

INDIVIDUAL USER

No Employees, No Other Operators _____ User Initial

CRANE AGREEMENT AND INDEMNIFICATION

Name: _____ (“User”) Phone: _____

Address: _____

P.O. Box or Street Address

City

State

Zip

ID/Driver’s License #: _____ State of Issue: _____ Acct #: _____

Section 1. Equipment Use Permit

Subject to the conditions and limitations of this equipment use permit, which is hereafter called the “Permit”, between User and the City of Homer, Alaska (“City”), the City hereby grants permission to User to access any City-owned Crane. This Permit represents a nonexclusive privilege authorizing use of City-owned Cranes on the Fish Dock and the Deep Water Dock and does not convey an interest or right to any City property or to the use of any City property.

Section 2. User Access Card

- A. Upon execution of this Permit, User shall be issued a plastic Crane Access Card.

Section 3. Term and Rates

This Permit shall be in effect beginning on _____ (“Effective Date”) and ending three years later on _____. (“Term”) When term expires, a new Agreement will need to be signed.

In exchange for use of the City-owned cranes under this Permit, User agrees to pay the City \$52.00 a year for three (3) years. This fee will be billed automatically to the User’s account. In addition to the charge for this Permit, User shall be charged the published crane rates from the Homer Port and Harbor tariff.

Section 4. Training

User shall, prior to operating any City-owned cranes, verify the successful completion of the following:

- A. The City of Homer authorized Hard Hat online training course at <https://hardhattraining.com/safety-training/pedestal-crane-online-training/>. The course is titled: Pedestal Crane Training – Online Safety Training and Certification. The \$79.00 charge for training is the responsibility of the User.
- B. A proficiency training session with the City cranes administered by the City’s Ice Plant Personnel. Must be completed with initial agreement.
- C. When training is complete, City of Homer personnel will complete a Crane Operator Card (paper) for the User that is valid for 3 years from the date of issue. After expiration, operator shall complete in-person proficiency training again.

Section 5. Users Warranties and Representations

- A. User warrants that their use of the City-owned cranes is for individual use only.
- B. User shall comply with all federal, state, and local laws related to the operation and use of any City-owned Cranes.

Section 6. Operation and Access

- A. The City does not guarantee the availability of any City-owned Crane at any time. City-owned Cranes may be unavailable due to City use or service without notice to User.
- B. User must have his or her Crane Operator Card (paper) in their possession at all times when operating any City-owned Crane.
- C. User shall not allow any other person to use their Crane Operator Card (paper) or their Crane Access Card (plastic).
- D. City-owned Cranes cannot be reserved and are available only on a first come first serve basis. However, offloading of fish shall be given priority over other uses of City-owned cranes on the Fish Dock.
- E. User shall be fully alert and shall not be under the influence of alcohol or any controlled substance while operating or using City-owned Cranes. User shall always use extreme care and caution when operating City-owned Cranes. The harbormaster or his designee has full discretion to determine when a user is operating a City-owned crane recklessly or impaired. Impairment may include but is not limited to operating the crane while under the influence of alcohol or any controlled substance or operation of a City-owned crane while suffering from fatigue. If the Harbormaster determines that a user is unfit to operate any City-owned crane, the Harbormaster or his designee has full authority to order user to immediately cease crane operations. Harbormaster may also prohibit a user from operating any City-owned crane in the future.
- F. User agrees that he or she will immediately report to port and harbor personnel any accident involving crane use or any malfunction or problem with a City-owned Crane. Any report must be received by port and harbor personnel within one (1) hour from accident or user's knowledge of any malfunction or problem with City-owned Cranes. In the event of serious bodily injury, user shall first call 9-1-1 and then report the accident to Port and Harbor Personnel.

Section 7. Insurance

- A. Minimum Scope and Limits of Insurance. User shall carry and maintain at their expense insurance, including, without limitation, insurance against assumed or contractual liability under this Permit, with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage, and \$1,000,000 personal injury. The insurance shall include Commercial General Liability OR in the policy description of operations shall include the vessel named in the policy and "Use of Port and Harbor Cranes" as being covered under P&I Coverage. This insurance shall be primary and exclusive of any other insurance held by the City.
- B. Verification of Coverage. Permit Holder shall deliver to the City certificates of insurance required by this section before using or operating any City-owned crane.

