125 – along W. 7th Aly and Block 111 – along W. 6th Ave, both near Steadman St. (across from Richard Foster Building (see attached map)).

Reviewer Comments:

This site requires fill – which was permitted & planned to occur in 2022 prior to Merbok. Proposer stated intent to fill this fall, independent of proposal. PEC considered this valid & responsive. (Fill work has begun.)

1/2 property is zoned commercial which requires a conditional use permit for residential uses; closest to utilities/power/port; isn't yet filled; some of the area is City ROW, which will decrease costs to City.

Proposer indicates 4.32 acres available – but absent records of right-of-way (ROW) vacations, the site includes portions of the following public ROW's:

W Nathan Barron Alley,
 W 6th Ave
 W Nugget Ave, and
 An unnamed north-south corridor.

Using the City GIS area tool, estimating:
2.91 acres land owned by BSNC
1.11 acres land that appears to be public right-of-way
4.02 acres total

If rights-of-way were vacated, this portion of the proposal is of course responsive on the 4-acre requirement.

If the rights-of-way still exist, the reviewer suggests that there may be a path for the 4-acres (makeup of proposer / City land) to be considered responsive – provided:

- The overall parcel is developed to use the rights-of-way for their intended purpose (access / utility / etc.).
- No construction of incompatible improvements such as structures occurs upon the rights of way.
- City only pays for the actual square footage of BSNC lands leased.

This would represent an improvement to community-owned lands – and meet the overall 4-acres needed.

Public utilities (water, sewer, power) are adjacent to the tract & connection (making use of the public rights-of-way (if true)) and would be a low-cost venture.

This site hosts the shortest proximity to utilities.

Please see attached summary spreadsheet for additional details.

**PORT OF NOME (ADDP) MODIFICATION PROJECT
CAMP LAND LEASE**

Item C.

Proposers		Proposal			PROPERTY		CRITERIA SCORING						TOTAL SCORES
No.	Name	Acreage	Filled	Responsive?	Legal Description	Physical Address	Option Price (Lump Sum)	Score (up to 25)	Annual Rent (Lump Sum)	Score (up to 50)	Annual Rent (\$/SF)	Suitability (up to 15)	
1	Bill Potter	0.54	N/A	No									
2	Banner Romenesko	0.20	N/A	No									
3	Arctic Gold Mining	4.00	Not Entirely	Yes	See proposal (near old Camp 5)	2871 Nome Teller Highway	\$ 25,000.00	5	\$ 75,000.00	5	0.5739	14.375	24.375
4	BSNC	4.32	Not Entirely	Yes	See proposal (Spokane/7th-Steadman/W. Nugget)	6th Ave & Steadman Area	\$ 2,500.00	25	\$ 41,817.60	50	0.02	23.125	98.125
5a	Alaska Gold Co #1	4.30	Graveled and graded	Yes	See proposal East of Graphite One	Lot 3, Satellite field #2016-	\$ 2,500.00	25	\$ 41,817.60	50	0.02	14.375	89.375
5b	Alaska Gold Co #2	4.50	Graveled Needs grading	Yes	See proposal (Tumet Pit/south of AMCC)	Tract A2 Center Creek Subd	\$ 2,500.00	25	\$ 41,817.60	50	0.02	11	86
5c	Alaska Gold Co #3	4.45	Graveled Needs grading	Yes	See proposal (south of Perkinsville)	Tract C Center Creek Subd	\$ 2,500.00	25	\$ 41,817.60	50	0.02	11	86
5d	Alaska Gold Co #4	4.32	Graveled Needs grading	Yes	See proposal north of Nome Beltz	Windfall Area	\$ 2,500.00	25	\$ 41,817.60	50	0.02	4	79

Recommended Camp Site

Action Taken:
Yes ___
No ___
Abstain ___

CITY OF NOME, ALASKA

RESOLUTION NO. R-23-09-03

A RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD AN OPTION TO LEASE LAND FOR A MAN CAMP FACILITY TO BERING STRAIT NATIVE CORPORATION (BSNC) FOR CONTRACTOR USE DURING CONSTRUCTION OF THE PORT OF NOME MODIFICATION CONSTRUCTION (PONM) PROJECT

WHEREAS, the City of Nome (City) is in partnership with the U.S. Army Corps of Engineers (USACE) to complete design of the Port of Nome Modification Project, and will soon execute a Project Partnership Agreement (PPA) for phased construction of the project; and,

