

AGREEMENT FOR OPERATION OF NOME CONVENTION AND VISITORS CENTER

Recitals:

WHEREAS, the Nome Chamber of Commerce, Inc. ("Chamber") is prepared to operate the Nome Convention and Visitors Center facility owned by the City of Nome ("City") located at 301 Front Street, and to undertake efforts to promote visitation to the City of Nome; and

WHEREAS, the City of Nome appropriated funds for operation of the Nome Convention and Visitors Bureau ("Visitors Center") in the FY09-FY22 municipal budgets and anticipates making future annual appropriations for operation of the Visitors Center and promotion of visitation to Nome.

In consideration of the above recitals and purposes named, the parties hereby agree as follows:

A. City of Nome.

Commencing July 1, 2022, City shall:

1. Subject to annual appropriation by the City Council, pay Chamber monthly payments of \$16,666.00 per month (\$200,000.00 per year) from the effective date of this agreement until June 30, 2023.
2. Continue to provide Chamber a non-exclusive revocable license for use of:
 - a. the name "Nome Convention and Visitors Bureau";
 - b. the address of P.O. Box 240 in Nome, so long as Chamber delivers to City any mail for City received at this address;
 - c. the phrase "There's no place like Nome.";
 - d. the "I [heart] Nome button design and logo;
 - e. all existing brochures/handouts, both print and electronic;
 - f. a month-to-month no cost lease on all furniture, fixtures and equipment, including "the musk ox" and other City owned exhibits at the Visitors Center. City may remove or utilize such item at any time in the future as City deems advisable upon giving reasonable notice to the Chamber.
 - g. Provide and pay for telephone/fax service at the Visitors Center.

3. Allow use of the Visitors Center by Chamber for rent of \$0 per month.
4. Provide a link from City's web site to the internet site established by Chamber.
5. Provide Chamber access to all public records related to the Visitors Center.
6. Maintain the exterior of the Center including, but not limited to, sidewalk, stair, and mobility ramp snow removal; exterior painting; and structural integrity.
7. Provide and pay for utility service (heat, electricity, water and sewer) to the Visitors Center.
8. ~~Should the position of Executive Director remain vacant for ninety (90) days the City will reduce its payment to the visitor center by \$5,000.00 per month or a pro-rated period per each thirty (30) day period of vacancy of the position.~~
9. The City does reserve the right to participate in the interview of a new executive director should the position become vacant during the term of this agreement.

B. Nome Chamber of Commerce, Inc., Obligations.

1. Commencing July 1, 2022, Chamber will:
 - a. Operate the Visitors Center in accordance with the Nome Chamber of Commerce Visitors Center Goals for FY21 and the Nome Chamber of Commerce Visitors Center Budget for FY22/23, copies of which are attached hereto as Exhibits A and B (collectively "the Goals").
 - i) Operating hours shall be a minimum of five days a week during the winter season and 6 days a week in the summer, with hours set to best meet visitor demand, but approximating a normal number of business hours (except for specific holidays to be agreed upon by City and Chamber). Business hours are to be acceptable to the City of Nome.
 - ii) Additional hours of operation shall be added to the regular operation schedule for special events, including, but not limited to, the Iditarod Trail Sled Dog Race, and to accommodate the seasonal cruise ship schedule.
 - iii) Visitors Center shall be staffed with at least one paid employee during all operating hours.
 - b. Submit quarterly written reports to City detailing actions towards realization of the goals. Said reports shall include:

- i) Number of inquiries responded to;
 - ii) Traffic counts at Visitors Center;
 - iii) Narrative description of visitor promotion activities for the previous quarter;
 - iv) Planned visitor promotion activities for the current quarter;
 - v) Current problems related to promotion of Nome as a visitor destination and proposed solutions.
- c. Coordinate the provision of Iditarod overflow housing;
 - d. Maintain a community events calendar;
 - e. Maintain a walking tour map of Nome;
 - f. Provide City with user rights in any and all promotional brochures and/or marketing materials and/or videos created by the Chamber or its contractors during the term of this Agreement;
 - g. Chamber shall mark or otherwise identify all Chamber owned furniture or equipment placed in the building so as to avoid confusion as to ownership. Furniture and equipment not so marked or identified shall be presumed to be City property;
 - h. Provide and pay for internet service at the Visitors Center;
 - i. Provide and pay for all interior maintenance of the Visitors Center, including, but not limited to, janitorial services;
 - j. Provide public restroom services in the building;
 - k. Keep interior of the Visitors Center in a clean and neat state which is comfortable for visitors;
 - l. Ensure that excessive loitering by locals is prohibited on Visitors Center property;
 - m. Post all materials to the Visitors Center website and Facebook page that City requests be posted;
 - n. Attend all monthly City of Nome Department Head meetings unless excused;

