

CRANE USE AGREEMENT

This Crane Use Agreement ("Agreement") is made and entered into this ____ day of _____, 202_ (the "Effective Date"), by and between the **Don Young Port of Alaska** (the "Port"), an enterprise established by the **Municipality of Anchorage**, a municipal corporation organized under the laws of the State of Alaska (the "Municipality" or "Anchorage"), and **Matson Navigation Company of Alaska, LLC**, a Delaware limited liability company ("Matson") (each referred to herein as a "Party" and collectively as the "Parties").

WHEREAS, the Municipality through the Port owns and operates the Don Young Port of Alaska, including the docks, terminals, and related facilities (collectively, the "Port");

WHEREAS, Matson, as an assignee through a series of instruments of assignment, and the Municipality and/or the Port are parties to that certain Crane Agreement dated November 7, 1986 (as amended to the date hereof, the "1986 Crane Agreement") concerning (a) construction of certain dock improvements, (b) the sale to the Municipality of one Mitsubishi 40 Long Ton Container Crane Serial Number MHI 931 with appurtenant equipment, tackle, and parts (the "Mitsubishi Crane"), and (c) certain improvements agreed to be made to two PACECO 27 ½ ton container cranes (the "PACECO Cranes") located at the Port and known and numbered as 262 and 353;

WHEREAS, the Municipality has commenced the Port of Alaska Modernization Program ("PAMP"), which is a phased project for the modernization of the Port and includes construction of two new cargo terminals, new docks and related infrastructure, replacement of existing docks and construction of other improvements to enhance the vessel and container handling capacity of the Port and when completed will result in removal by the Municipality of the Mitsubishi Crane and the PACECO Cranes;

WHEREAS, as part of the PAMP, construction of a new cargo handling terminal will begin in 2025 ("Cargo Terminal 1");

Whereas, the Municipality and Matson are parties to that certain Crane Agreement dated effective as of _____, 202_ ("Crane Agreement") for Matson to install by _____, 202_ at Cargo Terminal 1 three new ship-to-shore cranes owned by Matson (the "Matson Cranes" as specifically defined in the Crane Agreement), as part of the improvements for Cargo Terminal 1;

WHEREAS, Matson's cargo handling activities will relocate to Cargo Terminal 1 when construction of Cargo Terminal 1 is completed;

WHEREAS, Matson, as the lessee, and the Municipality, as lessor, are parties to a Consolidated Lease Agreement dated January 1, 2016 and all amendments and modifications thereto, including but not limited to, Amendment No. 1 dated effective January 1, 2021 ("Amendment No.1") (the 2016 Consolidated Lease, Amendment No.1

and all existing and future amendments and modifications thereto, collectively herein the “Consolidated Lease”) relating to Matson’s existing cargo handling activities at the Port;

WHEREAS, under Amendment No. 1, the Parties agreed that incident to PAMP Matson will relocate to the new Cargo Terminal 1 (as defined in the Crane Agreement); and the Municipality intends as lessor to lease to Matson as lessee acreage at the Port equivalent in quantity to what Matson has currently under the Consolidated Lease, which property to be leased will have equivalent or improved proximity to the Matson Cranes installed at the new Terminal 1;

WHEREAS, Matson and the Municipality are parties to a Preferential User Agreement dated as of January 1, 2021 (with all existing and future amendments and modifications thereto, collectively herein, the “PUA”) concerning Matson’s preferential berthing rights and other use of the existing dock at the Port;

WHEREAS, Matson and the Municipality hereby amend the PUA as set forth in this Agreement effective upon (a) completion of Cargo Terminal 1 and installation and acceptance of the Matson Cranes; and (b) Matson’s commencement of operations at Cargo Terminal 1;

WHEREAS, the Matson Cranes will be operated by Matson under the general provisions set out below in this Agreement and under the specific terms and conditions of the PUA as amended by this Agreement, which terms and conditions are incorporated herein.

