

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2024-12

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING LEASE OF UNALASKA MARINE CENTER UPLANDS AND ACCOMODATION OF BERTH SCHEDULING FOR MATSON TO BENEFIT THE UNALASKA MARINE CENTER PURSUANT TO UCO § 7.08.090

WHEREAS, the City and Matson Navigation Company of Alaska, LLC (“Matson”) have entered into a Memorandum of Understanding Regarding Dutch Harbor Dock Project Infrastructure Improvements; and

WHEREAS, the goal of the MOU is the development and construction of a new replacement ship-to-shore crane, dock structural improvements for tiedowns and stow pins to support the crane and covers for same, crane gantry end stops, certain electrical and other associated improvements (together, “Replacement Crane”); and

WHEREAS, Unalaska Code of Ordinances § 7.08.090 authorizes the negotiated sale and disposal, including by lease, of city land upon a determination by the Council that a particular use or class of uses of a parcel would benefit or compliment a municipal function; and

WHEREAS, use of the City land for the Replacement Crane and the freight transportation activities supported by the Replacement Crane benefits and compliments the Unalaska Marine Center; and

WHEREAS, the freight transportation activities supported by the Replacement Crane are anticipated to generate increased revenue under the Unalaska Marine Center Tariff; and

WHEREAS, the UMC Terminal Use and Upland Lease Agreement, attached hereto, grants Matson a twenty-year lease, with two five-year extensions, of Unalaska Marine Industrial Center Backreach Parcel F (24,547 sq. ft.), Parcel G (24,548 sq. ft.), Parcel H (24,548 sq. ft.); and

WHEREAS, the UMC Terminal Use and Upland Lease Agreement further provides that City may remove Parcel I (69,208 sq. ft.) from the leased premises upon 120 days' notice; and

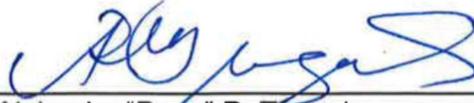
WHEREAS, the UMC Terminal Use and Upland Lease Agreement accommodates advanced scheduling of Matson vessels at UMC Dock Position #6 and Position #7; and

WHEREAS, the UMC Terminal Use and Upland Lease Agreement requires Matson to construct the Replacement Crane before 2028 to maintain the Agreement;

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council determines that the UMC Terminal Use and Upland Lease Agreement attached hereto provides for a use of city lands that benefits and compliments a municipal function.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the UMC Terminal Use and Upland Lease Agreement on behalf of the City of Unalaska and prior to doing so, may at the manager’s discretion negotiate any changes to the agreement that do not materially affect the premises, duration of the term, or uses that compliment and benefit the UMC.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on April 9, 2024.



Alejandro "Bong" R. Tungul
Vice Mayor

ATTEST:



Estkarien P. Magdaong
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Peggy McLaughlin, Port Director
Through: William Homka, City Manager
Date: 4/09/2024
Re: Resolution 2024-12 A RESOLUTION OF THE UNALASKA CITY COUNCIL
AUTHORIZING LEASE OF UNALASKA MARINE CENTER UPLANDS AND
ACCOMODATION OF BERTH SCHEDULING FOR MATSON TO BENEFIT THE
UNALASKA MARINE CENTER PURSUANT TO UCO § 7.08.090

SUMMARY: The approval of Resolution 2024-12 authorizes the City Manager to Negotiate and sign a lease with Matson for the uplands at the Unalaska Marine Center and provide for priority berthing for the domestic and international linehaul-vessels and weekly barge service. The term of this agreement is 20 years with 2 consecutive five-year renewal terms and the rate is to be set at and adjusted by tariff. By negotiating and mutually signing this lease agreement the City agrees to up to 30 years of uplands lease at tariff rate and Matson agrees to complete the improvements identified as installation of a new crane. Matson also agrees to honor public access and public use of the dock front.

PREVIOUS COUNCIL ACTION: There has been no previous Council action on this item

BACKGROUND: Matson Shipping has been leasing the uplands (backreach) area on a month-to-month basis for several years. Matson has been desirous of a long-term lease in order to invest in improvements at the Unalaska Marine Center. Matson needs a new crane to handle the cargo requirements at UMC and in order for the Matson leadership to authorize the purchase of a new crane, they must have proof of a long-term “crane” operating space.