Section 8. Termination

- A. The Crane Operator Card may be revoked by the City at any time with or without cause and does not create a right of use.
- B. The Crane User Permit may terminate immediately and User's Operator Card shall be immediately revoked if User violates any provision of this Permit or federal, state or local law or City of Homer policies or procedures during operation of any City-owned Crane.

Section 9. General Provisions

- A. This Permit is not transferable or assignable.

- B. Any provision or clause of this Permit that is deemed invalid by a court or otherwise by law shall not affect the validity of the remainder of the Permit.
- C. This Permit and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Alaska. Any legal proceeding in connection with this Permit shall be in the trial courts of the State of Alaska for the Third Judicial District in Homer. It is understood that consultation and negotiation are the first option for resolving all disputes arising under this Permit.
- D. The failure of the City at any time to enforce a provision or part of this Permit shall in no way constitute a waiver of such provision or part, nor in any way affect the validity of this Permit or any part of this Permit. A waiver by the City of any provision or part of this Permit shall not be construed as a continuing or future waiver of such provision or part or as a continuing or future waiver of any other provision or part of this Permit. Any waivers of the Permit conditions shall be in writing and signed by both parties.
- E. No provision of this Permit shall be construed to create a partnership or joint venture or any other arrangement between the City and User under which the City would be liable for the debts, losses or liabilities of User.
- F. The parties intend this Permit to be the complete and exclusive expression of their agreement and the Permit granted to User. No representations or promises not contained in this document have been made by the City. No modification to this Permit may be made unless in writing and executed by both parties.
- G. This Permit has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.
- H. The Parties hereby warrant and represent that each has the authority to enter into and perform the obligations of this Permit and that the individual signing this Permit on behalf of User has the authority to enter into this Permit on behalf of the User.
- I. All notices or notifications required by this Permit to be effective must be in writing and delivered to the Port and Harbor Office.

Section 10. Individual User Release of Liability and Indemnification Agreement

User hereby acknowledges that operation and use of cranes owned by the City may be dangerous and even life-threatening if used incorrectly. User further acknowledges that the City, through its employees and other representatives, has provided User with required training materials related to the operation and use of the cranes, which identify risks associated with operating the cranes.

User, on its behalf and on behalf of all its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (hereafter collectively referred to as "User"), hereby covenants and agrees to release, indemnify, and hold harmless the City, its employees, volunteers, officials, agents, officers, departments, boards, commissions, or other bodies (hereafter collectively referred to as the "City") from and for any and all demands, claims, actions, suits or causes of action, whether known or unknown, arising from any and all loss, damage, and/or mental or physical injury (including, but not limited to injuries leading to death and death itself) to any property or any person which is caused by or related to the operation or use of a City-owned crane by User.

User also warrants that injuries, death or damage stemming from not only the inherent risk of the operation of heavy equipment, like cranes, but also equipment malfunction or misuse, human error, ignoring a known hazard, and a defect in the property, including, but not limited to, the cranes or the dock on which the cranes are located, are all within the scope of this Release and Indemnification and User or individual through User or on his or her behalf is barred from bringing any and all present or future demands, suits, claims or causes of action arising from the City's conduct,

including demands, suits, claims or causes of action arising from the City's negligence and User is obligated to indemnify and hold harmless the City for any such claims brought against the City that arise from the operation or use of a City-owned crane by User. The above list of potential causes of injury, death or loss is intended only to provide an example of the broad scope of this Release and Indemnification and is in no way intended to limit the Release to the named causes as this Release and Indemnification is intended to apply to any and all causes of liability.

User is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969) and it is still the undersigned's true intent and desire to fully release all of the entities and persons described above collectively as the City even though all of such entities and persons are not specifically named herein. User further acknowledges familiarity with the decision of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) and intends this release to discharge the City from any liability for damages or losses subsequently discovered or incurred or for damages or losses that are different in extent, degree, or kind than those now alleged, known, anticipated, or expected.

This Release and Indemnification has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.

This Release and Indemnification shall be governed by the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties hereto have read and understand and have executed this Permit and Indemnification as of the date first written below.

INDIVIDUAL PERMIT HOLDER:

By: _____ Date: _____

Print Name: _____

CITY OF HOMER, ALASKA:

By: _____ Date: _____

Office Use

Online Training Completion Date (Write in date of original training if renewing): _____

Permit Expiration Date (3 years from date of proficiency test, below): _____

Ice Plant Operator Use

Proficiency Test Completion Date: _____ Test conducted by: _____