

Presented By:
Port Director

Action Taken:

Yes 6
No 0
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. 17-05-03

AN ORDINANCE AUTHORIZING THE DISPOSAL OF MUNICIPAL PROPERTY BY LEASE TO ALASKA MARINE LINES.

Section 1. **Authority.** This ordinance is adopted pursuant to authority granted by NCO 2.10.030(c).

Section 2. **Classification.** This is a non-Code ordinance.

Section 3. **Authorization of Lease to Alaska Marine Lines.** The City Council hereby authorizes the disposal of its interest in Lot 1, Block 4, Port of Nome containing approximately 71,043 square feet and a portion of Lot 1, Block 2 containing approximately 6,000 square feet to Alaska Marine Lines substantially upon the terms and conditions that certain lease attached hereto as Exhibit A.

Section 4. **Legal Description.** The leased premises are shown on the attached map.

Section 5. **Findings.** The City Council hereby finds that the use of the Property is for the furtherance of the development of local trade or industry, specifically, the shipping and goods transportation industry.

Section 6. **Interest Conveyed and Identification of Disposal Instrument.** A possessory interest is conveyed by a written lease for a term of five years with one five year extension at Alaska Marine Lines' option.

Section 7. **Value of City's Interest.** Based on the current assessment of the value of the Property, the city estimates the fair market rental value of the Property for the term of the proposed lease equals \$1,540.86 per week. This calculation was made based on a presumed fair market value rental rate of \$0.02 per square foot per week.

Section 8. **Time Place and Manner in Which Disposal Shall Occur.** Disposal shall occur as soon after approval of this ordinance as practical.

Section 9. **Effective Date.** This ordinance is effective upon adoption.

APPROVED and SIGNED this 12th day of June, 2017.



RICHARD BENEVILLE,
Mayor

ATTEST:



THOMAS MORAN,
City Manager

City of Nome, Alaska

LEASE AGREEMENT

This Lease Agreement ("**Lease**") effective beginning the 1st day of September, 1, by and between the City of Nome, a Municipal Corporation ("**City**"), and Alaska Marine Lines., ("**Tenant**"), for purposes of establishing terms governing the lease of Port of Nome, Alaska property.

The parties agree as follows:

1. Premises:

(a) Leased Premises. The City leased to Tenant the following real property, plus any existing improvements on the property ("**Leased Property**").

Port of Nome, Block 1, Lot 4 - 71,043 square feet and
Port of Nome, Block 2, Lot 1, south portion – 6,000 square feet

The Leased premises are taken by Tenant "as is, where is", subject to the terms of this Lease.

2. Access. The City leased to Tenant those rights of ingress and egress to the Leased Premises as are reasonably necessary to the operations of its business thereon.

3. Encumbrances. The Leased Premises are let subject to deed restrictions, easements, rights-of-way, if any, zoning and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authority. Tenant shall not allow or cause any encumbrances to lie against the Leased Premises.

4. Term.

(a) The initial term of this Lease shall be for a five year period from September 1, 2017, unless terminated earlier in accordance with this Lease.

(b) Tenant may seek to extend the term of this Lease once for a period of five (5) additional years by giving the City thirty (30) days written notice prior to the expiration of this Lease. The Lease may be extended upon mutual consent of both parties.

(c) Tenant, after two (2) years beginning with the start of the initial term, may terminate this Lease for convenience giving the City written notice of its intent to terminate at least sixty (60) days before termination is to be effective.

5. Rent.

(a) Initial Term. Tenant shall pay, during the initial term of this Lease rent of \$0.02 per square foot per week, equaling \$1,540.86 per week for the Leased Premises.

(b) Additional Term. The rent for any second 5 year term shall be \$0.022 per square foot per week, equaling \$1,694.95 per week for the Leased Premises.

(c) Payment Schedule. Rent shall be paid to the City, without notice or demand, in advance on a quarterly basis with the first payment for a three-month period of September 1, to November 30, due on September 1, 2017, or upon execution of this Lease Agreement, whichever occurs later.

(d) Rent shall be paid at the City's address.

