

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 as identified in Section 5.A.

NOW, THEREFORE, the parties agree as follows:

Section 1. Permit Definitions.

A. “Bulk Cargo” means cargo that is loaded or unloaded at the Municipal Terminals and transported in bulk without mark or count in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

B. “Carloading or Unloading” is the service performed to load cargo from wharf premises or other such terminal premises designated by the Port Director or his authorized representative to be used for such purposes, to or from railroad cars or trucks, trailers, semi-trailers from or to wharf premises or other terminal premises.

C. “Cargo-handling services” means any act of car loading or unloading, direct loading or unloading, handling or storing of cargo.

D. “Check” or “Checking” means the inspection of cargo to determine its quantity, condition, or destination, the consignee's identity, and the accuracy of billing.

E. “Commercial Fish Operations” means the act of loading, unloading, storing, and transportation of fish product from dock, wharf, pier or any other structure owned/leased by Port MacKenzie.

F. “Container” means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes

dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

G. "Direct Loading or Unloading" means the service accorded to cargo in transferring cargo by ship's tackle or terminal's tackle between ship and open top railroad cars, vehicles, pipeline, or water, raft, barge, lighter, or other waterborne vessels; or open top trucks, trailer beds or bodies, which are spotted within reach of ship's manifolds, tackle or terminal's tackle.

H. "Dockage" is the charge assessed to a vessel for docking at a wharf, dock, pier or other facility, or for mooring to a vessel so docked.

I. "Dunnage" means loose wood or packing material used in a ship's hold for protecting cargo from damage during transport and specified items approved by the Port MacKenzie Port Commission in the Port MacKenzie Terminal Tariff.

J. "General Cargo Operations" means service accorded to cargo in transferring cargo by ship's tackle or terminal's tackle between ship and open top railroad cars or water craft, barge, lighter, or other waterborne vessels, or open top trucks, trailer beds or bodies, which are spotted within reach of ship's tackle or terminal's tackle.

K. "Handling" means the service accorded to cargo movement from end of ship's tackle or terminal's tackle to the first place of rest on the wharf or other terminal premises designated by the Port Director or his authorized representative to be used as the first place of rest, or from such first place of rest on the wharf or other such terminal premises to a place within reach of ship's tackle or terminal's tackle.

L. "Holidays" Whenever in this Permit reference is made to holidays the following days are included: New Year's Day, Martin Luther King Day, President's Day, Seward's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day, and every other day appointed by the President of the United States of America and/or the Governor of Alaska. In the event that one of the above mentioned holidays occurs on Saturday, the previous Friday will be considered a holiday for the purpose of this Permit. In the event that one of the above mentioned holidays occurs on Sunday, the following Monday will be considered a holiday for the purpose of this Permit.

M. "Industrial Park" means those parcels of real property adjacent to the Dock/Terminal which organizations with business interests at the Port may lease/rent from the MSB.

N. "Marine Bulk Petroleum Tank Vessel and Barge Loading" means the transfer of any bulk petroleum product to any ship, tanker, barge or vessel from the Port MacKenzie Petroleum Oil Lubricants (POL) facilities.

O. "Marine Tanker Vessel Discharge" means any ship, tanker, barge or vessel operation that discharges petroleum product inbound across the Petroleum Oil Lubricants (POL) facilities.

P. “Motor Vehicle” means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan, or sport utility vehicle.

Q. “MSB Docks” means the gravel dock surface, access trestles, concrete operating wharves, and any equipment which is permanently affixed thereto.

R. “MSB Terminal” means the MSB Docks, Petroleum Terminals, Transit Areas and their associated facilities, such as access roads, railroad tracks and the adjacent storage areas necessary to conduct normal day-to-day dock or cargo handling operations.

S. “Borough” means the Matanuska-Susitna Borough.

T. “Non-Operating Port” means a landlord port with all port facilities generally leased, rented or preferentially assigned with the lessee, rental Operator or assignee responsible for operating the facilities.