C. Additional Obligations of Parties.

1. Term and Option to Renew. This Agreement shall commence July 1, 2022, and shall expire June 30, 2023, unless earlier terminated pursuant to Section C (2), below. This term may be extended for an additional one (1) year if both parties agree to such an extension.

2. Termination.

a. Either party may terminate this Agreement upon six (6) months prior written notice.

b. At termination or expiration of this Agreement, the Chamber shall provide City all documents and data files of Chamber related to its performance under this Agreement.

c. Upon expiration or termination of this Agreement, the Chamber shall surrender and deliver the Visitors Center to the City in as good condition as when received by the Chamber or as thereafter improved, excepting only: 1) ordinary wear and tear; 2) deterioration or functional obsolescence of improvements due to age; and 3) any defects objected to in a writing signed by the Chamber and delivered to the City prior to the Chamber's execution of this Agreement.

d. Not later than the expiration or termination date of this Agreement, or of any extended term, Chamber shall remove all of its property from the Visitors Center. Any damage caused to the Visitors Center by reason of such removal shall be immediately paid by Chamber. Any property not so removed by Chamber may become the property of the City at the City's option.

e. The City may, in its sole discretion, remove and store any or all property not timely removed from the Center. Storage shall be for the account and at the expense of Chamber, and without liability for loss thereof or damage thereto on the part of the City. If after a period of thirty (30) days or more Chamber has not retrieved its property from storage and paid City the reasonable cost of storage, the City may sell any or all of such property at a public or private sale. The City shall mail written notice of such sale to Chamber at least ten (10) days prior to sale. The notice shall state the date, time and place of the sale. The City may set the time, place, and manner of the sale in its sole discretion. The proceeds of any such sale shall be applied first to the costs of sale (including reasonable attorneys' fees), and then to storage charges. Any remaining balance shall be mailed to Chamber.

3. Equipment. Chamber shall provide all equipment necessary for performance of its obligations under this Agreement.

4. Improvements to Center. Chamber may make improvements to the interior of the Center; however, removal or relocation of doors, walls, or windows requires the written permission of the City.

5. Non-Discrimination. The Chamber shall not discriminate against any person or persons, or exclude any persons from participation in the Center's operations, programs, or activities conducted on the City's premises because of race, color, age, sex, handicap, national origin, or religion.

6. Indemnification/Insurance.
 - a. Chamber shall defend, indemnify and hold harmless the City, its agents or employees from and against any and all claims, demands, and causes of action of any nature whatsoever, and any expenses incident to defense of and by the City therefrom, for any injury to or death of persons or loss of or damage to property in any manner arising out of Chamber's use and occupation of the Visitors Center or performance of this Agreement, except to the extent caused by the sole negligence of the City.

 - b. In addition, Chamber shall procure and maintain commercial general liability insurance coverage written by responsible insurer(s) licensed to do business in the State of Alaska, naming the City as an additional named insured, which coverage shall not be less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate, including death, property damage, and personal injury liability. Chamber shall also obtain "all risks" property insurance for all contents of the Visitors Center whether Chamber's personal property or City's personal property, in an amount at least equal to the replacement cost of all Chamber's fixtures and improvements in the Visitors Center. Such insurance shall also be written by responsible insurer(s) licensed to do business in the State of Alaska, and shall name the City as an additional named insured. Chamber agrees to furnish certificates of insurance evidencing such insurance coverage to the City at or before the effective date of this Agreement. Chamber further agrees to immediately notify the City of any cancellation, termination, or decrease in its insurance. The certificates of insurance shall contain an endorsement providing for not less than thirty (30) days' notice to the City of intent to cancel or decrease the insurance. Chamber shall also maintain required workers' compensation insurance. If at any time during the term of this Agreement or any extension or renewal thereof a competent insurance agent deems this amount of coverage inadequate, Chamber will immediately increase its coverage to an adequate level.

