NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 23-43

A RESOLUTION OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY APPROVING A GROUND LEASE WITH THE CITY OF KOBUK FOR PUBLIC SAFETY USE, AND RELATED PURPOSES.

WHEREAS: the Northwest Arctic Borough Assembly is the governing body for the Northwest Arctic Borough; and

WHEREAS: the Northwest Arctic Borough is a home rule regional government and provides essential programs and services to improve the quality of life for all residents and their 11 communities; and

WHEREAS: the Borough needs adequate public safety facilities in Kobuk to support public safety programs for firefighting, search and rescue, and the Village Public Safety Officer Program; and

WHEREAS: the City of Kobuk has agreed to lease to the Borough a portion of the Old Clinic lot at a nominal rate for a term of 20 years to promote public safety in the community; and

WHEREAS: the Borough Administration has reviewed the lease terms and inspected the property, and recommends that the Borough execute a lease allowing the Borough to utilize a portion of the property for public safety uses; and

WHEREAS: the lease agreement will serve a public purpose beneficial to the Borough, the City of Kobuk, and its residents; and

WHEREAS: the Borough Assembly wishes to approve execution of a lease agreement with the City of Kobuk for use of a portion of the Old Clinic lot for public safety use for a term of 20 years through April 25, 2043.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly approves execution of a ground lease agreement with the City of Kobuk for public safety use for a nominal rate for a term of 20 years through 2043.


Nathan Hadley, Jr., Assembly President

RSN 23-43 – City of Kobuk Public Safety Lease
PASSED AND APPROVED THIS 25th DAY OF JULY 2023.

Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 25th DAY OF JULY 2023.

Stella Atoruk, Borough Clerk

ATTEST:
THE PROPERTY: Commonly referred to as the “Old Clinic.”

Kobuk
USS 3788 Lot 21A Plat 2005-3
East Section of Lot
No less than 10’ from existing Duplex
“Old Clinic”
LEASE

This LEASE (this “Lease”) is made this ______ day of ______________, 2023 (the “Effective Date”) between the City of Kobuk (“Lessor”), an Alaska municipal corporation, having a mailing address of P.O. Box 99, Kobuk, Alaska 99770 and the Northwest Arctic Borough (“NAB” or “Lessee”), an Alaska municipal corporation, having an address of 163 Lagoon Street, Kotzebue, AK 99752.

RECITALS

A. Lessor owns certain real property located in Kobuk, Alaska, as depicted on Exhibit A, commonly referred to as the “Old Clinic” and more particularly described as follows:

Kobuk
USS 3788 Lot 21A Plat 2005-3
East Section of Lot
No less than 10’ from existing Duplex
“Old Clinic”

(the “Property”); and

B. The Property has been identified by the parties for use as a public facility by NAB for its public safety needs, including but not limited to use for firefighting, search and rescue, and the Village Public Safety Officer Program equipment storage (the “Permitted Purposes”).

C. The parties wish to enter into renewed terms for the Borough’s use of a portion of the Property for storage use.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements contained in this Lease, the sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease Grant.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property, together with all reasonable access rights, rights of ingress and egress, and appurtenances reasonably attaching or belonging to the use and occupancy of the Property, and subject to any deed restrictions, easements, rights-of-way, zoning and building restrictions, and governmental regulations now in effect or hereafter adopted by any governmental authority. Lessee leases the Property “AS-IS.” Lessor reserves the right to grant easements or rights-of-way through, on, or above the Property for the sole purpose of providing water, sewer, or electric service to the Property or adjacent property; however, no such easement or right-of-way may be granted that interferes with Lessee’s use of the Property as authorized under this Lease.
2. **Use of Property.**

Lessee shall use and occupy the Property solely for Permitted Purposes. Lessee may not use the Property for any other purpose without Lessor’s prior written approval. Lessee must actively use and operate the Premises in compliance with this Lease. Lessor retains the right to enter the Property during non-business hours only in the case of an emergency and in accordance with all applicable laws.

3. **Term.**

The term of this Lease (the “Term”) shall be for 20 years and shall commence on ________________, 2023 (the “Commencement Date”), and, unless terminated early or extended in accordance with this Lease, expire on ________________, 2043.

Lessee shall, provided the Lease is in full force and effect, and Lessee is not in default under any of the terms of the Lease at the time of notification or commencement, have the option to extend this Lease for an additional five years, on the same terms and conditions set forth in the Lease, except as modified by the following terms, covenants, and conditions: this option shall be exercised only by Lessee delivering to Lessor no less than 30 days before the expiration of the Term of this Lease written notice of Lessee’s election to exercise the option to extend the Term of this Lease as provided in this section.

