

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: _____