DISCUSSION: Matson and the City of Unalaska are jointly applying for a grant through the Maritime Administration to improve the old section of Unalaska Marine Center. This grant will help fund the project which includes reinforcing the crane stop at the south end of the dock, installing new crane tie-downs for a bigger capacity crane, fixing the drainage on the dock and resurfacing both the dock and the unpaved uplands area.

The City of Unalaska had already contracted with PND Engineers to assess Positions 5-7 for the major maintenance project of drainage repair and resurfacing when Matson approached the City of Unalaska to partner in the application for the Port Infrastructure Development Program Grant Opportunity. Matson needs to replace the existing crane tie-downs, the pin pockets and replace the old crane stop at the South end of the dock. Matson wants to partner with the City of Unalaska to combine the drainage, resurfacing, and crane infrastructure to increase efficiency of construction. By combining Matson’s and the City’s scope of work, the project is more cost effective and better positioned for grant opportunities.

In order for Matson’s Board of Directors to approve the purchase of a new crane, their procurement team needs assurance of a long-term lease for crane storage and operations. Matson needs to formalize the lease for the uplands with terms that meet their procurement requirements minimum of 20 years.

This lease was developed under the guidelines of UCO § 7.08.090 and meets the requirements of land disposal under Unalaska City Code and also meets the terms for Matson's procurement team. The lease is in draft form and will need to be reviewed by Matson's legal team.

The key components of this agreement include a term of 20 years with two consecutive five-year periods (each considered a renewal term). The lease quotes tariff as the rate to be charged. The lease also addresses priority berthing for their domestic and international linehaul vessels and for their weekly barge service. The lease allows for public access to positions 5-7 and public use of the berth at pos 5-7 when Matson is not exercising the priority option for linehaul vessels and the weekly barge service.

In order for this lease agreement to meet the criteria of UCO § 7.08.090, the improvement must be completed, the City of Unalaska has assigned a deadline for that completion. This is an appropriate approach to leasing public property with out a bidding process. The signing of this lease agreement will provide for the joint application of the PIDP grant to proceed.

ALTERNATIVES: Council could vote down the lease opportunity. Council could choose another avenue for leasing the backreach.

FINANCIAL IMPLICATIONS: This will secure 143,851 square feet of uplands in a lease for no less than 20 years and no more than 30 years.

LEGAL: City of Unalaska's attorney has drafted the lease agreement at the City's request and the agreement is compliant with UCO.

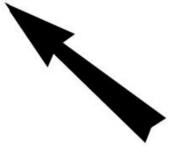
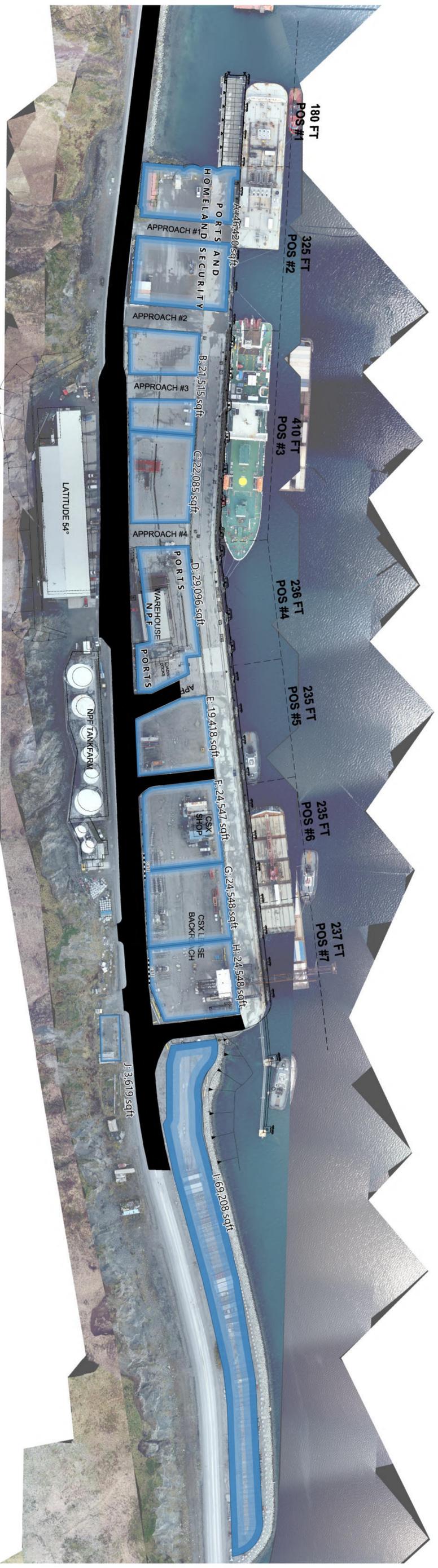
STAFF RECOMMENDATION: Staff recommends approval

PROPOSED MOTION: I move to adopt Resolution 2024-12.