6. Taxes and Charges Treated as Additional Rent. Tenant agrees to pay to the public authorities charged with collection thereof, promptly as the same become due and payable, all taxes, assessments, permit, inspection and license fees and other public charges, arising out of Tenant's occupancy, use or possession of the Leased Premises, including but not limited to municipal sales and property taxes, which are or become payable by Tenant during the term of this Lease or any extension or holdover period. Tenant agrees to exhibit to the City, on demand, receipts evidencing payment of all taxes, assessments and public charges so payable by Tenant. These payments constitute part of Tenant's rent and failure to pay these taxes in a timely fashion to the appropriate authority is equivalent to the non-payment of rent. This paragraph shall not be construed to require double payment of said taxes (once as taxes and once as rent), but only once as taxes.

7. Utility Service. Utility services are not included in Tenant's rent. Tenant shall arrange for its own utility services and bear all costs for utilities.

8. Compliance with Laws and Care of Premises/Indemnity. Tenant shall comply with all applicable laws, ordinances and regulations now or hereafter enacted in any manner affecting the Leased Premises, or the use thereof. Tenant 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 arising from Tenant's use or occupancy of the Leased Premises.

9. Maintenance Obligations.

(a) Tenant, at its own cost and expense, shall keep the Leased Premises and all Tenant's property which at any time may be situated thereon, clean and in good condition and repair free of hazard or nuisance during the entire term of this Lease, plus any extensions or holdover periods.

(b) Tenant shall, upon expiration or termination of this Lease, surrender and deliver the Leased Premises to the City in as good condition as when received by Tenant or as thereafter improved, ordinary wear and tear excepted.

10. Improvements.

(a) Tenant shall not make any permanent improvements to the Leased Premises. Tenant may erect removable fixtures on the Leased Premises, with the advance written permission of the City. The City's permission is to insure conformity with the planned uses of the Leased Premises and surrounding property. The City shall not be responsible for the design of any fixtures or the conditions thereof.

(b) Not later than sixty (60) days after expiration or termination date of this Lease, or of any extended term, Tenant shall remove all of its property from the Leased Premises. During the period Tenant is removing its fixtures and property from the Leased Premises, Tenant shall pay pro rated rent in the amount provided in Section 5 of this Lease for the period when Tenant is removing its fixtures and property from the leased premises.

11. Indemnification/Insurance.

(a) Tenant shall defend, indemnify and save 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 occurring on the Leased Premises, or in any manner arising out of Tenant's use and occupation of the Leased Premises or the condition thereof, during the term of this Lease or any extension or holdover period.

(b) In addition, Tenant 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, pertaining to the leased Premises, or Tenant's activities thereon, shall not be less than \$1,000,000.00 per occurrence \$1,000,000.00 in the aggregate, including death, property damage and personal injury liability. Tenant agrees to furnish certificates of insurance evidencing such insurance coverage to the City at or before the time this Lease is signed. Tenant further agrees to immediately notify the City of any cancellation, termination or decrease in its insurance pertaining to the Leased Premises. 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. Tenant shall also maintain required Workers' Compensation insurance. If at any time during this Lease or any extension or holdover period a competent insurance agent deems this amount of coverage inadequate, Tenant will immediately increase its coverage to an adequate level.

(c) All insurance provided by Tenant under this Lease 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) Tenant shall be responsible for insuring Tenant's contents, equipment, etc. stored in and on Leased Property.

12. Quiet Enjoyment. Provided Tenant is not in default hereunder, the City covenants that Tenant shall have peaceful and quiet enjoyment of the Leased Premises and that the City will warrant and defend Tenant in the peaceful and quiet enjoyment of the Leased Premises.

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

The City: City of Nome
 P.O. Box 281
 Nome, AK 99762
 Attn: City Manger

Tenant: Alaska Marine Lines
 P.O. Box 24348
 Seattle, Washington 98124-4348

14. Default.

(a) If Tenant at any time during the term of this Lease or any extension hereof shall (a) fail to make payment of any installment of rent or other sums, or (b) fail to observe or perform any of Tenant's other obligations hereunder, and if any such default shall not be cured as to (a) within ten (10) days after mailing of written notice of such failure to make payments, or as to (b) within thirty (30) days after the City shall have mailed to Tenant written notice specifying such default or defaults, Tenant shall not have commenced to cure such default and proceed diligently to cure the same, then the City may give Tenant notice of termination of this Lease. 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 Lease shall come to an end. Tenant hereby covenants to peaceably and quietly yield up and surrender to the City, not later than the termination date, the Leased Premises and all property located thereon not the property of the Tenant, and to execute and deliver to the City such instrument or instruments as shall be required by the City to properly evidence termination of Tenant's rights hereunder or its interest therein.

