



REVOCABLE TERMINAL OPERATOR PERMIT
PORT MACKENZIE
MATANUSKA-SUSITNA BOROUGH



THIS AGREEMENT made and entered into this _____day of _____, 20____, by and between the MATANUSKA-SUSITNA BOROUGH (“MSB”) and [COMPANY] (“OPERATOR”).

WHEREAS, the MSB holds legal interest in the titles to the land and facilities comprising Port MacKenzie and provides certain marine terminals suitable for performing marine-related services at Port MacKenzie; and

WHEREAS, OPERATOR desires to perform Terminal Operator and/or marine vessel related services at Port MacKenzie.

NOW, THEREFORE, the parties agree as follows:

Section 1. Permit Definitions

A. Unless provided otherwise in this permit, applicable definitions are set forth in the current Port MacKenzie Tariff No. 3 (hereafter known as Tariff), Appendix A., Port Facility Rules and Regulations.

B. For any terms not defined in the Tariff, or otherwise defined in this permit, applicable definitions set forth in 46 CFR part 525.1(c), Marine Terminal Operator Schedules shall control.

Section 2. Operating Activities

Operator hereby makes application for the non-exclusive right to perform only those Terminal Operator/marine services expressly identified and initialed below.

- _____ 1. Marine tanker vessel petroleum loading operations.
- _____ 2. Marine tanker vessel petroleum discharge operations.
- _____ 3. General cargo handling operations.
- _____ 4. Dry bulk cargo handling operations.
- _____ 5. Vessel servicing.
- _____ 6. Passenger operations.

Section 3. Term

The Operator may operate the MSB Terminals and Petroleum Valve Yard Facility at Port MacKenzie in accordance with this Permit commencing on the date the Permit is entered into and ending one (1) year after the date that the Permit is entered into. Unless otherwise terminated or suspended, the Operator may apply for a new Permit at least 30 days in advance of the expiration of this Permit.

Section 4. Notices

Any notice provided for herein shall be given in writing and transmitted by personal delivery or prepaid first class registered or certified mail to the parties at the following addresses:

MSB:	Port Operations Manager Port MacKenzie 350 E. Dahlia Ave. Palmer, Alaska 99645-6488	[Company]: _____ [Attn]: _____ [Address]: _____ _____ _____
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Section 5. Responsibilities of MSB

During the term of this permit, the MSB will:

- A. Designate areas consistent with Port operation in which the Operator may park, locate equipment, and/or conduct operations related to its activities at the Port;
- B. Make a reasonable effort to provide Dock and Terminal facilities at the Port upon which the Operator may conduct Terminal Operator and marine services;
- C. Make a reasonable effort to maintain utility connections at the MSB Terminal;
- D. Reasonably provide for the removal of snow and ice from the wharf and terminal areas; and
- E. At the sole discretion of the Port Operations Manager, allow Operator to use MSB equipment for a fee.
- F. Certain Holidays observed by the MSB may delay the providing of certain services and responsibilities beyond the Port’s control.

Section 6. Responsibilities of Operator

During the term of this Permit, the Operator shall:

- A. Ensure that all persons in Operator's employ are sufficiently qualified, trained, and able to conduct Operator's activities at the Port in accordance with all relevant federal, state, and local regulations, as well as the Tariff and the current Port MacKenzie Rules and Regulations;
- B. At the request of the MSB, provide the qualifications of any of its personnel, vendors, or other persons operating on behalf of Operator to the MSB;
- C. Ensure that its operations conform to all USCG, OSHA, and all other applicable federal, state, and local regulations, as well as the Tariff and the current Port MacKenzie Rules and Regulations;
- D. Furnish all equipment, supplies, and dunnage necessary to perform its operations under this Permit as indicated above;
- E. Ensure that Port-furnished equipment and facilities are not altered or modified while in use or in the custody of Operator, unless authorized by the Port Operations Manager;
- F. Store cargo, equipment, vehicles, and other materials only in those areas designated by the Port Operations Manager for that purpose and in a manner approved by the Port Operations Manager. The Operator assumes the risk for any damage that may be sustained by its cargo, equipment, vehicles, or any other materials at the Port. In the event that any such equipment, cargo, vehicles, or other material is damaged or destroyed, the Operator shall not seek compensation or restitution of any kind from the MSB;
- G. Keep all port facilities that it uses maintained in a clean and safe manner at all times;
- H. Ensure that proper equipment (i.e. gangways, ladders, safety nets, etc.) necessary for safely embarking/debarking from vessel(s) is used for all of its operations;
- I. Upon completion of any work performed under this Permit, secure and secure all entrances of all Port buildings, gates, and facilities they have entered;
- J. Have absolute control of and responsibility for the actions of its employees;
- K. Prior to beginning any operation, submit an operations plan to the Port Operations Manager for review and approval. The Operator shall supply to the Port Operations Manager copies of any attendant safety plans, permits, or other documentation relevant to its intended operations;
- L. Prior to the berth of any vessel, complete a vessel berthing application and submit to the Port Operations Manager; and

