

CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES
PORT OF NOME
LOCAL SERVICES FACILITIES (LSF)
ARCTIC PORT EXPANSION

This Agreement is entered into this ____ day of June, 2021, by and between PND Engineers, Inc., herein referred to as "Consultant" and the City of Nome (herein referred to as "City"). For good and valuable consideration, the receipt whereof is hereby acknowledged, Consultant and City agree as follows:

WHEREAS, City is in need of *Port Expansion Design Services*

WHEREAS, Consultant, through education and experience, possesses the requisite license and skills to perform such duties;

WHEREAS, City is therefore desirous of engaging the services of Consultant as an independent contractor using independent professional judgment to accomplish assigned tasks;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Employment of Consultant

The work to be performed by Consultant pursuant to this Agreement is all tasks assigned by the City Manager or through a designee. A more specific identification of Consultant's professional services to be provided in accordance with the provisions of this Agreement is listed in Appendix A "Scope of Work," incorporated herein by reference and such other duties as requested by the City.

2. Time of Performance

Consultant shall commence performance within ten days following approval of this

Agreement and complete performance in accordance with the proposed project schedule (Charrette – June 2021, Phase I – November 2022). The time for completion may be extended by mutual written agreement of City and Consultant. Should any delays in the performance of the Work be caused solely by City, the completion date, but not the Consultant's fee, shall be extended by an amount of time equal to the length of the delay.

3. Fee

A. Lump Sum. City shall pay Consultant a lump sum of **\$6,660** for all services rendered by Consultant in performance of work authorized pursuant to this Agreement. The amounts payable to Consultant shall not exceed the sums identified in this paragraph without the prior written approval of the City. Any additional professional services other than those identified in item 1, Employment of Consultant, shall be requested in writing by City. The fee for such additional services shall be negotiated by the parties.

4. Payments

City agrees to make payments to Consultant as services are performed and costs are incurred, provided Consultant submits two copies of a proper invoice for each payment, in such form and accompanied by such evidence in support thereof as may be reasonably required by City.

Billing and expense invoices can be submitted once a month. Invoices shall be accompanied by an activity report detailing work and accomplishments.

City may, at its option, withhold ten percent from each payment pending satisfactory completion of the work by Consultant.

All invoices are otherwise due and payable within 15 days of receipt by the City.

5. Services Supplied by City

City shall provide Consultant with site access for the investigation of the project site.

6. Personnel

Consultant agrees to furnish all personnel necessary for expeditious and satisfactory performance of this Agreement, each to be competent, experienced and well qualified for the work assigned. No person objected to by the City shall be employed by Consultant for work hereunder.

7. Independent Contractor Status

In performing under this Agreement, Consultant acts as an independent contractor and shall have responsibility for and control over the details and means for performing the services required hereunder.

8. Indemnification

To the maximum extent permitted by law, Consultant shall defend, indemnify and save harmless City or any agent, employee, or other representative thereof, from and against losses, damages, liabilities, expenses, claims, and demands of whatever nature, including for death, personal injury, property damage or economic loss, to the extent arising out of any negligent act or negligent omission or willful misconduct of Consultant, its agents or employees while performing under the terms of this Agreement.

9. Assignment

Consultant shall not assign this Agreement or any of the monies due or to become due hereunder without the prior written consent of City.

10. Subcontracting

Consultant may not subcontract its performance under this Agreement without prior written consent of City. Any subcontractor must agree to be bound by the terms of this Agreement applicable to the services to be performed by the subcontractor.

11. Designation of Representatives

The parties agree, for the purposes of this Agreement, that City shall be represented by and may act only through the City Manager or such other person as they may designate

in writing or is identified in Appendix A. Consultant shall be represented by and may act only through Bryan Hudson.

12. Termination

Either party may terminate this Agreement, with or without cause, after first giving thirty days written notice. Consultant shall not be entitled to any anticipated profit on services not performed. **Termination of this agreement by either party may be for any reason, or no reason.**

13. Insurance

Consultant shall, at all times, at its own expense, keep in force the following described insurance for protection against the claims of employees or other persons, insuring both the Consultant and the City against liability that may accrue against them or either of them in connection with the performance of Consultant under this Agreement:

- a) Workers Compensation as required under AS23.30 naming all employees;
- b) Vehicle liability insurance including applicable uninsured/underinsured coverage with limits of liability not less than one million (\$1,000,000) dollars per occurrence combined Single limit bodily injury and property damage, or the minimum amount required by the law whichever is greater;
- c) Umbrella policy of not less than one million (\$1,000,000) dollars per occurrence;
- d) Professional errors and omissions insurance of not less than one million (\$1,000,000) dollars per occurrence.