WHEREAS, there is a significant housing shortage in Nome, and since completion of the project feasibility study, there have been many community discussions to find solutions to the problem before construction became a probability; and,

WHEREAS, despite efforts to resolve the situation, the housing shortage has been getting increasingly worse in recent years, and further exacerbated by COVID-19 and recession, followed by inflation, thereby prompting requests from local residents that housing for the port expansion be specifically and separately addressed; and,

WHEREAS, the City and USACE agreed there was a great need to require the contractor to mobilize man camp facilities to support project personnel during construction in an effort to ensure minimal impact to any existing housing facilities in Nome; and,

WHEREAS, USACE regulation required the City, as the non-federal sponsor, to provide the land site for placement of the man camp facilities, thereby prompting the City to issue a Request for Proposals (RFP) in August 2023 with a total of 8 proposals submitted and reviewed by the Proposal Evaluation Committee (PEC), which then recommended award be made to BSNC; and,

NOW, THEREFORE, BE IT RESOLVED, the Nome Common Council hereby authorizes the City Manager to award an Option to Lease for \$2,500 to BSNC for land to house contractor man camp facilities during construction of the Port of Nome Modification Project.

APPROVED and **SIGNED** this 11th day of September 2023.

JOHN K. HANDELAND,
Mayor

ATTEST:

JEREMY JACOBSON,
Deputy City Clerk



P.O. Box 281 • Nome, Alaska 99762
phone 907.443.6663 fax 907.443.5345

PROPOSAL FORM

Property Owner: BSNC Phone: 907 443-8123
Address: P.O. Box 1008 Fax: _____
NOME, AK 99762 Email: Frank.Johnson@
Bering Straits.com

PROPERTY

- 1) Legal Description A Portion OF BLOCK 125 LOTS 5 through 21 and BLOCK 111 LOTS 5 through 9 Nome Townsite Subdivision according to Plat number 1904 Mar 9 records of the Nome Recording district,
- 2) Physical Address Second Judicial District, State of ALASKA
6th and Steadman

PRICE PROPOSAL (required)

- 1) Option Price (Lump Sum) \$ 2,500
- 2) Annual Rent (Lump Sum per year) \$ 41,817.60 - 4 Acres
- 3) Annual Rent (Unit Price per sq. ft. per year) \$.02

By signing below, you acknowledge that you have received and reviewed all RFP Documents and agree to enter the Option to Lease Agreement* on the basis of your proposal if selected by the City.

Date: 8/23/2023
Name: Frank L. JOHNSON JR
Title: Maintenance & Service Superintendent
Signature: [Signature]

*Identify any provisions in Option to Lease Agreement you want modified:

6th and Steadman Area

Acres: 4.32
Sq. Ft.: 188,078

Leg Item C.



Google Earth

Image © 2023 CNES / Airbus

Stampede Ventures LLC 800 ft

EXHIBIT A-1

6th Avenue and Steadman Area

4 or more Acres in the following Land

Legal Description:

Subdivision: Nome Townsite (USS 451)

Block 125, Lot 4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21

Block 111, Lot 5, 6 7, 8, 9

Plat—1904 Mar 9

Each lot has a separate TAX ID/Account number

This lot is currently not filled but BSNC intends to fill this property in 2023 independent from this proposal and will be a level filled lot before the end of 2023.

All permitting has been obtained and filling of lot was delayed due to Typhoon Merbok.

If this is a lot of interest we can provide any necessary documentation for the fill permitting.



NOTICE OF INTENT TO AWARD

TO: Proposers of Record


PROJECT DESCRIPTION: OPTION TO LEASE CAMP LAND

The City of Nome (City) received and opened proposals on August 24, 2023 for the subject project. Based on the scoring tabulation (attached) the City intends to execute an Option to Lease with Bering Strait Native Corporation (BSNC).

Any proposer who believes the award has been made improperly may file a protest no later than five (5) days from the date of this Notice of Intent.

Dated this 8th day of September 2023.

City of Nome
OWNER

By 
Glenn Steckman – City Manager

Proposers of Record:

<u>Company</u>	<u>Representative</u>	<u>Contact Email</u>
Arctic Gold Mining, LLC	Cecil Connor	c.connor@arcticgoldmining.com
BSNC	Frank Johnson	frank.johnson@beringstraits.com
Alaska Gold Company	Frank Johnson	frank.johnson@beringstraits.com

Cc: Brooks Chandler, City Attorney

**PORT OF NOME (ADDP) MODIFICATION PROJECT
CAMP LAND LEASE**

Item C.