 - c. All insurance provided by Chamber under this Agreement shall (1) contain a waiver of subrogation by the insurer in favor of the City; (2) provide that an act or

omission of the City will not void the policy or be a condition to recovery; and (3) provide primary insurance coverage.

d. City shall procure and maintain property insurance covering the Visitors Center and all personal property of City in the Visitors Center and shall procure and maintain public liability insurance coverage.

7. Use of Visitors Center. The Chamber may use the Visitors Center solely for purposes related to the performance of this Agreement and may also use the Visitors Center as the Chamber's local office for Chamber purposes. Chamber shall not use the Visitors Center for residential purposes.

8. Compliance with Laws and Care of Premises/Indemnity.

a. Chamber shall comply with all applicable laws, ordinances and regulations now or hereafter enacted in any manner affecting the Visitors Center, or the use thereof. Chamber agrees to defend, indemnify, and hold the City, its agents, or employees financially harmless (a) from all consequences of any violation of such laws, ordinances, and/or regulations, and (b) from all claims for damages on account of injuries, death, or property damage resulting from such violation.

b. Chamber shall not permit any unlawful occupation, business, or trade to be conducted at the Visitors Center, or any use to be made thereof contrary to any law, ordinance, or regulation.

c. Chamber shall neither use nor permit any assignee to use the Visitors Center for any purpose which poses a substantial risk of damage by means of fire or otherwise.

9. Default.

a. If Chamber at any time during the term of this Agreement or any holdover period shall fail to observe or perform any of Chamber's other obligations hereunder, and if within thirty (30) days after the City shall have mailed to Chamber written notice specifying such default or defaults, Chamber shall not have commenced to cure such default and proceed diligently to cure the same, then the City may give Chamber notice of termination of this Agreement. In such a case, on a date specified in such notice, which date shall not be less than thirty (30) days after the date of mailing of such notice ("termination date"), the term of this Agreement shall come to an end.

b. The City shall not be in default of any of its obligations hereunder unless and until it shall have unreasonably failed to perform said obligation within thirty (30)

days, or such additional time as may be reasonably required, after receipt of written notice by the City specifying the default.

10. Notices. Any and all notices required or permitted under this Agreement, unless otherwise specified in writing by the party whose address is changed, shall be addressed as follows:

THE CITY: City of Nome, Attn: City Manager
P. O. Box 281
Nome, AK 99762

THE CHAMBER: Nome Chamber of Commerce, Attn: Executive Director
P.O. Box 250
Nome, AK 99762

11. Rights or Remedies. No right or remedy herein conferred upon or reserved to the Chamber or City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

12. Waiver ad forbearance. Except to the extent that such party may have otherwise agreed in writing, no waiver by a party of any breach by the other party of any of its obligations, agreements, or covenants hereunder shall be deemed to be a waiver of any subsequent breach.

13. Inspection. The City will retain a key to the Center. City may inspect the Visitors Center at its convenience without prior notice to Chamber.

14. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the parties hereto.

15. Assignment or Subletting. Chamber shall not assign, sublet, or grant a security interest in this Agreement without the prior written consent of the City.

16. Integration and Modification. This document contains the entire agreement of the parties hereto. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Agreement, or the performance of either party hereto, are merged and integrated into the terms of this document. This Agreement may not be modified or amended except by a writing signed by both parties hereto, and any purported amendment or modification is without effect until reduced to a writing signed by both parties hereto.

17. **Governing Law/Construction.** This Agreement shall be construed and governed by the laws of the State of Alaska. This Agreement was negotiated between the parties and shall not be strictly construed against either party.

18. **Covenants and Conditions.** Each term and each provision of this Agreement shall be construed to be both a covenant and a condition.

19. **Time of the Essence.** Time is of the essence as to each term and provision of this Agreement to be performed by Chamber.

20. **Severability.** Any provision of this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair, or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

Dated this _____ day of June, 2022.

CITY OF NOME

NOME CHAMBER OF COMMERCE, INC.

BY: _____

BY: _ _ _ _ _

Glenn Steckman
ITS: CITY MANAGER

Paul G. Kosto
ITS: EXECUTIVE DIRECTOR

Notary's Acknowledgment:

STATE OF ALASKA)
) ss
SECOND JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me by Glenn Steckman and Paul G. Kosto, both known to me personally, this _____ day of June, 2022.

Witness my hand and seal:

Notary Public for Alaska
My Commission Expires: _____