NOW THEREFORE, in consideration of the promises and covenants herein, and for other valuable consideration, the Parties agree as follows:

- I. MATSON CRANES. On the terms and subject to the conditions set forth in the Crane Agreement, Matson agrees to supply and install the Matson Cranes.
- II. DESCRIPTION OF THE CARGO TERMINAL 1 PREMISES. The premises that are the subject of this Agreement consist of Cargo Terminal 1 as defined in the Crane Agreement and the premises described and defined in the PUA.
- III. INSTALLATION, OPERATION AND MAINTENANCE OF THE MATSON CRANES.
 - A. Effective as of the Access Delivery Date as defined in the Crane Agreement and subject to the terms and conditions of the Crane Agreement, the Municipality grants to Matson an easement and license for Matson to deliver, offload, install, operate and maintain the Matson Cranes at the Terminal 1 Dock.
 - B. Matson shall maintain sole authority for and control of the Matson Cranes. Matson is responsible for all costs of operating, owning, and maintaining the Matson Cranes.

The Municipality at its expense agrees to maintain the integrity of the system providing electrical power to the gantry cranes and panzer belt system.

C. Matson will make available the Matson Cranes for third party use as follows:

1. Matson will make available the Matson Cranes for non-commercial use and humanitarian aid use outside of Matson's ongoing operations and subject to agreed-upon rates between Matson and the user. Matson's approval of proposed non-commercial use or humanitarian aid use shall not be unreasonably withheld. Matson will charge third parties under this paragraph an hourly rate for the use of the Matson Cranes, with a minimum time requirement no less than four (4) hours. Matson will retain the entire amount of such charges.

2. Matson may make available the Matson Cranes for third party commercial use at Matson's sole discretion. Notwithstanding the foregoing, if use is requested by an agent of the Department of Defense, the Department of Homeland Security, or the Federal Emergency Management Agency, Matson shall not unreasonably withhold such use. Further, if the requested use is both Transient and Non-Permanent, Matson shall not withhold such use, so long as the use is also (i) safe, (ii) within the capacity of the Matson Cranes, and (iii) will not otherwise interfere with Matson's operations. For purposes of this paragraph, "Transient" means the proposed use will make no more than four calls within any period within 365 days utilizing the Matson Cranes. For purposes of this paragraph, "Non-Permanent" means the proposed use will not be more than eight calls within any four year period. Prior to any use under this paragraph, the applicable third party must enter a written agreement with Matson regarding rates and charges. Matson will retain the entire amount of such charges.

3. Anchorage will enter into a use agreement with any Similarly Situated User including substantially similar third-party use restrictions as those in this section. For the purposes of this paragraph a "Similarly Situated User" means a commercial organization operating privately owned cargo or freight loading and unloading cranes on dock infrastructure owned by Anchorage.

D. Matson will provide competent and qualified operators for the Matson Cranes, who shall be available subject to existing union-labor agreements, commencing upon the Matson Cranes becoming operational and continuing thereafter for the duration of this Agreement, to provide crane services to vessels utilizing Cargo Terminal 1 for Matson or third-party use subject to section III(C) of this agreement.

E. When Matson is notified by Anchorage of a Cargo Terminal 1 berthing reservation on a day/time that doesn't interfere with Matson's PUA-related terminal usage, Matson will re-position the cranes at no expense to Anchorage so as not to interfere with the associated alternative use operations.

F. Anchorage agrees to maintain the surfaces of Cargo Terminal 1 in a safe operating condition through all anticipated weather conditions.

IV. TERMINATION OF THE 1986 CRANE AGREEMENT. Upon Matson's commencement of cargo handling operations on the Cargo Terminal 1 premises, the Parties agree that the 1986 Crane Agreement shall terminate and be of no further force or effect.

V. TERM OF AGREEMENT. The term of this Agreement shall commence on the Effective Date as defined on page one of this Agreement and shall continue in full force and effect until midnight on _____, 20____, unless earlier terminated by mutual agreement of the Parties or by either Party due to an Event of Default as defined in this Agreement, which is not cured within any applicable period for cure, or as otherwise provided by this Agreement. Notwithstanding any provision of this Agreement, Matson reserves the right to terminate this Agreement for convenience in the event that Matson makes the business decision to no longer provide cargo operations at the Port. If Matson makes the decision to no longer provide cargo operations at the Port and decides to sell the Matson Cranes, Matson will provide written notice of this decision to the Municipality. For a period of sixty (60) days (the "Initial Exercise Period") after receipt of the written notice, the Municipality shall have the right to purchase all the Matson Cranes (the "Right of First Refusal") at a purchase price determined by averaging the amount of three (3) independent appraisals. To exercise its rights hereunder, the Municipality must deliver written notice to Matson within the Initial Exercise Period. The Right of First Refusal shall terminate upon (a) the expiration of the Initial Exercise Period or (b) the time when Matson has received written confirmation from the Municipality regarding its exercise of its Right of First Refusal.