M. When transferring petroleum, comply with the following petroleum transfer operations requirements:

1. Provide a copy of Operator's current Petroleum Operations Manual examined and approved by the USCG;
2. Prepare and submit a Facility Response Plan (FRP) in conformance with USCG requirements and under 33 CFR 1321, and provide the Port Operations Manager a copy of same;
3. Provide the Port with a copy of Operator's current, USCG-approved Fuel Oil Spill Contingency Plan;
4. Comply with fuel oil spill containment equipment and procedural requirements as specified by 33 CFR parts 127, 154 and other provisions as applicable. Equipment will be maintained on site during fuel oil transfer;
5. Comply with all applicable federal, state, and local regulations and requirements;
6. Provide the Port and USCG with a current written list of designated, qualified facility operators to act as person(s)-in-charge of fuel oil transfer operations at the Port's facilities;
7. Complete applicable Petroleum Facility Temporary Custody Acceptance and Inspection Agreement document(s) prior to any petroleum cargo transfer operations;
8. Remit to the MSB a non-refundable \$250 Marine Tanker Vessel Loading Operator Agreement Fee, in addition to any other fees assessed as part of this permit, the Tariff, or otherwise;
9. Obtain written permission of the Port Operations Manager; and
10. Provide Material Safety Data Sheets (MSDS) to the Port Operations Manager for all hazardous materials handled.

Section 7. Permit Fee Schedule

A. Operator will remit to the MSB an annual permit fee corresponding to the service category that Operator indicated in Section 2 of this document, as outlined below.

B. In the event that Operator has indicated multiple service categories, Operator will only pay the greatest fee associated with one of their selected service categories.

Service Category

1. Marine vessel tanker petroleum loading operations	\$ 5,000
2. Marine vessel tanker petroleum discharge operations	\$ 5,000
3. General cargo handling operations	\$ 10,000
4. Dry bulk cargo handling operations	\$ 10,000
5. Vessel servicing	\$ 1,000
6. Passenger Operations	\$ 3,000

Section 8. Cooperation

This Permit is a nonexclusive authority for the Operator to conduct operations at Port MacKenzie. The Operator understands that similar authority may be held by others. The Operator shall cooperate with all other persons authorized to operate at the Port. The Port Operations Manager may order the Operator to schedule or reschedule its activities so as to accommodate the operations of other operators and the Operator shall comply with such an order.

Section 9. Checking and Reporting

The Operator shall be solely responsible for all required government and shipper documentation, as well as certification of quality and quantity of cargoes handled, for its operations.

Section 10. Facility Damage

A. The Operator shall give immediate verbal notice to the Port Operations Manager if Operator should become aware of defacement, damage, alteration, or destruction to any part of the Port facility by any party. The Operator shall also submit written notice of such an event to the Port Operations Manager as soon as possible.

B. The Operator shall be liable for any defacement, damage, alteration, or destruction to any part of the Port facility resulting from its use in accordance with the Tariff.

Section 11. Nondiscrimination

A. In performing its duties under this Permit, the Operator may not discriminate against any person on the basis of race, creed, color, religion, national origin, age, sex, marital status, physical or mental handicap.