U. “Operating Ports” generally provide all port services except stevedoring with their own employees including, but not limited to, loading and unloading of rail cars and trucks and the operation of container terminals, grain elevators, and other bulk terminal operations.

V. “Passenger” means an individual embarking/disembarking across Port piers who travels on a ship or vessel by virtue of a contract with the carrier, and who is paying a fare.

W. “Passenger Operations” means providing or contracting services at Port MacKenzie necessary for one who travels on a ship or vessel by virtue of a contract with the carrier, and who is paying a fare.

X. “Petroleum Terminals” means the petroleum terminals of Port MacKenzie which are the steel and concrete breasting platforms, pipe racks, walkways, dolphins, and appurtenant structures located to the west of the MSB dock.

Y. “Petroleum Valve Yard” means the Port's petroleum manifold system, including any transfer pipelines and valves contained therein, its related facilities and walkways.

Z. “Port MacKenzie” means the Port MacKenzie District as defined by the current Port MacKenzie Special Use District (SPUD) document, tidelands which have been transferred to the MSB, and tidal waters within the boundary limits of the MSB, exclusive of those areas which are within the exclusive jurisdiction of either the State or the United States.

AA. “Port Director” means the Director of Port MacKenzie or the Port Director’s designee.

BB. “Terminal Operator” means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing terminal services in

connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, common carriers who perform port terminal services.

CC. “Transshipment” means the transfer of cargo goods arriving and unloaded at the wharf, from the vessel stipulated in the contract of affreightment, for further shipment to its ultimate destination on and by terms of a through bill of lading, to another vessel before the place of destination has been reached. To qualify, transshipped cargo goods shall not leave the boundaries of the Port MacKenzie District, and the originating seal must remain unbroken.

DD. “Vessel” means ships or crafts of all types, in excess of 40’LOA (length over all), including but not limited to the following: motor ships, steam ships, canal boats, tugs, barges, sailing vessels, motor boats, and every structure adapted to be navigated from place to place for the transportation of property and persons by any means.

EE. “Vessel Owner” means the actual or registered owner, charterer, master, agent, person in navigational control or person responsible for the operation of the vessel.

FF. “Vessel Servicing” means tug boat assistance and/or providing commodities to vessels.

GG. “Wharfage” means the charge assessed against any freight, cargo, goods placed in transit shed or on a wharf, or passing through, over or under a wharf or MSB terminal; or transferred between vessels, or loaded to or unloaded from a vessel at a wharf, regardless of whether or not a wharf is used. Wharfage is solely the charge for use of wharf and does not include handling, sorting, piling of freight or charges for any other services.

Section 2.     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 on December 31st of each year subject to the terms and conditions of this Agreement and the Port MacKenzie Terminal Tariff. Unless otherwise terminated or suspended, the Operators may apply for a new Agreement each year for a one (1) year term, upon mutual agreement by execution of a new Revocable Terminal Operator Permit.

Section 3.     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 Director  
Port MacKenzie  
350 E. Dahlia Ave.  
Palmer, Alaska 99645-6488

Operator: Operator Company  
Attn: Area Operations Manager  
Address  
City, State Zip

Section 4. Responsibilities of Port.

During the term of this Permit, Port MacKenzie, a Non-Operating Port owned by the MSB, will:

- A. Use its best efforts to provide Dock and Terminal facilities at the Port upon which the Operator may conduct Terminal Operator and marine services as set forth in Section 5.A;
- B. Designate areas consistent with Port operation in which the Operator may park and locate equipment related to its activities at the Port;
- C. Maintain utility connections at the MSB Terminal;
- D. Reasonably provide for the removal of snow and ice from the dock and trestles; and
- E. Provide such equipment and facilities for use or operation by the Operator as the Port Director may deem to be available at the time requested by the Operator. Such equipment and facilities shall be provided at the tariff rates established in the then current Port MacKenzie Terminal Tariff.

Note 1: Certain Holidays observed by the MSB may delay the providing of certain services and responsibilities beyond the Port's control.

Section 5. Responsibilities of Operator.