(b) In the event of termination of this Lease, the City shall have the right to repossess the Leased Premises and such property without process of law or any form of suit or proceedings, subject to Tenant's removal rights under §10, as well as the right to sue for and recover all rents and other sums accrued up to the time of such termination, plus damages arising out of any breach on the part of Tenant, including damages for rent and other sums not then accrued. The City shall also have the right, without resuming possession of the Leased Premises or terminating this Lease, to sue for and recover all rents and other sums, including damages, at any time and from time to time accruing hereunder.

(c) 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.

15. Costs Upon Default/Interest. In the event either party shall be in default in the performance of any of its obligations under this Lease, and an action is brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred in prosecuting the action, including full, actual, reasonable attorney's fees. Any sums due from the Tenant under this Lease shall accrue interest at 10.5% per annum from the date they are due until paid in full.

16. Rights or Remedies. No right or remedy herein conferred upon or reserved to the 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.

17. Waiver and 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.

18. Inspection. The City may inspect the Leased Premises upon twenty-four (24) hours' notice to Tenant. No advance notice shall be required in the event of a suspected emergency. Tenant shall also provide the City with the name and home phone number of its manager for use in an emergency.

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

20. Assignment or Subletting. Tenant shall not assign or sublet or grant a security interest in this Lease without the prior written consent of the City. An assignment of this Lease for loan security purposes shall not be construed as a subordination of the City's rights hereunder, nor a subordination of its fee. The City's permission to sublet or assign will not be unreasonably withheld. Tenant's request to

assign, sublease or grant a security interest must be in writing and must show the name and address of the proposed assignee, sublessee or secured party.

21. Holding Over. In the event that Tenant holds over at or after the end of the term, or any extended term, the tenancy shall be deemed a tenancy by sufferance and Tenant shall be liable for the current fair rental value of the property or the rent set by this Lease, whichever is greater, in addition to all other sums payable by Tenant under this Lease. All covenants required to be observed by Tenant continue into any holdover period.

22. 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 Lease or the performance of either party hereto are merged and integrated into the terms of this document. This Lease 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.

23. Governing Law/Construction. This Lease shall be construed and governed by the laws of the State of Alaska. This Lease was negotiated between the parties and shall not be strictly construed against either party. Venue for any dispute related to this Lease shall lie exclusively with the trial courts for the State of Alaska, Second Judicial District at Nome, Alaska.

24. Covenants and Conditions. Each term and each provision of this Lease shall be construed to be both a covenant and a condition.

25. Time of the Essence. Time is of the essence as to each term and provision of this Lease to be performed by Tenant.

26. Severability. Any provision of this Lease 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.

27. Hazardous Substances. Tenant shall strictly comply with all applicable laws, ordinances or regulations respecting the handling, containment and cleanup of discharges or releases of oil or hazardous substances, including petroleum fractions. In the event of a discharge or release of oil or a hazardous substance, including petroleum fractions, resulting from or arising out of Tenant's activities on the Leased Premises, Tenant shall (1) promptly and completely, at its own sole expense, clean up the discharge or release, in strict compliance with all applicable laws, ordinance, regulations, and agency directions; and (2) indemnify and hold harmless the City from all consequences thereof, including the costs of state or federal remedial or compliance actions, whether informal or formal, all clean up and remediation costs needed to

restore the Leased Premises to its previous condition, and reasonable attorney's fees.

DATED this ____ day of _____, 2017.

CITY OF NOME, ALASKA

ALASKA MARINE LINES

By _____
Thomas C. Moran
City Manager

By _____

Its _____

STATE OF WASHINGTON)
) ss.
_____ COUNTY)

On this ____ day of _____, 2007, before me, a Notary Public in and for the State of Washington duly commissioned and sworn as such, personally appeared _____, the _____ of Alaska Marine Lines and acknowledged this instrument to be a free and voluntary act and deed of the named Tenant for the uses and purposes herein mentioned, and on oath stated that he/she was authorized to execute this instrument.

WITNESS my hand and official seal the day and year last above written.

Notary Public for Washington
My commission Expires: _____

STATE OF ALASKA)
) ss.
SECOND JUDICIAL DISTRICT)

On this ____ day of _____, 2017, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Thomas C. Moran, to me known to be the City Manager of Nome, and known to me to be the person who executed this instrument on behalf of the City.

WITNESS my hand and official seal the day and year last above written.

Notary Public for Alaska
My commission Expires: _____