B. The Operator shall comply with all applicable federal, state, and borough laws and ordinances concerning the prohibition of discrimination while conducting permitted activities at the Port.

Section 12. Permits, Laws and Taxes

A. The Operator shall acquire and maintain in good standing all applicable federal, state and local permits, licenses, and other entitlements necessary. All actions taken by the Operator under this Permit shall comply with all applicable statutes, ordinances, rules, and regulations. The Operator shall pay all taxes pertaining to its performance under this Permit.

B. The Operator shall observe all applicable rules and regulations, whether or not they are posted, including but not limited to the Tariff, the current Port MacKenzie Rules and Regulations, signs posted at the Port (including “No Smoking” and “No Parking” signs at the MSB Terminal), and all applicable USCG safety requirements.

Section 13. Non-Waiver

The failure of the MSB at any time to enforce a provision of this Permit shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Permit or any part hereof, or the right of the MSB thereafter to enforce each and every provision hereof.

Section 14. Assignments

Any assignment by the Operator of its interest in any part of this Permit is prohibited, and shall give the MSB the right immediately to terminate this Permit without any liability.

Section 15. Amendment

A. This Permit shall only be amended, modified or changed in writing, executed by authorized representatives of the parties, with the same formality as this Permit was executed and such writing shall be attached to this Permit as an appendix.

B. For the purposes of any amendment, modification or change to the terms and

conditions of this Permit, the only authorized representatives of the parties are:

Operator: _____

Title: _____

MSB: _____

Title: _____

C. Any attempt to amend, modify, or change this Permit by either an unauthorized representative or unauthorized means shall be void.

Section 16. Jurisdiction; Choice of Law

The law of the state of Alaska shall govern the rights and obligations of the parties under this Permit.

Section 17. Severability

Any provision of this Permit decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Permit.

Section 18. Integration

This Permit shall supersede any previous Permits issued by the MSB to the Operator.

Section 19. Indemnification

Operator covenants to and shall defend, indemnify and hold the MSB harmless from and against any and all demands, claims, causes of action (whether in action for damages, indemnity, contribution, government cost recovery or otherwise), actions, damages, fines, penalties, judgments, costs and expenses (including, without limitation, the MSB's and the Operator's costs of defense, settlement, and reasonable attorneys' fees), charges, forfeitures, liens, liabilities or losses of any nature and kind whatsoever for injury or damage to persons or property occurring within or upon the premises, unless caused by or resulting from the negligence of the MSB or the MSB's agents, servants, or employees in the operation or maintenance of the premises. Except as otherwise provided in this Section, the MSB is to be free from liability and claims for damages by reason of any injury to any person or persons, including Operator, its agents, employees, permittees, or contractors, or property of any kind whatsoever and to whosoever belonging, including Operator's, resulting from any cause or causes whatsoever while in, upon, or in any way connected with the

premises during the term of this Permit, or any use or occupancy hereunder. Operator covenants to indemnify and save harmless the MSB from all liability, loss, costs (including Operator's or MSB's attorney's fees) and obligations on account of or arising out of any such injuries or losses, however occurring, including any acts, negligent or otherwise, by the agents, invitees, guests, independent contractors, employees or servants of Operator and Operator agrees to defend the MSB at Operator's own cost (including attorney's fees) against all such claims, actions and suits brought against the MSB.

Section 20. Permit Administration

The Port Operations Manager is authorized to administer this Permit on behalf of the MSB.

Section 21. Termination

A. Either the MSB or Operator may terminate this Permit for any reason or for no reason by notifying the other party in writing at least twenty (20) days before the date upon which the termination is to be effective. Any fees assessed as a result of this permit will not be refunded.

B. The MSB may terminate this agreement in response to a breach by Operator of its responsibilities as laid out in this document or failure by Operator to comply with prevailing rules and regulations. Any fees assessed as a result of this permit will not be refunded.

Section 22. Facility Operations

A. The Port Operations Manager shall have the right to order any operation to cease immediately if, in the opinion of the Port Operations Manager, a condition is unsafe, unlawful, or in violation of the Tariff, the current Port MacKenzie Rules and Regulations, or any other applicable regulations.