CITY MANAGER COMMENTS: I support the staff recommendation.

ATTACHMENTS: Draft Agreement

Unalaska Marine Center



**INTERNATIONAL PORT OF DUTCH HARBOR
UMC TERMINAL USE AND UPLAND LEASE AGREEMENT**

This UMC Terminal Operation Contract and Use and Upland Lease Agreement (“Agreement”) is made and entered into as of _____, 2024, between the City of Unalaska, an Alaska municipal corporation (“City”), and Matson Navigation Company of Alaska, LLC (“USER”), a Delaware limited liability company.

WHEREAS, USER has agreed herein to construct the Replacement Crane; and

WHEREAS, USER has agreed herein to use UMC dock and uplands for cargo operations and lease a portion of an area commonly known as the Backreach for cargo storage and handling, it is therefore appropriate that the City grant USER the use of the UMC Terminal as provided herein;

WHEREAS, the City Council of the City of Unalaska has authorized this Agreement with Resolution No. 2024-12;

NOW, THEREFORE, in consideration of the premises, and the terms, covenants, conditions, and agreements contained herein, USER and the City hereby agree as follows:

I. DEFINITIONS

A. Cargo Terminal Services includes the following functions:

1. Transporting empty and loaded containers within the Facilities.
2. Receiving and delivering empty or loaded containers or chassis.
3. Performing all necessary housekeeping services.
4. Furnishing all security at assigned berths during periods of vessel berthing.
5. Visual inspection of the condition of containers and cargo discharged from vessels at the Facilities, reporting to the vessels’ masters or agents any damage or defects noted.
6. Preparing reports reflecting the movement of containers or cargo.
7. Providing expeditious movement of containers and cargo.
8. Performing such other duties as are reasonable in such operations and as negotiated between the parties involved.

B. Facilities means all Unalaska Marine Center improvements owned or operated by the City of Unalaska.

C. Premises means the leased premises described in Section II.A, as may be amended or reduced in accordance with this Agreement.

D. Stevedoring includes the following vessel loading and discharging functions:

1. Performing the stowage of cargo on board vessels in accordance with instructions received from their masters or their designated representatives.
2. Discharging cargo or containers from vessels and transport the cargo or containers to a place of rest in the Facilities.
3. Transporting cargo or containers from a place of rest in the Facilities and load and stow cargo or containers onto the vessels.
4. Lashing and unlashng cargo on vessels.
5. Opening and closing hatches and cells.
6. Plugging and unplugging shipboard electrical reefer receptacles if necessary to the extent not performed by the vessels.
7. Checking and tallying containers and container seals and cargo.
8. Spotting vessels and handling lines as may be required.
9. Billing, receiving, or attempting to collect and, where applicable, remit to the City, all charges incurred under the applicable Port Tariff by persons, vessels, or cargo utilizing UMC facilities or services subject to this Agreement.

E. Replacement Crane has that meaning given by City of Unalaska Resolution No. 2024-_____.

F. Tariff means the International Port of Dutch Harbor Unalaska Marine Center Terminal Tariff, as may be amended from time to time.

G. USER Vessel means ships, barges, or other watercraft which are owned, operated, or chartered by or for USER or any affiliated or related company, or which are used in connection with any USER freight operations, or a vessel owned or operated by an entity with which USER has a connecting carrier, consortium, or rationalization agreement, if, and to the extent that, said vessel is carrying cargo on USER's behalf.