Proposers		Proposal			PROPERTY		CRITERIA SCORING					TOTAL SCORES	
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5d	Alaska Gold Co #4	4.32	Graveled Needs grading	Yes	See proposal north of Nome Beltz	Windfall Area	\$ 2,500.00	25	\$ 41,817.60	50	0.02	4	79

Recommended Camp Site

TO: The Mayor and Common Council

FROM: Glenn Steckman

RE: City Manager Report

September 8, 2023

Curfew Regulations:

Please be advised that city staff will be recommending changes to the curfew regulations at the next scheduled council meeting to make the ordinance clearer.

Airplane Landing Tax:

I will not have a recommendation by Monday's meeting. I am still waiting for information on airport activity and Arnie will be in town in the ten days to help develop more solid estimates.

STIP:

The road projects that are in the STIP for the City of Nome are funded. Seppala Dr. construction is planned for 2024. Center Creek Road Rehabilitation for 2025. The Front St start package was submitted a week ago. Depending on the complexity of the Right of Way issues, this project could start in 2025 or 2026. Steadman Street also could start as early as 2025 depending on ROW issues.

Work Session:

I have requested a work session to discuss the proposed man-camp. The question to be discussed is: does the city want to lease land at a cost from a private landowner or to provide city land at no cost. The RFP results are now in. It will still be up to the contractor to decide whether the local offer works or the contractor wants to pursue another site.

ATV enforcement:

The NPD will once again be enforcing ATV regulations. NPD will emphasize helmet requirements for passengers and the need for ATV's to be licensed to operate on state roads. While there was an initial uptick in compliance, there are indicators that drivers and passengers are slipping back to non-compliance. Alaska is the national leader in Traumatic Brain Injuries

New Paramedic:

The city has hired a new paramedic. After his orientation and training, the plans are to schedule the employee for Saturdays and two nights a week.

Juvenile Challenges:

This has been a busy summer with crimes being committed by juveniles. There were break-ins at local businesses, assaults on the homeless, assaults on residents and illegal entrances in vehicles parked at the airport to name a few.

Pool:

The pool project is again moving along as the contractor was finally able to rent hotel space for additional sub-contractors needed to complete the project.

Fall Clean-up:

Starting this Monday thru Saturday, city crews will be picking up bulk items from households that call for city pick up. A truck will be available at OSJ on Saturday the 16th for residents to drop off items and the Mono-Fill will be open Monday thru Saturday from 11am-6pm.

Vaping:

Reports are coming in of an increasing number of underage persons vaping. It was discussed at a council meeting by Councilmember Mark Johnson to regulate the sale of vaping devices and cartridges. I believe the Common Council should look at eliminating the sale of vaping devices and cartridges in Nome. While it will not eliminate the problem, the opportunities will be made more difficult.

Cannabis Sales:

AMCO has approved drive thru sales for cannabis shops. Greg Smith has a letter under the communications section of the agenda about this new policy. The question is whether the city will allow or disallow drive through sales of cannabis. Our zoning code is silent on the issue and does not give clear guidance for staff to approve or not.

Michaela Goade:

The City of Nome, the Kegoayah Kozga Public Library, the Nome Arts Council and Katirivik Cultural Center are hosting the award-winning illustrator and author Michaela Goade to Nome on Sunday, September 10 at 2pm. The Bering Sea Lions Club has generously provided funding to give away free copies of Ms. Goade's work at the Sunday event.

On Monday, September 11, from 6pm-8pm, a workshop will be given by Ms. Goade on writing and illustrating books.



Memo

To: Glenn Steckman – City Manager
 From: Joy L. Baker – Port Director *JLB*
 CC: Mayor Handeland & Common Council; Port Commission
 Date: September 8, 2023
 Re: Monthly PD Report/Capital Projects Update – Sep 2023

Administrative:

Cargo, fuel, gravel barges have been competing heavily with ship traffic the last month or so, with 5 more cruise ships due in September. The last of the fuel deliveries are currently underway this weekend (prior to 11 Sept meeting), keeping port staff busy at the dock headers, following the Norwegian cruise ship on Friday, that required posting of port security per MTSA regulations. Unfortunately, the office is having to close when all field personnel are engaged outside of the office due to lack of staff. We are hopeful the shared office position with Public Works can be filled soon, so training for the 2024 season can begin.