4. **Rent.**

As consideration for this Lease, Lessee shall pay to Lessor rent for the Property in the amount of $1,00 per year (the “Rent”). Lessee shall pay the Rent to Lessor annually, due and payable in advance on the first day of each year during the Term without notice or demand, provided that prorated Rent for the first year of the Term shall be payable on the Effective Date.

5. **Taxes.**

Lessor shall promptly pay to the applicable governmental or public authorities all taxes, assessments, general and special, permits, inspection and license fees, and any other public charges, whether of a like or different nature, levied upon or assessed against the Property and any buildings, structures, fixtures, or improvements now or hereafter located on the Property, or irrespective of Lessee’s occupancy, use, or possession of the Property, which accrue during the Term.

6. **Liens and Encumbrances.**

6.1. Lessee shall not permit any liens, including without limitation, mechanics’ or laborers’ liens, against the Property for improvements of any labor or materials furnished to Lessee or claimed to have been furnished to Lessee or to Lessee’s agents or contractors, in connection with work performed or claimed to have been performed on the Property or improvements by or at the direction of Lessee in connection therewith. In the event any such lien is recorded; Lessee must cause the lien to be removed within 90 days of recordation.
6.2. Except as otherwise provided in this Lease, Lessee shall not encumber or cloud Lessor’s fee simple title to the Property or any portion thereof, nor enter into any lease, sublease, assignment, or other obligation. Any act or omission in violation of this Section 6.2, without the prior written consent of Lessor shall be void against Lessor.

7. Compliance with Laws.

During the Term, Lessee shall (i) maintain its storage equipment and material on the Property in good condition and repair; (ii) not permit waste of the Property; and (iii) operate on the Property in compliance with all applicable laws, regulations, ordinances, and permits.

8. Utilities.

Lessor is under no obligation to provide utilities to the Property or to pay any costs for utility usage on the Property during the Term.


9.1 Lessee shall be solely responsible, at its own expense, for all routine maintenance, including snow removal, related to Lessee’s use and occupancy of the Property. Lessee shall keep the Property in a clean and safe condition, shall dispose of all garbage and other waste in a clean and safe manner.

9.2 Lessee may perform the following assessments, alterations, additions, and improvements to the Property at Lessee’s sole cost and expense:

(a) Evaluate and assess the scope of repairs or construction required for warm storage and office use.

(b) Construct or renovate buildings, rooms, doors, windows, electrical, plumbing and heating systems as the Borough deems necessary for warm storage for the Permitted Purposes.

(c) Any such alteration, additions, or improvements are owned by the Lessee, unless it is not removed from the Property within a reasonable amount of time after the termination of this Lease and shall thereafter become the property of the Lessor.

10. Lessee’s Rights.

During the Term, so long as Lessee is not in default under this Lease, Lessee shall have the right to use the property for the Permitted Purposes.

11. Hazardous Substances.
Lessee shall not bring, leave, store, use, generate, transport, produce or release any hazardous substances in, on or about the Property without Lessor’s express written consent. All hazardous substances shall be used and stored in compliance with all governmental regulations, manufacturer’s directions and best practices. Lessee shall immediately notify Lessor of any contamination of the Property or other land, air or water by hazardous substances, or any release or threatened release of hazardous substances. “Hazardous substances” means any substance defined under Section 12.3 of this Lease.

12. Indemnification and Insurance.

12.1. Lessee’s Indemnity. Lessee shall indemnify, defend, and hold harmless Lessor, his agents, and affiliates from and against:

(a) any and all liability for loss, damage, expenses, claims or fees which arise out of, or are related to, any act or omission by Lessee; and

(b) any and all liability (including voluntary response costs, penalties, fines and attorney’s fees) arising from the presence of Hazardous Substances upon, about or beneath the Property or any of the easement and access areas used by Lessee under this Lease or migrating from the Property and access areas used by Lessee under this Lease arising in any manner whatsoever out of the activities of Lessee, whether or not Lessee has been negligent. This obligation shall include, but not be limited to, the expense of defending all third-party claims, suits or administrative proceedings, even if such claims, suits and proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against Lessor.

12.2. Lessor’s Indemnity. Lessor shall indemnify, defend, and hold harmless Lessee, its agents, affiliates, officers, assembly members, and employees from and against:

(a) any breach of a representation or warranty under Section 20 of this Lease; and

(b) any and all liability for loss, damage, expenses, claims, or fees which arise out of, or are related to any activity of Lessor (or agents, contractors, employees, or any other representative of Lessor) occurring on the Property prior to execution of the Lease or the previous lease agreement between the parties for the Property, including any liability related to Hazardous Substances or Petroleum Products. This obligation shall include, but not be limited to, the expense of defending all third-party claims, suits or administrative proceedings, even if such claims, suits and proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against Lessee.