II. DESCRIPTION OF PREMISES

A. Leased Premises. Except as provided in Subsection B, the Premises that are the subject of this Agreement are the following parcels consisting of UMC Backreach as depicted in the attached Exhibit A:

1. Parcel F (24,547 sq. ft.);
2. Parcel G (24,548 sq. ft.);
3. Parcel H (24,548 sq. ft.); and

4. Parcel I (69,208 sq. ft.).

- B. Reduction in Leased Premises.** City shall have the right, exercised at its sole discretion, to retake and remove Parcel I (69,208 sq. ft.) from the leased Premises at any time during the term of this Agreement. To exercise this right, City shall provide USER 120 days' written notice before such reduction in Premises shall be effective and USER shall surrender Parcel I in accordance with Section **XVII.B.**

III. IMPROVEMENTS

- A. Existing Improvements.** The Premises contain certain improvements and personal property belonging to USER at the time of entering into this Agreement. All such improvements shall be considered USER's Improvements and personal property under this Agreement.
- B. Replacement Crane Required.** This Agreement is entered into by the City on the express condition that USER constructs the Replacement Crane at USER's expense. The Replacement Crane shall be placed into service no later than December 31, 2027. Should USER fail to construct the Replacement Crane and place it into service as requires by this Section, USER shall pay to the City a termination fee of \$250,000 and USER's rights and interest under this Agreement shall terminate as of January 1, 2028. If USER is unable to place the Replacement Crane into service by December 31, 2027 as a result of delays for which USER is not reasonably responsible, and could not have reasonably anticipated, and USER has made all commercially reasonable efforts to have the Replacement Crane into service by December 31, 2027, the parties shall negotiate a reasonable extension of time in good faith. This Agreement does not authorize crane parking for the Replacement Crane. As design and development of the Replacement Crane progresses, USER and the City shall, in good faith, negotiate terms for crane parking as a separate agreement or as an addendum to this Agreement.
- C. City Approval for Improvements.** USER shall make no alterations, additions, or improvements to the leased premises without the prior written approval of the City. Unless otherwise agreed to in writing, all approved improvements shall be considered USER's Improvements.

IV. USE OF PREMISES & BERTHING ASSIGNMENT

- A.** The City hereby grants USER the exclusive right to use and occupy the Premises in connection with its transportation business and related activities during the term of this Agreement.
- B.** The City specifically reserves to itself and for non-USER vessels rights to use and occupy the UMC Terminal, or portions thereof, subject to the priorities of use accorded to USER under this Agreement.
- C.** Unless authorized in writing by the City's Port Director, USER shall not block any public right-of-way or approach to City-controlled Facilities, nor leave equipment or Cargo on

or obstruct City-controlled Facilities (not including the Premises) except when actively loading or unloading USER's Vessels.

D. USER shall not use the Premises or any Facilities for any unlawful purposes. Use of all Facilities shall be in accordance with the Tariff.

E. USER shall use the Premises solely for Cargo Terminal Services and Stevedoring Services.

F. Berthing Assignment for USER Vessels. In accordance with the terms of this Agreement and the Tariff, the City shall make all commercially reasonable efforts to accommodate at UMC dock Position #6 and/or Position #7 the timely berthing of USER's line haul vessels and weekly barge vessels for purposes of mooring, docking, and loading or discharging cargo on or from such USER Vessels. For all other USER Vessels, Dock assignments shall be made at the discretion of the Harbormaster in accordance with the Tariff, provided that the Harbormaster shall assign such Vessels to UMC dock Position #6 and/or Position #7 unless such assignment would unreasonably delay the berthing of any vessel or interrupt UMC operations.

1. To avail itself of the berthing assignments described above:

- a. Each week, USER's Unalaska representative shall furnish the Harbormaster with a report that provides information as to the position, estimated time of arrival in Unalaska, and estimated port time of USER's line haul vessels and weekly barge vessels for which User desires berthing at Position #6 and/or Position #7 during the week following. Alterations to and deviations from the weekly report shall not incur charges applicable to cancellation of a confirmed schedule. For each such vessel, USER shall confirm or update such information at least 12 hours in advance of the vessel's estimated time of arrival.
 - b. For all other USER Vessels, USER's Unalaska representative shall furnish the Harbormaster with a vessel schedule at least 12 hours in advance of the estimated time of arrival.
2. It is agreed that Premises and Facilities are public facilities and subject to the provisions of the Tariff.
3. USER shall make a reasonable effort to vacate berths within four hours after working cargo; provided however, should weather conditions prevent the User Vessel from leaving safely, an extension may be granted by the City Harbormaster if not a conflict with previously scheduled vessels.

G. Use of Storage, Marshaling Areas, and Facilities Other than the Dock. USER shall have exclusive right to use and occupy the Premises, including without limitation the operations of loading, unloading, working, parking, and storage of cargo, vans, chassis, trucks, and other equipment; provided that the City reserves the right to maintain access for all users via the public rights-of-way and dock area adjacent to any berth when USER is not actively engaged in loading or unloading of USER Vessels.

