

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 24-47**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY APPROVING A GROUND LEASE WITH
THE CITY OF SELAWIK TO FACILITATE A PUBLIC SAFETY
BUILDING AND SOLAR FARM, AND FOR 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 recently received a Designated Legislative Grant (“Grant”) in the amount of \$1,500,000 to fund construction of Borough public safety facilities, a portion of which can be used for Selawik’s public safety facilities; and

WHEREAS: the Grant requires that that the Borough obtains site control with a sufficient land interest for a period of at least 20 years; and

WHEREAS: the Borough has also secured grant funds to establish a solar photovoltaic generation farm and wishes to site the solar farm on the same tract as the to-be-constructed public safety facility; and

WHEREAS: the City of Selawik wishes to lease to the Borough a portion of its property, Tract F, Plat 2020-01, Kotzebue Recording District, for a term of 20 years with the possibility for 10-year extensions, at a nominal rate, in order to facilitate public projects that will benefit the community and its residents; and

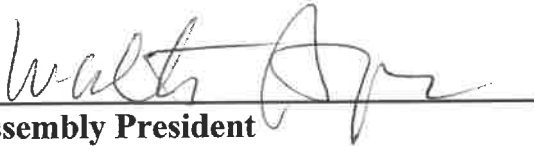
WHEREAS: this lease will facilitate the solar and public safety building projects and will serve a public purpose beneficial to the Borough and its residents; and

WHEREAS: the Borough Assembly wishes to approve execution of a nominal-rate lease agreement with the City of Selawik for use as a public safety storage facility and solar farm in Selawik for a term of 20 years with the possibility for automatic 10-year extensions.


NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly approves execution of a lease agreement with the City of Selawik for a

public safety facility and a solar farm for a term of 20 years with the possibility for automatic 10-year extensions.

PASSED AND ADOPTED THIS ^{12th} ~~29th~~ DAY OF ^{Nov} ~~OCTOBER~~ 2024.


Assembly President

PASSED AND APPROVED THIS ^{12th} ~~29th~~ DAY OF ^{Nov} ~~OCTOBER~~ 2024.


Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS ^{12th} ~~29th~~ DAY OF ^{Nov} ~~OCTOBER~~ 2024.


Stella Atoruk, Borough Clerk

ATTEST:



LEASE

This LEASE (this “Lease”) is made this _ day of _____ 2024 (the “Effective Date”) between the City of Selawik (“Lessor”), an Alaska municipal corporation, having a mailing address of P.O. Box 99, Selawik, 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 the following real property located in Selawik, Alaska:

Tract F as shown on Plat 2020-01, Kotzebue Recording District, Alaska (the “Property”).
- B. Lessor wishes to lease a portion of the Property to NAB to facilitate important public projects, and the parties have identified the highlighted portion of the Property on Exhibit A to this Lease (the “Leased Property”) to facilitate the Borough’s construction of designated public facilities.
- C. The Leased Property has been identified by the parties for use as (1) public safety use; and (2) solar photovoltaic generation (“PV”) and battery electric storage system (collectively, the “Permitted Purposes”).
- D. The parties wish to enter into terms for the Borough’s use and occupancy of the Leased Property as detailed in this Lease.

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.

1.1 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased 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 Leased 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 Leased Property “AS-IS.” Lessor reserves the right to grant easements or rights-of-way through, on, or above the Leased Property for the sole purpose of providing water, sewer, or electric service to the Leased Property or adjacent property; however, no such easement or right-of-way may be

granted that interferes with Lessee's use of the Leased Property as authorized under this Lease.

1.2 The parties may agree in writing to survey and subdivide the Leased Property to limit the actual leased premises to the area reasonably necessary to accommodate NAB's conduct of the Permitted Purposes. If the parties agree to survey and subdivide, the parties must cooperate in good faith to determine the appropriate boundaries. NAB will be responsible for the cost of all survey and subdivision work.

2. Use of Leased Property.

Lessee shall use and occupy the Leased Property solely for Permitted Purposes. Lessee may not use the Leased 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 Leased 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 the Effective Date, and, unless terminated early or extended in accordance with this Lease, expire on October 31, 2044.

