

1st Reading: April 23, 2018
2nd Reading: May 29, 2018

Presented By:
City Manager

Action Taken:
Yes 5
No 0
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. O-18-04-02

AN ORDINANCE AUTHORIZING THE DISPOSAL OF MUNICIPAL PROPERTY BY LEASE TO THE FEDERAL AVIATION ADMINISTRATION (FAA)

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

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

Section 3. Authorization of Lease. The City Council hereby authorizes the disposal of a portion of its interest substantially upon the terms and conditions contained in the attached Lease No. DTFAWN-17-L-00216, Exhibit A.

Section 4. Legal Description. A tract of land near the Nome Airport, Alaska, located in Section 26, Township 11 South, Range 34 West, Kateel River Meridian, Alaska in the Cape Nome Recording District, Second Judicial District, State of Alaska more particularly described as follows: a one hundred foot wide strip of land containing 78,137 sq. ft. through the City of Nome Cemetery as shown on Exhibit B - Record of Survey for Proposed Nome Cemetery, Document Number 2015-8, dated 08/07/2015.

Section 5. Findings. The City Council hereby finds that the disposal of the Property is for a necessary public service, specifically the continued operation of a Medium-Intensity ALS w/ Runway Alignment (MALSR) Facility Site.

Section 6. Interest Conveyed and Identification of Disposal Instrument. A possessory interest by a written lease for a term of eight (8) years.

Section 7. Value of City's Interest. Based on the current assessment, the Property value for the parcel is estimated as \$8,595.00. The FAA shall pay \$1,806.39 per year during the term of the lease.

Section 8. Time Place and Manner in Which Disposal Shall Occur. Immediately upon approval of this ordinance at the regular meeting of the City Council scheduled for May 29, 2018.

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

APPROVED and **SIGNED** the 29th day of May, 2018.



RICHARD BENEVILLE, Mayor

ATTEST:



BRYANT HAMMOND, Clerk

LAND LEASE

Between

**THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

And

CITY OF NOME

Lease Number: DTFAWN-17-L-00216

THIS LEASE is hereby entered into by City of Nome whose address is P.O. Box 28, Nome, AK 99762 hereinafter referred to as the Lessor and the United States of America, herein after referred to as the Government. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor and the Lessor's successors and assigns.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows:

1. PREMISES (08/02) - The Lessor hereby leases to the Government the following described property, hereinafter referred to as the premises:

MEDIUM INTENSITY ALS w/RUNWAY ALIGNMENT (MALSR) FACILITY SITE

A tract of land near the Nome Airport, Alaska, located in Section 26, Township 11 South, Range 34 West, Kateel River Meridian, Alaska in the Cape Nome Recording District, Second Judicial District, State of Alaska more particularly described as follows:

One hundred foot wide strip of land containing 78,137 sq. ft. through the City of Nome Cemetery as shown on Exhibit A - Report of Survey for Proposed Nome Cemetery, Plat Number 2015-8, dated 08//07/2015 and Exhibit B - Federal Aviation Administration (FAA) drawing titled "MALSR-RWY 27 Electrical Cable Plan and Details, Nome, Alaska, drawing No. ALD-OME-325.301, dated 6/1/1990.

- A. Together with a right-of-way for ingress to and egress from the premises for Government employees, their agents and assigns, a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or

telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, and in the approximate locations shown on the attached Exhibit A and B.

- B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.
 - C. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.
 - D. On the Premises, the Government currently has three MALSR lights on located unimproved land. No known grave sites exist in the vicinity of the current MALSR lights. Lessor agrees to locate all future grave sites, if any in such a way as to minimize interference such that the Government can reasonably continue to install, maintain, and operate the runway lighting systems and /or runway approach systems. In the conduct of these activities, the Government will not remove any human remains or disturb any grave sites without prior coordination with the Lessor, and only in situations where other reasonable solutions are not available.
 - E. Use of Premises: The premises shall be used and occupied solely for the purpose of installing, maintaining, and operating runway lighting and/or runway approach systems reasonably required in the conduct of airport operations including, but not limited to installation by government of replacement or additional light fixtures or approach system reasonably useful or in furtherance of this purpose.
- 2. TERM (08/02) - To have and to hold, for the term commencing on 10/01/2015 and continuing through 09/30/2023 inclusive, PROVIDED that adequate appropriations are available from year to year for the payment of rentals.
 - 3. CONSIDERATION (08/02) - The Government shall pay the Lessor rental for the premises in the amount of \$1,806.39 per year during the lease period. Payments shall be made in arrears at the end of each Government fiscal year without the submission of invoices or vouchers. The payments shall be directly deposited in accordance with the Electronic Fund Transfer (EFT) Payment clause in this lease. Payments shall be considered paid on the day an electronic funds transfer is made.
 - 4. HOLDOVER (10/13) – If, after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. Rent shall be paid in accordance with the terms of the lease, in arrears on a prorated basis, at the rate paid during the lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquire the property in fee or vacated the premises.