H. Additional Berthing of USER Vessels. USER Vessels shall be allowed to berth at Position #6 and/or Position #7 while not engaged in cargo operations unless the City Harbormaster requests their removal to accommodate other use of Facilities. In such event, the Harbormaster will notify the vessel captain as early as possible of the time the USER Vessel must clear the dock.

I. Cargo Terminal Services & Stevedoring. User shall be responsible for performing all Cargo Terminal Services and Stevedoring Services for USER Vessels and shall perform same for USER Vessels only.

V. RENT & OTHER PAYMENTS

A. Rent. In addition to wharfage, dockage, and other fees or charges elsewhere specified in this Agreement, USER shall pay to the City monthly rent (“Rent”) for the Premises. The Rent shall be based on the total square feet of the Premises. And calculated and paid in accordance with this Section.

1. Except as provided in this section, the Rent shall be calculated based on Tariff Storage Rates for Open Areas monthly charge. As of the effective date of this Agreement, such rate is \$0.47 per square foot.
2. Within two years of the effective date of this Agreement, the City shall obtain an appraisal of the fair market value of Parcel F, Parcel G, Parcel H, and Parcel I. USER’s Improvements shall not be appraised and the highest and best use of the Premises shall be determined without consideration of any use rights or limitations imposed by this Agreement. USER shall reimburse the City for the reasonable cost of the appraisal within 30 days of the City invoicing USER for same. Following receipt of such appraisal report, an annual rental rate equal to 10% of the appraised value shall be fixed. The monthly Rent shall be equal to 1/12th of the annual rental rate, with any adjustment in the Rent effective the first month after the City has provided USER a copy of the appraisal report.
3. In accordance with Unalaska Code of Ordinances § 7.12.050, the fifth year following adjustment to the Rent in accordance with Section V.A.2, and again every five years thereafter, each of the Parcels constituting the Premises shall be reappraised and the Rent shall be adjusted, and the City reimbursed the reasonable cost of the appraisal, as set forth in Section V.A.2. If, however, the Tariff Storage Rates for Open Areas monthly charge has been revised to reflect current fair market value of UMC storage premises at any time during any five-year period, the Rent shall adjust based on the updated Tariff Storage Rates for Open Areas monthly charge, with such adjustment in the Rent effective the first month after the effective date of the Tariff change, and appraisal shall not be required.
4. Rent payments shall be made payable to the City of Unalaska and delivered to the City of Unalaska Finance Department, P.O. Box 610, Unalaska, Alaska 99685, or to any other address which the City may designate in writing.

5. Rent is due with or without invoice on the date specified in subparagraph C above.
- B. USER shall pay to the City Wharfage and Dockage fees at the rates shown in the Tariff.
- C. USER shall submit to the City within ten days of the end of each month a statement detailing the vessel dockage and cargo tonnage handled during the previous month. All such sums shall be a charge against the vessel or cargo, as the case may be, and shall be remitted by the User to the City. Such remittances shall be accompanied by appropriate itemized documentation. Charges shall be paid by the User to the City within ninety 90 days after the first billing to the vessel or cargo, or within ten working days of receipt of payment by the User, whichever is less, provided that credit terms shall be those chosen by the User. All such billings to the vessels and cargo will be itemized for services rendered by the User and shall be made promptly after performance of those services.
- D. Nothing in this Agreement reduces or modifies the liability of USER for fees or charges for other services set out in the Tariff.
- E. All amounts due under this Agreement, including Rent, that are not paid within thirty days of the date due shall bear interest at the rate of 10.5% per annum for as long as the delinquency continues.

VI. TERM OF AGREEMENT

- A. **Initial Term.** The term of his Agreement is for 20 years and shall commence on July 1, 2024, and shall continue in full force and effect through June 20, 2044, unless earlier terminated pursuant to this section.
- B. **Renewal Terms.** This Agreement may be renewed for two consecutive additional five-year periods (each a “Renewal Term”) by mutual agreement of the parties. At least 90 days prior to the expiration of the term then in effect, USER shall provide written notice to the City of its desire to renew or not renew this Agreement for the next succeeding Renewal Term. The City will then reply to USER within 15 days whether it wishes to renew this Agreement. If both parties agree to renew this Agreement, they shall then enter good faith negotiations to address any modifications to this Agreement requested by either party. The failure of the parties to agree upon a renewal of this Agreement shall cause this Agreement to terminate at the end of the current term.
- C. **Default.** The City may declare a default hereunder and terminate this Agreement, in addition to exercising any other available remedy, upon the occurrence of any of the following:
 1. The failure of USER to pay any sum of money due under this Agreement within 30 days after the due date.
 2. The failure of USER to perform or observe any covenant or condition of this Agreement, other than a default in the payment of money described in Section VI.C.1, which is not cured within 30 days after notice thereof from the City to