12.3. As used in this Section 12 and in this Lease; the following terms have the following meanings:

(a) “Hazardous Substance” means one or more of: (A) any hazardous or toxic substance, material or waste, including but not limited to: (1) those substances, materials and
waste listed in the U.S. Department of Transportation Hazardous Materials Table at 49 C.F.R. 172.101, (2) those substances listed by the U.S. Environmental Protection Agency as hazardous substances at 40 C.F.R. Part 302, or (3) those substances listed by the State of Alaska as hazardous substances at AS 46.03.826(5); (B) amendments to those collective provisions of Subsection (A) above of state and federal law, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law; or (C) Petroleum Products.

(b) "Petroleum Products" means crude oil, petroleum, diesel fuel, marine fuel, heating oil, gasoline, kerosene, aviation fuel, jet fuel, motor oil, lubricants, hydraulic fluids, and other petroleum-based substances, by-products, additives, and derivatives.

13. **Quiet Enjoyment.**

Provided Lessee is not in default under this Lease, Lessor covenants that Lessee shall have peaceful and quiet enjoyment of the Property without interference by Lessor.

14. **Default.**

14.1. **By Lessee.** The occurrence of any of the following events shall constitute an event of default under this Lease by Lessee:

(a) Failure to observe or perform any of Lessee’s obligations under this Lease, provided that Lessee may cure such default by bringing its performance into compliance within 30 days of written notice to Lessee. However, if Lessee’s default cannot reasonably be cured 30 days, Lessee shall be allowed additional time as is reasonably necessary to cure the default, so long as: (i) Lessee commences to cure the default within 30 days, and (ii) Lessee diligently pursues a course of action that will cure the default and bring Lessee back into compliance with this Lease; or

(b) Lessee’s unequivocal abandonment of the Property.

14.2. **By Lessor.** Lessor shall be in default of this Lease if Lessor fails to perform or comply with, or breaches, any of the terms this Lease, and Lessor’s the nonperformance, noncompliance or breach continues for a period of 30 days after receipt of written notice from Lessee. However, if Lessor’s default cannot reasonably be cured within 30 days, Lessor shall be allowed additional time as is reasonably necessary to cure the default, so long as: (i) Lessor commences to cure the default within 30 days, and (ii) Lessor diligently pursues a course of action that will cure the default and bring Lessor back into compliance with this Lease.

15. **Remedies.**

15.1 **Lessor’s Remedies.** Upon any default, Lessor shall have the right, at its election, to give Lessee notice of Lessor’s intent to terminate this Lease and all Lessee’s rights hereunder, on a date specified in the notice, which date shall not be less than 30 days after the date of giving of such notice, and on the date specified in the notice, the Term and all of Lessee’s rights under this Lease shall terminate as if the Lease naturally expired by its terms. Lessee shall peaceably
and quietly surrender the Property and execute and deliver such instrument(s) as may be reasonably required by Lessor to properly evidence the same.

15.2. Lessee’s Remedies. In the event of any default by Lessor, Lessee shall have the right, at its election, to give Lessor notice of Lessee’s intent to terminate this Lease and all Lessor’s rights hereunder, on a date specified in the notice, which date shall not be less than 30 days after the date of giving of such notice, and on the date specified in the notice, the Term and all of Lessor’s rights under this Lease shall terminate as if the Lease naturally expired by its terms. Lessor shall execute and deliver such instrument(s) as may be reasonably required by Lessee to properly evidence the same.

16. Surrender of the Property.

Upon expiration or early termination of this Lease, all Lessee’s rights in the Property and this Lease shall immediately terminate and revert to Lessor, and Lessee shall surrender and vacate the Property, provided, however, that Lessee shall have 60 days to remove from the Property any equipment, personal property, and movable installments, unless a longer period of time is reasonably required. Subject to the immediately preceding sentence, Lessee shall repair any damage to the Property that results from such removal within 90 days after the expiration or early termination of this Lease. If Lessee fails to remove its equipment, personal property, and movable installments within the 90 days, the same shall be deemed abandoned and all rights of Lessee with respect thereto shall automatically cease and be vested in Lessor. Alternatively, Lessor may require Lessee to remove all or a portion of the equipment, personal property, and movable installments, provided that Lessor provides Lessee with written notice thereof specifically identifying which such items Lessee must remove no less than 30 days prior to the expiration or early termination of this Lease.

