



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](mailto: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.

**TO PROPOSERS**

**INSTRUCTIONS**

**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

<b>Mailing Address:</b>	<b>Physical Address:</b>
P.O. Box 281 NOME, AK 99762	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](mailto: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](mailto: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
<b>100</b>	<b>100%</b>	<b>Total</b>

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.



P.O. Box 281 • Nome, Alaska 99762

phone 907.443.6663 fax 907.443.5345

## 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 15<sup>th</sup> 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 15<sup>th</sup> 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:

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.

- 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.

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

**LANDLORD:**

**TENANT:**

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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.

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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.

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Notary Public

**EXHIBIT A-2 LEGAL DESCRIPTION OF THE LEASED PREMISES**