USER, unless the default is of a kind that may be cured, but not within such 30-day period, in which case no default shall be declared so long as USER shall commence the curing of the default within such 30 day period and thereafter shall diligently and continuously prosecute the curing of same.

3. The commencement of a case under any chapter of the federal Bankruptcy Code by or against USER, or the filing of a voluntary or involuntary petition proposing the adjudication of USER as bankrupt or insolvent, or the reorganization of USER, or an arrangement by USER with its creditors, unless the petition is filed or case commenced by a party other than USER and is withdrawn or dismissed within 90 days after the date of its filing.
4. The admission in writing by USER of its inability to pay its debts when due; the appointment of a receiver or trustee for the business or property of USER, unless such appointment shall be vacated within ten days after its entry; USER making an assignment for the benefit of creditors; or the voluntary or involuntary dissolution of USER.

D. Eminent Domain. Upon condemnation of the lease property or any part thereof by the state or federal government or an agency thereof, including inverse condemnation, the lease shall terminate without any liability to the City.

VII. MAINTENANCE AND REPAIR OF PREMISES

- A.** The City shall maintain and repair, at its own expense, the utilities (water, sewer or septic system, storm drainage, and electrical), common roadbeds and UMC structures. In no event shall the City be obligated to repair or otherwise mitigate or respond to damages resulting from USER's use of the Facilities.
- B.** Specifically for the Premises, USER shall, at its own expense, provide all routine preventive maintenance, repairs, and replacements to any USER structures, including: any USER, container cranes, container handling equipment, USER installed electric systems and equipment, and the cargo storage area.
- C.** USER will provide all snow removal and de-icing of the Premises. USER shall keep the Premises clean, orderly, and free of rubbish. If USER fails to adequately remove snow, ice, or debris, the City may furnish the necessary equipment and manpower to provide this service in which event USER shall promptly pay the City's billings for such services.
- D.** USER shall provide the City Harbormaster a semi-annual maintenance and repair report on any single incident of damage or repair over \$10,000.
- E.** Within 30 days after each anniversary of the date of this Agreement, USER and the City agree to inspect the Premises and prepare a report describing the condition of the Premises and specifying any items in need of repair. The party responsible for those repairs shall start those repairs within 30 days after the report is prepared and shall promptly complete them.

- F. If, at any time during the term of this Agreement, the Premises are damaged or destroyed by fire or other casualty, due to any cause other than an act or omission solely of USER, the City may elect to either (i) at its expense, repair, rebuild, replace and restore the Premises to a condition comparable to that which existed immediately prior to the fire or other casualty, or (ii) terminate this Agreement. In the event the City elects to repair, rebuild, replace or restore the Premises, payments under this Agreement shall be abated in proportion to the extent that the Premises are not usable by USER during the time the unusable areas remain unrepaired or unrestored.
- G. USER acknowledges having inspected or having been given a full opportunity to inspect the Premises, Position #6 and Position #7 and hereby accepts them in their present condition, and shall at the termination of this Agreement surrender said Premises in as good a condition and repair to the City reasonable wear and tear excepted.

VIII. INDEMNITY

- A. USER shall indemnify and hold harmless the City and its elected and appointed officials, employees, agents, and servants from any and all losses, expenses, damages, demands, and claims by any person in connection with or rising out of any injury (including death) to persons or in connection with damage to property or the natural environment, sustained in whole or in part as a result of USER use, occupancy and maintenance of the Premises and assigned Berths, and/or exercise of its rights under this Agreement or USER breach of this Agreement. USER shall defend all suits and actions brought against the City and any of its elected or appointed officials, employees, agents or servants from any such injury or damage and shall pay all damages, costs, and expenses, including attorney's fees incurred in connection with the suits or actions. The only exception to this indemnity provision shall be for claims resulting from the negligence, gross negligence, or willful misconduct of the City or its employees, agents, or servants, and for claims resulting from an act or omission of a third party, with respect to which USER's obligations under this paragraph shall be limited to that portion of any such claim not attributable to the City and not attributable to a third party.
- B. This indemnity provision specifically includes all environmental damage that may result from USER operations under this Agreement and any penalties or fines which may be assessed in connection therewith.
- C. Claims arising in whole or in part out of any incident or event occurring during the term of this Agreement or any extension or renewal of it shall be covered by the provisions of this section VII even though they may not have been asserted or discovered until after the expiration of said term.