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 four 10-year extension terms on the same terms and conditions set forth in the Lease (each an "Extension Term"). Each Extension Term shall be exercised automatically unless Lessee has discontinued its conduct of the Permitted Purposes or Lessor as notified Lessee of its default and Lessee has failed to cure the default within 60 days of receipt of written notice of the default.

4. Rent.

In consideration of Lessee's construction of public facilities to carry out its Permitted Purposes, and in recognition of the community benefit, and cost to Lessee, Lessor will provide this Lease at no cost to Lessee.

5. Taxes.

Lessee shall promptly pay to the applicable governmental or public authorities all taxes, assessments, fees, and any other special charges, whether of a like or different nature, levied upon or assessed against the Leased Property and any buildings, structures,

fixtures, or improvements now or hereafter located on the Leased Property resulting from Lessee's conduct of the Permitted Purposes.

6. Liens and Encumbrances.

6.1. Lessee shall not permit any liens, including without limitation, mechanics or laborers' liens, against the Leased 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 Leased 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 title to the Leased 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 buildings and equipment on the Leased Property in good condition and repair; (ii) not permit waste of the Leased Property; and (iii) operate on the Leased Property in compliance with all applicable laws, regulations, ordinances, and permits.

8. Utilities.

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

9. Maintenance and Repairs.

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 Leased Property. Lessee shall keep the Leased 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 assessments, alterations, additions, and improvements to the Leased Property at Lessee's sole cost and expense to facilitate the Permitted Purposes

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 Leased Property in violation of State and federal laws. 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 Leased 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 Leased Property or any of the easement and access areas used by Lessee under this Lease or migrating from the Leased 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 Leased Property prior to execution of the Lease or the previous lease agreement between the parties for the Leased 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 Leased 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 within 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 Leased 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 of 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 Leased 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 Leased Property.

Upon expiration or early termination of this Lease, all Lessee's rights in the Leased Property and this Lease shall immediately terminate and revert to Lessor, and Lessee shall surrender and vacate the Leased Property, provided, however, that Lessee shall have 60 days to remove from the Leased 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 Leased 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 Leased Property after the expiration of the Term without Lessor's written consent, the holdover will 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).

18. Notices.

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 Selawik
Attn: City Mayor
P.O. Box 99
Selawik, 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 pre-paid), or email with confirmation of receipt. 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 confirmed. 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 Leased 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 Leased Property as a legally-recorded lot in fee simple; (ii) the Leased 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 Leased 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 superior court 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 by email.