Causeway:

Arctic Deep Draft Port – Nome Modifications Pre-Construction Engineering & Design (PED):

The NOAA/National Marine Fisheries Service (NMFS) office has issued the approved Incidental Hazard Authorization (IHA) permit for the 1st year (2024) of the port expansion project. The file was published on 7 Sept 2023 on the federal register, and can be found at [this link](#) or by accessing www.federalregister.gov and entering 2023-19187 in the search bar at the top right of the main page. All comments received during the public process are included in the file, along with the responses provided to NMFS by the USACE and City.

The Corps and City designers are working through minor housekeeping details to finalize the drawing and specifications package. Once complete, both teams will sign and stamp all project materials for transmission to the contracting office for incorporation into the solicitation package, scheduled for release on 1 Nov 2023.

Prior to soliciting the project for construction, the City and USACE must execute the Project Partnership Agreement (PPA). On 11 Sept 2023 the City Council will consider a resolution authorizing execution of the PPA and certifications required by the USACE to proceed with Phase 1 construction.

On 11 Sept 2023, the City Council will also consider a resolution to award an Option to Lease to Bering Strait Native Corporation (BSNC) for land to be used for a man camp facility, as required of the City as the non-federal sponsor of the project. Award of the Option does not yet constitute confirmed use of the property, as the contractor will make the decision as to whether to use the site or not, which is when the 4-year lease will either be executed by the City or not.

The Corps intends to schedule another meeting in Nome on the project, but the actual schedule has not yet been determined. Once info is available, the City will share with Nome media and an ad will be placed in the newspaper.

Local Service Facilities (LSF) Design Integration:

Same as 2nd paragraph under the ADDP section above, the LSF design is proceeding ahead, as part of the main USACE design and specs package, which will continue from this point on throughout construction.

Causeway Bridge Repairs and Sediment Removal:

The Corps has issued an RFQ to Bristol Engineering for conducting repairs needed at the bridge, with a response due by 21 Sept 2023. The project is anticipated to be awarded in Oct/Nov 2023, with field work done in the 2024 season.

Arctic Port Reception Facility – Solid Waste Disposal (Incinerator):

New funding opportunities are being evaluated for this project.

Harbor:Inner Harbor CAP 107 Study (Deepen/Widen the Inner Basin):

The City continues to make monthly inquiries on the status of this project, with District reporting they are awaiting direction from Corps HQ on how to proceed. The delays on this issue have also been submitted to Alaska Delegation staff members for action.

Port Industrial Pad:West Nome Tank Farm (WNTF) - Property Conveyance:

The USAF continues evaluating ADEC's comments and stipulations on the quit claim deed and environmental covenants, which require execution to convey the USAF property to the City. ADEC's position on these documents are in line with the City's needs and intended use of the property.

Thornbush Laydown Site Development (TBS):

Dredge spoils from the port expansion and inner harbor project have been given clearance by two ADEC programs (Solid Waste and Contaminated Sites), to be disposed of in the undeveloped 9-acre portion of this property. The spoils will require dewatering before serving as a hardened base layer to the specified fill and surfacing to complete development of the 18-acre parcel.

Public Works continues to fill depressions on the TBS pad in an effort to maximize the usable surface before winter. This repair/prep will allow relocations of containers, dredges and equipment for construction setup in 2024.

Port Rd. Improvements (ADOT Project cost-shared with City/Port):

This state STIP project has been postponed to 2026/27 to avoid road construction conflicting with the heavier truck traffic during the port expansion. There is ongoing discussion regarding maintenance work in 2023.

FEMA DR4672 Merbok Recover Projects:Inner Harbor Dredging – South Wall and East Ramp:

Based on the City's procurement effort to obtain dredging services to sediment in the inner harbor, the state disaster team (ADHSEM) continues coordinating with FEMA to authorize a scope of work and sufficient funding to award the work. Considering the summer operating season is nearly complete, it is becoming more likely this work will be pushed to spring.

Cape Nome Jetty Repair:

Efforts to secure disaster funds to repair the jetty continue with ADHSEM and FEMA, to return the structure to pre-storm condition. On 11 Sept 2023, the City Council will consider a resolution to amend a task order with Bristol Engineering for a repair design and cost estimate to be performed by subcontract. This work will allow FEMA to authorize sufficient funds for the repair of the jetty.

Italics reflects no change in project information from previous report