IX UTILITIES

- A. During the term of this Agreement, USER shall pay the providers directly for all utility bills and accounts for utility services used or consumed by USER on or in connection with the Premises.

- B.** USER shall be responsible for obtaining its own janitorial services for USER facilities on the Premises, if any.

X. INSURANCE

- A.** USER shall procure and maintain at its sole expense, and shall keep in full force and effect throughout the term of this Agreement, the following policies of insurance:
1. Commercial General Liability Insurance, \$5,000,000 combined single limit per occurrence for bodily injury and property damage claims arising from all operations related to this Lease. The general aggregate limit shall be \$5,000,000.
 2. Commercial Automobile Liability Insurance, \$5,000,000 combined single limit per accident for bodily injury and property damage.
 3. Worker's Compensation and Employers Liability. Worker's Compensation shall be statutory as required by the State of Alaska. Employers Liability shall be endorsed to the following minimum limits and contain USL&H coverage endorsement, if applicable: (i) bodily injury by accident, \$1,000,000 each accident; and (ii) bodily injury by disease, \$1,000,000 each employee.
 4. Pollution Insurance, \$10,000,000 combined single limit per loss applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of petroleum products, smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.
- B. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:
1. Commercial General Liability and Automobile Liability and Pollution
 - a. City, its officers, officials, employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitation on the scope of protection afforded to City, its officers, officials, employees and volunteers.
 - b. USER's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of USER's insurance and shall not contribute to it.

- c. USER's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by USER for City.
 2. Worker's Compensation and Employer's Liability. USER's insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from work performed by USER for City.
 3. All Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given by the Insurer to City by certified mail, return receipt requested.
- C. Acceptability of Insurers.** Insurance is to be placed with insurers qualified to do business in Alaska having a Best's rating of no less than A-.
- D. Verification of Coverage.** USER shall furnish City with approved certificates of insurance and with certified copies of all endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms which meet industry standard. City reserves the right to require complete, certified copies of all required insurance policies at any time.

XI. RIGHT OF INSPECTION-RECORD KEEPING REQUIREMENT

- A. The City shall have the right to inspect the Premises without prior notice to ensure compliance with the terms of this Agreement.
- B. The City shall have the right to audit USER's records and to require USER to prepare summaries or reports from its records to determine compliance with the payment terms of this Agreement.
- C. USER shall prepare or cause to be prepared bills of lading detailing all cargo loaded on or from each container on any USER Vessel using the Premises. USER shall preserve all bills of lading and other records evidencing USER's use of the Premises for not less than three years after expiration of this Agreement.

XII. TAXES

- A. In addition to the fees and charges provided in this Agreement, USER shall pay when due all taxes and other charges which are levied at any time during the term of this Agreement upon the leasehold interest and any improvements on the Premises. If the City receives a notice of assessment from any taxing jurisdiction claiming that the City or USER is liable for any tax or charge for which USER has agreed to make payment under this paragraph, the City shall notify USER in writing no later than 30 days after receipt of the claim.

B. If USER has a reasonable basis to contest, protest, or appeal (the “Appeal”) the imposition or amount of any tax or charge, USER, at its own expense, may prosecute the Appeal, in which case the City shall cooperate fully with USER including, but not limited to, providing documentation and other information as required for USER to settle or sustain the Appeal. If USER prosecutes the Appeal, and if, but only if, such proceedings suspend enforcement and collection of the tax or charge, and no part of the Premises or any interest therein is or will be in danger of being sold or forfeited, this Agreement shall not obligate USER to pay the tax or charge until the taxing jurisdiction's decision that the City or USER is liable for the tax or charge becomes final. If any of the Premises is subjected to a lien which is not discharged within thirty 30 days after USER receives notice of such lien, USER shall deposit with the City cash, a sufficient corporate surety bond or other security satisfactory to the City in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of such contest.