**GENERAL PROVISIONS**

During the term of this Permit, the Operator shall:

- A. 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.  
(see Note 1 under Section 5.N)
  - \_\_\_ 2. Marine tanker vessel petroleum discharge operations.
  - \_\_\_ 3. General cargo handling operations.
  - \_\_\_ 4. Dry bulk cargo handling operations.
  - \_\_\_ 5. Vessel servicing.
  - \_\_\_ 6. Commercial fish operations.
  - \_\_\_ 7. Passenger operations.

B. Furnish all equipment, supplies, and dunnage necessary to perform its private or common carrier services under this Permit as indicated above. The Operator shall only allow persons certified by the United States Coast Guard (“USCG”) to operate any POL terminal facility supplied by the Port for the Operator's use pursuant to Section 4.E. The Operator providing services listed in Section 5.A.1 and 2, shall maintain a current list of operators certified by the USCG with the Port Director.

C. Ensure that Port furnished equipment and facilities are not altered or modified while in use/under the custody of Operator, unless authorized by the Port Director or his designee.

D. Store cargo/transship cargo only in those areas designated by the Port Director for that purpose and in a manner approved by the Port Director.

E. At all times other than those when the Operator is actually servicing a vessel, keep all Port facilities it uses pursuant to this Permit clean and clear of its personnel, equipment, cargo, debris, dunnage, and other material. If the Port Director determines that the Operator has failed to perform as required by this Subsection, the Port Director may either (1) direct the Operator to secure a labor force to so perform at the sole expense of the Operator and the Operator shall do so immediately, or (2) directly arrange for such performance at the sole expense of the Operator and the Operator shall pay those expenses plus 15% administrative overhead costs before performing further services pursuant to this Permit.

F. At its option and providing space is available, the Operator may leave its business equipment, motor vehicles or its employee's vehicles only in those areas designated by the Port Director for such purposes. The Operator assumes the risk for any damage that may be sustained by such equipment or vehicles at the Port.

G. Be responsible for providing the proper equipment (i.e. gangways, ladders, safety nets, etc.) necessary for safely embarking/debarking from vessel(s) under this Permit.

H. Upon completion of any work performed under this Permit, secure and lock all overhead and personnel doors of all Port buildings, gates, and facilities they have entered.

I. If the Operator offers services for public hire, supply the Port Director with three (3) copies of its current cargo-handling rates and charges upon execution of this Permit. The Operator shall give written notice to the Port of any changes within a reasonable time before the effective date of such change. The Port shall quote the rate and charges on file pursuant to this Section in response to inquiries from the public.

J. Not enlist the service of any employee of the MSB (Port) in its performance under this Permit, under any circumstances, unless authorized by the Port Director. The Operator shall have absolute control of and responsibility for the actions of its employees.

K. Annual Terminal Operator Permit fees shall be prepaid for the permit period ending December 31st of each year by application for each service category(s) \_\_\_\_\_ in the

amounts identified below for the services described in Section 5.A. Permit applicants seeking to provide one or more of the listed services shall pay fees according to the following schedule unless the total services fees are more than \$15,000. In such case, a maximum Permit fee of \$15,000 shall apply. Permit fees shall be refunded based upon Port MacKenzie Terminal Tariff charges invoiced to the Terminal Operator Permit Holder. The MSB may waive permit fees for companies with approved leases within the Port District. The Port Director may approve a single, non-refundable Terminal Operator fee of \$1,500.00 per vessel in lieu of the fees listed in the following schedule.

| <u>Service Category</u> |   |          |
|-------------------------|---|----------|
| 1.                      | Marine vessel tanker petroleum loading operations<br>(see Note 1 under Section 5.N below) | \$ 5,000 |
| 2.                      | Marine vessel tanker petroleum discharge operations                                       | 5,000    |
| 3.                      | General cargo handling operations   | 10,000   |
| 4.                      | Dry bulk cargo handling operations  | 5,000    |
| 5.                      | Vessel servicing  | 1,000    |
| 6.                      | Commercial fish operations  | 1,000    |
| 7.                      | Passenger operations  | 1,000    |

**PASSENGER PROVISIONS**

L. If the Operator is in passenger-type operations or offers services for public hire, shall provide the Port Director with an operations plan for approval by the Port Director prior to commencing operations.

