



# City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road  
Homer, AK 99603

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## COMMERCIAL /PERMIT HOLDER CRANE AGREEMENT AND INDEMNIFICATION

### Section 1. Equipment Use Permit

Subject to the conditions and limitations of this equipment use permit between (“Permit Holder”)

Permit Holder /Entity’s Name: \_\_\_\_\_ Marina Account #: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

P.O. Box or Street Address

City

State

Zip

and the City of Homer, Alaska (“City”), the City hereby grants permission to Permit Holder to access any City-owned crane on the Fish Dock and the Deep Water Dock. Any person using this named Permit Holder’s access plastic card to operate or use a City-owned crane shall be a “Covered Operator” under this Commercial Permit. This Permit represents a nonexclusive privilege authorizing use of City-owned cranes and does not convey an interest or right to any City property or to the use of any City property.

### Section 2. Permit Holder Access Card

- A. Upon execution of this Permit, Commercial Permit Holder shall be issued a plastic crane access card.
- B. Any individual using Permit Holder’s plastic access card shall be a “Covered Operator” under this Permit. Permit Holder warrants that prior to the use or operation of any City-owned crane, a Covered Operator must: (1) complete required online and proficiency training (see Section 4); (2) enter into and sign the Covered Operator Agreement and incorporated Indemnification Agreement; and (3) comply with all other applicable provisions in this Permit.

### Section 3. Term and Rate

This Permit shall be in effect beginning on \_\_\_\_\_ (“Effective Date”) and ending three (3) years later on \_\_\_\_\_. (“Term”) When term expires, a new Agreement will need to be signed.

In exchange for use of City-owned cranes under this Permit, Commercial Permit Holder agrees to pay the City \$52.00 a year for two (2) Permit Access Cards (plastic) or \$104.00 a year for four (4) Permit Access Cards. This fee will be billed automatically to Permit Holder’s account. In addition, Permit Holder shall be charged the published crane rates from the Homer Port and Harbor tariff.

### Section 4. Training

Commercial Permit Holder shall, prior to operating any cranes owned by the City or permitting any employee, agent, representative, service provider, or other person to operate any City-owned crane using Commercial Permit Holder’s access card, ensure and verify that each Covered Operator has successfully completed:

- A. The City of Homer authorized online Hard Hat Training Course at <https://cityofhomer-safetyclasses.talentlms.com/>. The course is titled: Pedestal Crane Training –OSHA- AK. The \$50.00 charge for this training is the responsibility of the User or Permit Holder, not the City of Homer.
- B. A proficiency training session with the Fish Dock cranes administered by the City’s Fish Dock personnel.
- C. When training is complete, City of Homer personnel will complete a Crane Operator Card (paper) for the User that is valid for three (3) years from the date of issue.

#### Section 5. Permit Holder Warranties and Representations

Permit Holder and its Covered Operators shall comply with all federal, state, and local laws related to the operation and use of any City-owned crane.

#### Section 6. Operation and Access

- A. Permit Holder or any Covered Operator must have their Crane Operator Card (paper) in his or her possession at all times when operating any City-owned crane.
- B. Permit Holder agrees that all Covered Operators under its permit must 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 Covered Operator’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.
- C. 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 Permit Holder or a Covered Operator.
- D. City-owned cranes cannot be reserved and are available only on a first come first serve basis. However, the use of City-owned cranes on the Fish Dock to offload fish shall be given priority over other uses.
- E. Permit Holder (plastic card) shall guarantee and prohibit any Covered Operator (paper card) from operating any City-owned crane recklessly or while impaired. 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 a crane while under the influence of alcohol or a controlled substance or operating a crane when suffering from extreme 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. If a Covered Operator is prohibited from operating any City-owned crane due to reckless or impaired operation under this section of the Permit, Permit Holder shall ensure that the Covered Operator does not operate any City-owned crane using Permit Holder’s plastic access card. The City shall provide notice to Permit Holder of any action taken against a Covered Operator under this section within 24 hours of such action.

#### Section 7. Insurance

- A. Minimum Scope and Limits of Insurance. Permit Holder shall carry and maintain at its 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, \$1,000,000 personal injury, and \$2,000,000 aggregate. This 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, and the policy purchased shall name the City as an additional insured with respect to the use or operation of City-owned cranes by Permit Holder or a Covered Operator.

- 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 or permitting any Covered Operator to use or operate a City-owned crane.

#### Section 8. Termination

- A. This Permit may be terminated by the City at any time with or without cause and does not create a right of use.
- B. This Permit may terminate immediately and Permit Holder's plastic access card may be immediately revoked if Permit Holder or any Covered Operator 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. The Crane Operator Card for person violating any permit provisions will also be revoked.

#### Section 9. General Provisions

- A. This Permit may not be transferred or assigned.
- B. Any provision or clause of this Permit 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 Permit Holder or any Covered Operator under which the City would be liable for the debts, losses or liabilities of Permit Holder or any Covered Operator.
- F. The parties intend this Permit to be the complete and exclusive expression of their agreement and the Use Permit granted to Permit Holder. 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 Permit Holder has the authority to enter into this Permit on behalf of the Permit Holder.
- I. All notices or notifications required by this Permit to be effective must be in writing and must be delivered to the Port and Harbor office.

## Section 10. Commercial/Permit Holder Release of Liability and Indemnification Agreement

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

Permit Holder, 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, and on behalf of any person using or operating a City-owned crane with Permit Holder's access card (collectively referred to as "Permit Holder or its Covered Operators"), 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 Permit Holder or its Covered Operators.

Permit Holder 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 Permit Holder and its Covered Operators are 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 Permit Holder 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 Permit Holder or its Covered Operators. 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.

Permit Holder 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. Permit Holder 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.

The representative signing hereby warrants that he or she has authority to sign on behalf of Permit Holder. 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 executed this Permit as of the date first written below.

COMMERCIAL PERMIT HOLDER:

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Permit Expiration Date (3 years from sign date)

\_\_\_\_\_  
Entity's Name

\_\_\_\_\_  
Insurance Expiration Date

\_\_\_\_\_  
Title (Permit Holder's Authorized Representative)

CITY OF HOMER, ALASKA:

By: \_\_\_\_\_

Date: \_\_\_\_\_