All insurances, workers' compensation insurance, commercial general liability insurance and motor vehicle liability insurance, as described above shall include an endorsement stating the following: sixty (60) days advance written notice of cancellation, non-renewal, reduction change, shall be sent to the City Manager, PO Box 281, Nome, AK 99762.

14. Insurance Certificate

All insurance shall be placed with an insurance carrier or carriers satisfactory to the City and shall not be subject to cancellation or any material change except after 30 days

written notice to the City and shall provide that no failure of Consultant to comply with any condition or provision of this Agreement or other conduct of Consultant or those for whose conduct it is responsible, shall void or otherwise affect the protection under the policy afforded to the City. A Certificate of Insurance reflecting full compliance with these requirements shall, at all times during the term of this Agreement, be kept on deposit at the general offices of the City. If Consultant fails to comply with these insurance requirements, the City may terminate this Agreement on 10 days written notice.

15. Claims Recovery

Claims by City resulting from Consultant's failure to comply with the terms of and specifications of this Agreement and/or default hereunder may be recovered by City by withholding the amount of such claims from compensation otherwise due Consultant for work performed or to be performed. City shall notify Consultant of any such failure, default or damage therefrom as soon as practicable after discovery of such event by written notice. Nothing provided herein shall be deemed as constituting an exclusive remedy on behalf of City, nor a waiver of any other rights hereunder at law or in equity.

16. Compliance with Applicable Laws

Consultant shall, in the performance of this Agreement, comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations applicable to its performance hereunder, including, without limitation, all such legal provisions pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, and other employee benefit laws. Consultant also agrees to comply with all contract provisions pertaining to grant or other funding assistance which City may choose to utilize to perform work under this Agreement. Services performed under this Agreement shall be in accordance with sound, generally accepted consulting practices and shall comply with all applicable codes and standards.

17. Records and Audit

Consultant agrees to maintain sufficient and accurate records and books of account, including detailed time records, showing all direct labor hours expended and all

reimbursable costs incurred for at least three years after receipt of final payment and closure of all pending matters related to this Agreement. Said books shall be subject to inspection and audit by City.

18. Notices

Any official notice that either party hereto desires to give the other shall be delivered through the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid and addressed as follows:

To City:	To Consultant:
Glenn Steckman – City Manager City of Nome P.O. Box 281 Nome, AK 99762	Bryan Hudson – Principal PND Engineers, Inc. 1506 West 36th Avenue Anchorage, Alaska 99503

19. Venue and Applicable Law

The venue of any legal action between the parties arising as a result of this Agreement shall exclusively be laid in the Second Judicial District of the Superior Court of the State of Alaska, at Nome, Alaska, and this Agreement shall be interpreted in accordance with the laws of the State of Alaska.

20. Attorney’s Fees

In the event either party institutes any suit or action to enforce its rights hereunder, the prevailing party shall be entitled to recover from the other party its reasonable attorney’s fees and costs in such suit or action and on any appeal therefrom.

21. Waiver

No failure on the part of either City or Consultant to enforce any covenant or provision herein contained, nor any waiver of any right hereunder unless in writing and signed by the parties sought to be bound, shall discharge or invalidate such covenants or provisions or affect the right of the City or Consultant to enforce the same or any other provision in the event of any subsequent breach or default.

22. Binding Effect

The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and bind the parties and their respective successors.

23. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior negotiations and understandings are superseded and replaced by this Agreement and shall be of no further force and effect. No modification of this Agreement shall be of any force or effect unless reduced to writing, signed by both parties and expressly made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective date indicated below.

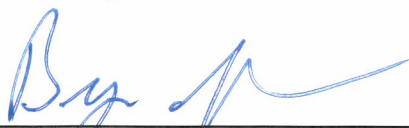
CITY

Dated: _____ By: _____

City Manager
City of Nome

CONSULTANT

Bryan Hudson

Dated: 6/9/2021 By: 

Authorized Signer of Consultant

APPENDIX A

SCOPE OF WORK

The scope of work covered under this initial contract includes as follows:

The USACE will perform a design charrette for this project in June of 2021 (exact date is to be determined) in which the Consultant shall participate to gain a further understanding of the project, the division of work between the USACE design team and the Consultant, and coordination processes. The charrette is expected to take place in Anchorage, Alaska and last for one full day. Upon completion of the charrette, the Consultant shall prepare a summary of the charrette for the project records for discussion at a project kickoff meeting. Fees for the design of Phase I of the project (as described in the RFP) will be negotiated after the charrette and kickoff meeting.

The City's designated representative for this contract is the Port Director, Joy Baker.