M. Whenever a Passenger Ship is at berth at Port MacKenzie, Operators shall provide and be in compliance with the USCG Passenger Ship Terminal Security Plan to include all required security personnel and equipment necessary to protect passengers, vessel and Port MacKenzie marine facilities. A copy of the Operator’s Passenger Ship Terminal Security Plan shall be submitted to the Port fourteen (14) days prior to the arrival of the vessel.

Port MacKenzie will assist the Operator as necessary to isolate and secure the designated passenger ship terminal when requested.

**PETROLEUM PROVISIONS**

- N. In accordance with Petroleum Terminal transfer operations requirements:
1. Provide a copy of Operator’s current Petroleum Operations Manual examined by the USCG.
  2. Provide the Port with a copy of Operator’s current, approved Oil Spill Contingency Plan.
  3. Comply with minimum oil spill containment equipment as specified by USCG (33 CFR 154.545). Equipment will be maintained, on site, during oil transfer.
  4. Comply with all applicable federal, state, and local regulations and requirements.

5. Provide the Port and USCG with a current written list of designated, qualified facility operators to act as person(s)-in-charge of oil transfer operations at the Port's facilities.
6. Complete applicable Vessel Berthing Application prior to any petroleum cargo transfer operations.
7. Complete applicable Petroleum Facility Temporary Custody Acceptance and Inspection Agreement document(s) prior to any petroleum cargo transfer operations.

Note 1: Special Clean Air Act Permitting authorization and procedures are required in order to conduct marine bulk petroleum tank vessel and barge loading operations. Operators loading products at Port MacKenzie shall have an approved and separate Marine Tanker Vessel Loading Operator Agreement with the MSB prior to conducting those operations. A separate and non-reimbursable Marine Tanker Vessel Loading Operator Agreement fee will be charged, in addition to those listed in this section, General Provisions, Paragraph K above.

Section 6. 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 Director 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 7. Checking Services.

A. The Operator shall check all cargo which it loads, unloads, or handles and prepare all over, short, and damage reports as may be required by a shipper, carrier, or consignee.

B. The Operator shall be solely responsible for all apparent damage or pilferage suffered by cargo checked by the Operator and not recited in shipside, exception, final over, short, damage, or unloading reports, except for such damage as may be caused by the negligent act of a Port employee.

C. The Operator shall be solely liable for all errors in its delivery of cargo as a result of improper checking or completion of any report listed in Paragraph B of this Section 7.



Section 8. Facility Damage.

A. The Operator may not deface, damage, destroy, or alter any portion of the Port facility or equipment. Should this occur, the facility damage must be immediately reported to the Port. If approval for Operator to correct the damage is obtained, the Operator may repair or replace such damage, destruction, or alteration at Operator's own expense and by means of Operator's work force if Operator pledges to do so within twenty-four (24) hours after the incident. Operator shall propose a schedule of performance satisfactory to the Port Director. If the Operator fails to give timely notice to the Port Director as required by this Section, Operator shall no longer have the right to repair or replace such damage, destruction, or alteration and the Port may proceed to so perform. The Operator shall pay the Port for the cost of repair or replacement of damaged facilities including fifteen (15%) percent administrative overhead costs within forty-five (45) days after presentation of a bill by the Port. The Operator shall pay any bill submitted in accordance with this Section before performing further services under this Permit.

B. The Operator shall give immediate verbal notice to the Port Director 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 Director as soon as possible.

Section 9. Services at Port.

The Operator shall use its best efforts to provide services which are better than or equal to those at other ports in Southcentral Alaska, at the lowest possible price.

Section 10. 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 11. 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 Port MacKenzie Terminal Tariff, signs posted at the Port

(including “No Smoking” and “No Parking” signs at the MSB Terminal) and all applicable U.S.C.G. Safety Requirements.