5. CANCELLATION (08/02) - The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the Lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by certified mail return receipt requested and mailed at least 90 days before the effective termination date.
6. NON-RESTORATION (7/14) - It is hereby agreed between the parties that, upon termination of its occupancy (due to termination or expiration of the lease), the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this lease, including any holdover period. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.
7. PAYMENT BY ELECTRONIC FUND TRANSFER (07/14) – All payment by the Government under this lease will be made by electronic funds transfer (EFT). The Government will make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210. The Lessor is responsible to maintain correct payment information with the Government. If the Lessor's EFT information is incorrect or outdated, the Government is not required to make payments to the Lessor until correct/current EFT information is submitted to the Government for payment distribution.
8. LESSOR PAYMENT INFORMATION - NON-SAM (01/13)
 - A. The System for Award Management (SAM) system is the FAA's required method to receive vendor information. However, you have been granted an exception to SAM and, therefore, must provide your initial payment information and any future changes to your payment information to the RECO on a completed and signed "Vendor Miscellaneous Payment Information" form, together with any other required notice under this lease. Having an exception from SAM does not excuse a vendor from EFT payment requirements, as required in the clause above called, "Payments by Electronic Fund Transfer."
 - B. The Lessor is responsible to maintain correct payment information with the FAA, and for any liability that may result from the Government's reliance on incomplete or inaccurate information provided by the Lessor. Failure to provide accurate information or adequate notice of changes to Lessor payment information can result in a determination of "incorrect information."
9. QUIET ENJOYMENT (10/96) - The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

10. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (07/14) –

- A. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.
- B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.
- C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.
- D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

11. NOTIFICATION OF CHANGE IN OWNERSHIP OR CONTROL OF LAND (10/14) –

If the Lessor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the "change in property rights". Concurrent with the written notification, the Lessor or Lessor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

12. LESSORS SUCCESSORS (10/96) - The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's successors and assigns.

13. CONTRACT DISPUTES (11/03)

A. All lease disputes arising under or related to this lease shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

B. All Lease Disputes shall be in writing and shall be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70
Federal Aviation Administration
800 Independence Avenue, SW
Room 323
Washington, DC 20591
Telephone: (202) 267-3290
Facsimile: (202) 267-3720

C. A lease dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease claim involved. A lease dispute is considered to be filed on the date it is received by the ODRA.

D. The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.

14. ANTI-KICKBACK (7/14) - The Anti-Kickback Act of 1986 (41 U.S.C. § 8701 et seq.), prohibits any person from:

- A. Providing or attempting to provide or offering to provide any kickback;
- B. Soliciting, accepting, or attempting to accept any kickback; or
- C. Including, directly or indirectly, the amount of any kickback in the lease price charged by a prime Lessor to the United States Government or in the lease price charged by a sublessor to a prime Lessor or higher tier sublessor.

15. ASSIGNMENT OF CLAIMS (10/96) - Pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305 the Lessor may assign his rights to be paid under this lease.
16. COVENANT AGAINST CONTINGENT FEES (08/02) - The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this lease upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or, in its discretion, to deduct from the lease price or consideration, or otherwise recover the full amount of the contingent fee.
17. OFFICIALS NOT TO BENEFIT (10/96) - No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this lease, or to any benefit arising from it. However, this clause does not apply to this lease to the extent that this lease is made with a corporation for the corporation's general benefit.
18. EXAMINATION OF RECORDS (08/02) - The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this lease have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this lease.
19. NOTICES - All notices/correspondence shall be in writing, reference the Lease number, and be addressed either to the physical address below, or to the current email addresses for the RECO for the Alaskan Region and the Lessor's Property Manager:

To the Lessor:
City of Nome
PO Box 281
Nome, AK 99762

To the Government:
DOT / Federal Aviation Administration
Real Estate & Utilities Group ALO-820
222 W 7th Ave, #14
Anchorage, AK 99513

20. LESSORS REQUESTED PROVISIONS:

A. HAZARDOUS SUBSTANCES CONTAMINATION (05/00)

The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the lighting/runway approach facility

B. AMENDMENT

This Lease may be amended only by written agreement signed by both parties.

C. INTEGRATION AND MODIFICATION

This Lease 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 Lease.

D. 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 remain in full force and effect.

E. WAIVER AND FOREBEARANCE

Except to the extent that such party may have otherwise agreed in writing, no waiver by such 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 of the same or any other covenant, agreement or obligation. Nor shall any forbearance by such party to seek a remedy for any breach of the other party be deemed a waiver by such party of its rights or remedies with respect to such breach.

IN WITNESS WHEREOF, the parties hereto have signed their names.

LESSOR:

City of Nome

Date

UNITED STATES OF AMERICA:

Linda Walker
Real Estate Contracting Officer

Date