17. Holding Over.

Except as provided in Section 16 above, if Lessee remains in possession of the Property after the expiration of the Term without Lessor’s written consent, Lessor may treat such holdover as a tenancy at sufferance and take such steps as are necessary to remove Lessee from the Property, regain possession of the same and recover Lessor’s actual damages caused by the wrongful holdover. Alternatively, at Lessor’s option, such holdover may operate to create a month-to-month tenancy, subject to the same conditions, provisions and obligations of this Lease (except that the Term will be month-to-month).


Any and all notices required or permitted under this Lease shall be in writing and shall be delivered to the other party at the party’s address set forth below:

Lessor: City of Kobuk
Attn: City Mayor
P.O. Box 99
Kobuk, AK 99770
Lessee: Northwest Arctic Borough  
Attn: Public Services Director  
P.O. Box 1100  
Kotzebue, Alaska 99752

Any demand, request, approval, consent, or notice (collectively referred to as a “notice”) given to either party by the other shall be in writing and delivered by hand or sent by mail (postage prepaid), facsimile or e-mail, return receipt requested. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Lessee has vacated the Property without providing a new address, three days after notice is deposited in the U.S. mail. A party may change its address by providing written notice to the other party as set forth in this Section 18.

19. **Assignment.** Lessee may not assign this Lease or sublet any interest in the Property without Lessor’s prior written consent, which consent shall not be unreasonably withheld. An approved assignment or sublease shall be subject to all of the terms of this Lease and the assignor shall not be relieved of the assignor’s obligations as Lessee under this Lease. An approved sublease shall be in writing and be subject to the terms of this Lease.

20. **Warranties.**

20.1 Lessor and Lessee each acknowledge and represent that it has the right, power, and authority to enter into this Lease and bind itself to the terms of this Lease through execution by its authorized representative.

20.2 Lessor represents and warrants that: (i) Lessor solely owns the Property as a legally-recorded lot in fee simple; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements that would adversely affect Lessee’s use and enjoyment of the Property under this Lease; and (iii) Lessor’s execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreements binding on Lessor.

21. **Miscellaneous.**

21.1. **Modification of Lease.** This Lease may only be modified or amended by a document in writing executed by both Lessor and Lessee.

21.2. **Entire Agreement.** This Lease embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings, written or oral, related to the subject matter of this Lease.

21.3. **Waiver and Forbearance.** Either party’s failure to declare a default immediately upon its occurrence, or delay in taking action for a default shall not constitute a waiver of the
default, nor shall it constitute an estoppel. Either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default.

21.4. Remedies. Except as otherwise provided in this Lease, Lessor and Lessee shall be entitled to any or all remedies provided under this Lease and as otherwise available at law or in equity.

21.5. Severability. If any provision of this Lease or any application of any provision of this Lease is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

21.6. Headings. Descriptive paragraph headings throughout this Lease are for convenience and reference only; the words contained therein shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Lease.

21.7. Attorneys' Fees. If either party institutes a suit against the other for violation of or to enforce any term of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including without limitation, reasonable attorneys' fees.

21.8. Choice of Law; Venue. This Lease and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the laws of the State of Alaska and Lessee and Lessor hereby irrevocably consent to the jurisdiction of such state with venue in Kotzebue, Alaska.

21.9. Delay in Performance. Whenever a period of time is prescribed for the taking of an action by Lessor or Lessee, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, civil disturbances and other causes beyond the reasonable control of the performing party (an "event of force majeure"). However, events of force majeure shall not extend the Term or any period of time for the payment of Rent or other sums payable by either party or any period of time for the written exercise of an option or right by either party.

21.10. No Partnership; Successor and Assigns. This Lease shall create only the relationship of Lessor and Lessee between the parties, and not a partnership, joint venture, or any other relationship. This Lease and the covenants and conditions in this Lease shall inure only to the benefit of and be binding only upon Lessor and Lessee and their permitted successors and assigns.

21.11. Continuing Obligations. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease.

21.12. Counterparts. This Lease may be executed in one or more counterparts, each identical to the other, so long as the counterparts in a set contain the signatures of all the parties.
to this Lease. Counterparts of this Lease may be delivered and exchanged electronically or by facsimile.

Lessor and Lessee have executed this Lease as of the Effective Date.

LESSOR:  CITY OF KOBUK

By:  
Its: Mayor

LESSEE:  NORTHEAST ARCTIC BOROUGH

By: Dickie Moto, Sr.  
Its: Mayor
THE PROPERTY: Commonly referred to as the "Old clinic."

Kobuk
USS 3788 Lot 21A Plat 2005-3
East Section of Lot
No less than 10' from existing Duplex
"Old Clinic"