B. In the event of a operational dispute between the parties under this Permit, the Port Operations Manager shall provide a written decision and serve a copy thereof upon the Operator. The decision of the Port Operations Manager shall be final.

Section 23. Insurance

A. During the term of this Permit, the Operator shall continually and without interruption maintain in good standing insurance described in this Section or self- insurance satisfactory to the MSB. Prior to its performance pursuant to this Permit, the Operator shall furnish the Port Operations a certificate of insurance in accordance with Subsection B of this Section.

B. The Operator shall obtain:

1. General Liability: At least as broad as ISO CG 0001 (Edition 4/13) \$2,000,000 Combined Single Limit per occurrence for bodily injury, property damage, personal and advertising injury. The general aggregate limit shall be a minimum of \$5,000,000.
2. Auto Liability: At least as broad as ISO CA 0001 (Edition 10/13) \$1,000,000 Combined Single Limit, including Hired & Non-owned coverage.
3. Worker's Compensation and Employer's Liability Insurance, including Longshore and Harbor Worker's coverage as required by state and/or federal statute.
4. Terminal Operators Liability including Stevedoring and Wharfingers' \$5,000,000.
5. Petroleum transfer operations require evidence of insurance in the amount of \$10,000,000. Dangerous, hazardous, or explosive cargo movements require advance notification to and approval of the Port Operations Manager as described in the Tariff and the current Port MacKenzie Rules and Regulations.

C. Excess Liability: In order to meet the required minimum limits of insurance, it is permissible for the operator to combine an excess liability or umbrella policy. Burden is on the Operator to demonstrate that excess/umbrella policy attaches to underlying coverage in order to reach minimum limits. On or to the insurance coverages required of Operator under the provisions of Subsection 1., 2., and 5., above of Section 23. B., Operator shall cause the MSB to be named and listed upon the policies as an additional insured. All such insurance policies shall be non-assessable and shall contain language, to the extent commercially obtainable, to the effect that (a) any loss shall be payable notwithstanding any act or negligence of the MSB that might otherwise result in forfeiture of the insurance and (b) the policies are primary and non-contributing with any insurance that may be carried by or available to the MSB.

D. Deductibles and Self-Insured Retentions: Deductibles and self-insured retentions are the sole responsibility of the Operator. Operator may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the MSB, the Operator shall reduce or eliminate such deductibles or the Operator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. The insurance obtained pursuant to this Section shall provide for written notice of any termination, cancellation, or expiration of the insurance to be delivered to the Port Operations Manager no less than thirty (30) days before the effective date thereof.

G. The Operator may be required to provide evidence of additional insurances at the discretion of the Port Operations Manager.

Section 24. Force Majeure and Delay Damages

A. Force majeure is an act or event of substantial magnitude, beyond the control of the Operator and/or the MSB, which delays or hinders the Operator's activity at the Port pursuant to this Permit, including without limitation:

1. Strike or work stoppages.
2. Any interruption, suspension, or interference with the Operator's activities caused by acts of God, or acts of the public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
3. Order of a court, administrative agency or governmental officer other than MSB officers.
4. Suspension, termination, or interruption of governmental licenses, consents, authorizations or approvals.

B. No claim for costs may be allowed the Operator for delay or hindrance of its activities under this Permit caused by third parties.

Section 25. Safety

The Operator must conduct all operations in a safe manner, and must comply with all applicable provisions of the Tariff and the current Port MacKenzie Rules and Regulations.

Section 26. Hazardous Materials

A. Operator may cause or permit hazardous materials to be used, kept, and/or stored at the Port only with the written permission of the Port Operations Manager. Any such materials must be handled in a manner that complies with all laws regulating any hazardous material, the Tariff, and the current Port MacKenzie Rules and Regulations. If Operator breaches the obligations stated in the preceding sentences, or if the presence of hazardous material on the premises caused or permitted by Operator results in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs for which Operator is legally liable to the MSB for damage resulting therefrom, the Operator shall indemnify, defend, and hold the MSB harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the premises and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Permit term as a result of such contamination. This indemnification of the MSB by the Operator includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal,