Section 12. 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 13. Assignments.

Except insofar as this Permit specifically permits assignments, and those permitted assignments must have prior consent of the MSB, any assignment by the Operator of its interest in any part of this Permit or any delegation of duties under this Permit shall be void, and any attempt by the Operator to assign any part of its interest or delegate duties under this Permit shall give the MSB the right immediately to terminate this Permit without any liability.

Section 14. 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 15. Jurisdiction; Choice of Law.

Any civil action rising from this Permit shall be brought in the Superior Court for the Third Judicial District of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties under this Permit.

Section 16. Severability.

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

Section 17. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Permit shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 18. 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 19. Risk of Loss.

The Operator agrees that any equipment, cargo, vehicle, or other material of any kind which is authorized to be stored or placed at the Port is so stored and placed at the sole risk of the Operator. In the event that any such equipment, cargo, vehicles, or other material is damaged or destroyed by any cause other than the wrongful misconduct of the MSB, the Operator shall not seek compensation or restitution of any kind from the MSB.

Section 20. Permit Administration.

The Port Director shall administer this Permit on behalf of the MSB.

Section 21. Termination.

Either the MSB or the Operator may terminate this Permit for any reason by notifying the other party in writing at least twenty (20) days before the date upon which the termination is to be effective.

Section 22. Factual Operational Disputes.

In the event of a factual operational dispute as to daily operations between the parties under this Permit, the Port Director shall reduce his position to a written decision and serve a copy thereof upon the Operator. The Operator may appeal the decision by written application to the Port Commission within thirty (30) days after receiving the Port Director's decision. While the appeal is pending, the Operator shall abide by the decision of the Port Director. The decision of the Port Commission shall be final and binding on all parties.

Section 23. Insurance.

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

B. The Operator shall obtain:

1. Bodily injury liability insurance in an amount not less than \$500,000 for any one person and not less than \$1,000,000 for any one accident or occurrence.

2. Standard Worker's Compensation, Social Security, Unemployment, Employer's Liability Insurance and Longshore and Harbor Worker's Compensation Insurance as may be required by state or federal law.

3. Property damage liability, which shall include any and all property whether or not in the care, custody, or control of the Operator, in an amount of not less than \$1,000,000 on account of any one accident.

4. Petroleum transfer operations require evidence of insurance in the amount of \$10,000,000. Dangerous, hazardous or explosive cargo movements require advance notification to the Port Director and approval of the Borough Manager concerning adequacy of Operator's insurance.

5. On or to the insurance coverages required of Operator under the provisions of Subsections 1., 3. and 4., 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 a

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.

C. 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 Director no less than thirty (30) days before the effective date thereof.

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. Fire Prevention.

The Operator shall keep fire lanes clear and maintain fire control equipment in a readily accessible location.

Section 26. Hazardous Materials.

Operator may cause or permit hazardous material, lawful, necessary and useful to Operator's business, to be used, kept and stored in a manner that complies with all laws regulating any hazardous material so brought upon, used or kept in or about the premises. If Operator breaches the obligations stated in the preceding sentence, 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, or restoration work required by any federal, state, or local governmental agency or political subdivision because of hazardous material present in the soil or groundwater on or under the premises. Without limiting the foregoing, and in addition to all the rights of indemnity set forth in Paragraph 18 of the Permit, if the presence of any hazardous material on the premises caused or permitted by Operator results in any contamination of the premises, Operator shall promptly take all actions on its sole expense as are necessary to return the premises to the condition existing prior to the introduction of any such hazardous material to the premises; provided that MSB's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Alaska, or the United States Government.

The duties set forth in this Paragraph 26 shall survive the expiration or termination of this Permit.

IN WITNESS WHEREOF, the Parties have executed this Permit on the date first hereinabove written.

**MATANUSKA-SUSITNA BOROUGH**

**COMPANY**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTEST:**

**RECOMMENDED FOR APPROVAL**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Borough Clerk  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Port Director  
Date: \_\_\_\_\_