XIII. ASSIGNMENT

The parties stipulate and agree that the rights and obligations under this Agreement are of such a nature that the rights and duties of USER hereunder shall not be assignable, nor shall USER sublet any portion of the Premises, without the prior written consent of the City, which consent shall not be unreasonably withheld, except to an entity that is owned solely by or that is an affiliate of USER, after 30 days’ prior notice to the City. USER shall include in such notice a statement of any legal requirement for confidentiality regarding the notice or the related transaction, with which the City shall comply to the extent allowed by law. Should the City consent to an assignment USER shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee of any payments or other performance due under this Agreement shall not be construed as a waiver of USER’s continuing liability. A change of control of USER other than from the parent entity of USER to an affiliate shall constitute an assignment for purposes of this provision.

XIV. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

At all times during the term of this Agreement, USER shall conduct operations in accordance with all applicable federal, state, and local laws and ordinances.

XV. SEVERABILITY

If any part, term or provision of this Agreement is declared null or unenforceable by a court or other tribunal of competent jurisdiction, the validity and enforceability of the rest of this Agreement shall not be affected.

XVI. WAIVERS

No waiver by USER or the City of any covenant or condition of this Agreement shall be construed as a waiver of any other covenant or condition, nor shall the waiver of one breach be considered as a waiver of any other breach.

XVII. SURRENDER

- A. USER agrees that that it shall not cause the Facilities to be subject to any liens, charges or encumbrances and agrees that at the expiration of the term of this Agreement it will deliver to the City or its designee, the Premises in good condition (ordinary wear and tear excepted) and without liens, charges, or encumbrances.

- B. Excepting only the Replacement Crane, USER shall have the right at any time during the Term to remove from the Premises all its Improvements, equipment, removable fixtures and other personal property, and all property of third persons for which USER is responsible and on or before the expiration or earlier termination of this Agreement, USER shall remove all of the same from the Premises, repairing all damage caused by any removal; provided, however, if USER shall fail to remove all such property within 45 days after the expiration or earlier termination of this Agreement, the City may remove such property to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction; provided, further, that the City shall have given USER ten days' notice of the City's intent to sell such property at public auction, the proceeds of which shall be applied: first to the expenses of removal, including repair required thereby, and of storage and sale; second, to any sums owed by USER to the City, with any balance remaining to be paid to USER. If the expenses of such removal, repair, storage, and sale shall exceed the proceeds of sale, USER shall pay such excess to the City upon demand. Without limiting any other term or provisions of this Agreement, USER shall indemnify and hold harmless the City, its officers, agents, employees, and contractors from all claims of third persons arising out of the City's removal and disposition of property pursuant to this Section, including claims for conversion, claims for loss of or damage to property, claims for injury to persons (including death), and claims for any other damages, consequential or otherwise, excluding only claims based on the City's sole negligence.

XVIII. MODIFICATIONS AND NOTICES

- A. No modification of this Agreement shall be effective unless agreed to by USER and the City in writing and approved by the Unalaska City Council. No modification of one provision of this Agreement shall be considered a waiver, breach or cancellation of any other provision.

- B. All notices required to be given under this Agreement shall be in writing, and shall be effective on the date of receipt and shall be mailed to the parties at the following addresses:

If to City:

City Manager
 City of Unalaska
 P.O. Box 610
 Unalaska, AK 99685

If to USER:

XIX. ANTI-DISCRIMINATION

During the performance of this Agreement, USER agrees:

- A. In connection with its performance under this Agreement including construction, maintenance, and operation of or on the Premises, USER will not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, or national origin.
- B. USER and its employees shall not discriminate, by segregation or otherwise, against any person on the basis of race, color, ancestry, religion, sex, or nationality by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally.
- C. USER shall include and require compliance with the above nondiscrimination provisions in any subletting or subcontract made with respect to use of the Premises under this Agreement.

XX. ALASKA LAW

The parties agree that this Agreement was entered into in the State of Alaska, that Alaska law will govern its interpretation and application, and that venue of any suit or other action arising out of this Agreement shall be in the Superior Court for the State of Alaska Third Judicial District unless a nonwaivable state or federal law requires otherwise.

XXI. BINDING ON SUCCESSORS AND ASSIGNS

All provisions of this Agreement shall inure to the benefit of and be binding on the parties, their successors, and permitted assigns.

XXII. COMPLETE AGREEMENT

This Agreement between USER and the City, constitutes the final agreement between the parties. They are the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by the aforementioned agreements.