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

LESSOR: CITY OF SELAWIK

By: _____
Its: Mayor

LESSEE: NORTHWEST ARCTIC BOROUGH


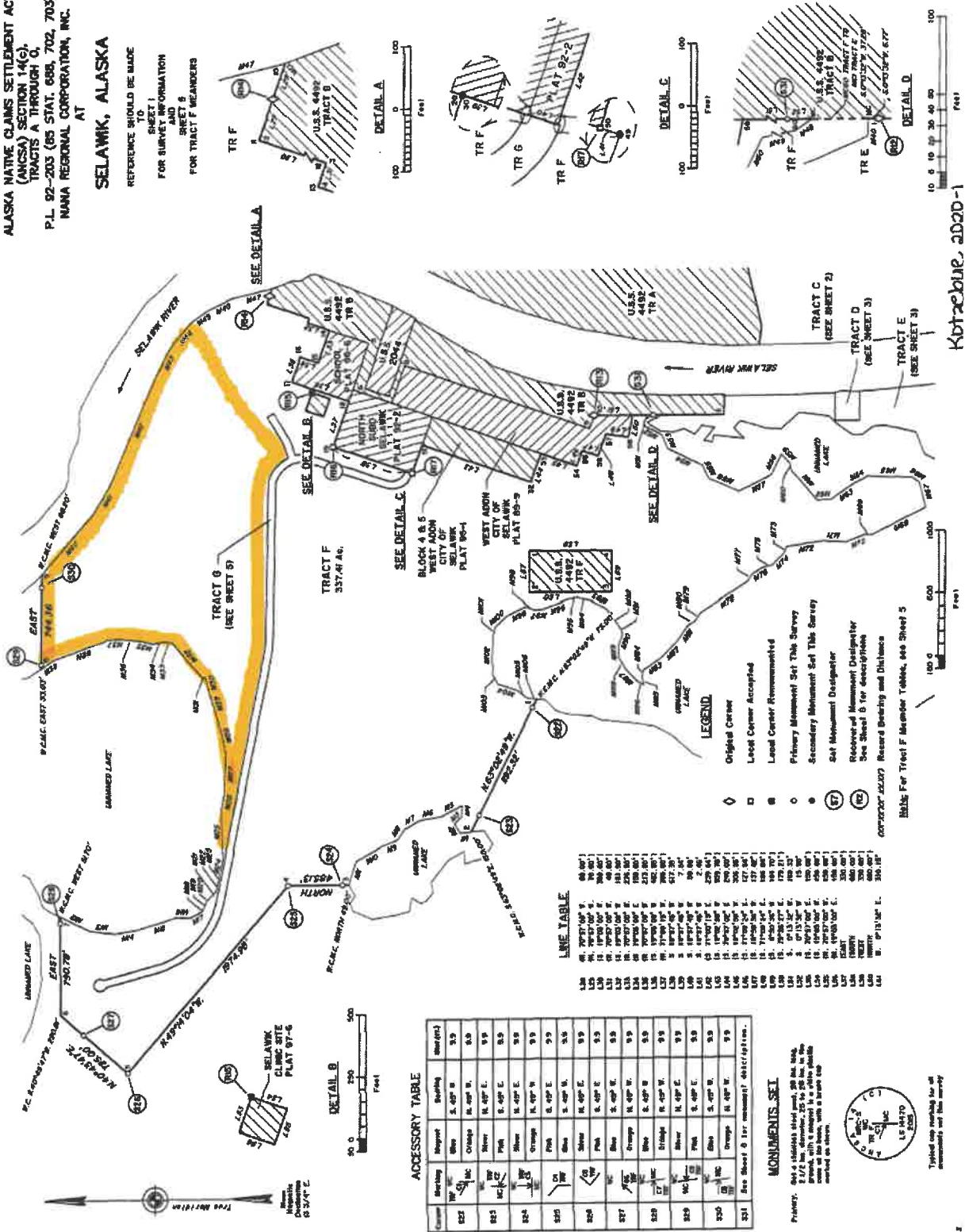

By: Dickie Moto, Sr.
Its: Mayor

Exhibit A Leased Property

Sheet 4 of 6 Sheets
ALASKA NATIVE CLAIMS SETTLEMENT ACT
(ANCSA) SECTION 14(C),
TRACTS A THROUGH G,
P.L. 92-203 (85 STAT. 685, 702, 703)
NANA REGIONAL CORPORATION, INC.
AT
SELAWIK, ALASKA

REFERENCE SHOULD BE MADE
TO
SHEET 1 INFORMATION
FOR SURVEY INFORMATION
AND
SHEET 5
FOR TRACT F WEADERS



Kotzebue 2020D-1

ACCESSORY TABLE

Station	Bearing	Distance	Remarks
S22	N 40° W	5.5	
S23	N 40° E	5.5	
S24	S 40° E	5.5	
S25	N 40° E	5.5	
S26	N 40° E	5.5	
S27	N 40° E	5.5	
S28	N 40° E	5.5	
S29	N 40° E	5.5	
S30	N 40° E	5.5	
S31	N 40° E	5.5	

MONUMENTS SET
 1/2" dia. aluminum 25 to 50 lbs. in the ground
 1/2" dia. aluminum 25 to 50 lbs. in the ground
 1/2" dia. aluminum 25 to 50 lbs. in the ground
 1/2" dia. aluminum 25 to 50 lbs. in the ground
 1/2" dia. aluminum 25 to 50 lbs. in the ground

LINE TABLE

Line No.	Station	Bearing	Distance	Remarks
1	S22	N 40° W	5.5	
2	S23	N 40° E	5.5	
3	S24	S 40° E	5.5	
4	S25	N 40° E	5.5	
5	S26	N 40° E	5.5	
6	S27	N 40° E	5.5	
7	S28	N 40° E	5.5	
8	S29	N 40° E	5.5	
9	S30	N 40° E	5.5	
10	S31	N 40° E	5.5	