VI. Crane and Cargo Terminal 1 Premises Obligations

Anchorage shall maintain the Cargo Terminal 1 premises, including but not limited to the crane rails and substructure, in good condition, so as to support the operation of the Matson Cranes, provided, however, that the Municipality shall not be obligated to repair any damage to the Cargo Terminal 1 premises to the extent caused by the acts or omissions of Matson, its employees, agents, invitees, or crane operators.

A. Indemnity and Insurance.

1. Risk of Loss. Matson shall bear all risk of loss for the Matson Crane, except for any loss caused in whole or in part by the actions or omission of the Municipality or third parties. The Municipality shall bear all risk of loss with respect to all improvements to the Cargo Terminal 1 premises other than the Matson Cranes. Matson shall be responsible for any damage to the Cargo Terminal 1 premises that is caused in whole or in part by the installation of the Matson Cranes.

2. Municipality Insurance. From and after the date and time that the installation of the Matson Cranes has been completed, Anchorage agrees it is responsible to

insure the Cargo Terminal 1 premises improvements (other than the Matson Cranes) for all risks of physical loss, damage or destruction, including earthquake, tsunami, tidal surge, flood and windstorm, and Anchorage agrees that it will furnish Matson a copy of said insurance including coverage terms, conditions and exclusions after date of installation and then annually prior to renewal of such policy. The cost of any premium and deductibles for such insurance shall be for the account of the Municipality. If the Municipality does not maintain such insurance, Matson shall procure the insurance and charge the premium cost to the Municipality.

3. Loss or Damage. From and after the date and time that the installation of the Matson Cranes has been completed, in the event of loss or damage to the Matson Cranes, the following provisions shall apply:

(a) Should the Matson Cranes be damaged by fire or other casualty, Matson shall decide within sixty (60) days of the occurrence whether the damage is reparable within three hundred and sixty (360) days of the occurrence (with the repair work and the preparations therefore to be done during the regular working hours on regular workdays). If Matson determines the damage can be repaired within three hundred and sixty (360) days, the Matson Cranes may be repaired with due diligence by Matson.

(b) Should one or more of the Matson Cranes be completely destroyed by fire or other casualty, or should one or more be damaged to such extent that the damage cannot be repaired within three hundred and sixty (360) days of the occurrence, Matson shall have the option to terminate the easement and preferential right granted to Matson for installation and operation of the affected Matson Crane or Cranes on the Cargo Terminal 1 premises on thirty (30) days' notice, effective as of any date not more than one hundred twenty (120) days after the occurrence. In the event that this paragraph shall become applicable, Matson shall advise Anchorage within sixty (60) days after the happening of any such damage whether Matson has elected to continue the easement and preferential right in effect or to terminate it. If Matson shall elect to continue the easement and preferential right related to one of more of the damaged Matson Cranes in effect, it shall commence and prosecute with due diligence and dispatch any work necessary to restore, repair, or replace the affected Matson Crane or Cranes. If Matson shall fail to notify Anchorage of its election within said 60-day period, Matson shall be deemed to have elected to continue the easement and preferential right. For the period from the occurrence of any damage to one or more of the Matson Cranes to the date of the completion of its repair or replacement (or date of termination, if Matson shall elect not to repair or replace one or more of the Matson Cranes), then any and all charges payable by Matson shall be abated in the same proportion as the Matson Crane or Cranes are unusable for Matson's operations.

(c) If Matson shall terminate the easement and preferential right as in this section provided, then all further obligations related to the damaged Matson Crane or Cranes shall terminate except as to liabilities which shall theretofore have accrued.

(d) In the event of a casualty loss to one or more of the Matson Cranes, Matson shall be entitled to all insurance proceeds.

4. Indemnity.

(a) Matson agrees to indemnify Anchorage and save it harmless from all loss, claims, or damage, including damage to persons or property, no matter how caused, arising out of the act, omission or neglect by Matson, its subcontractors, officers, agents, employees, or crane operators, or resulting from or caused or occasioned by Matson's operation, future modification, and maintenance of the Matson Cranes pursuant to its easement and preferential rights, save and except (a) occurrences insured against, as provided for in Section A of this Article, (b) collapse or failure of the dock structure where the collapse and failure is not the fault of Matson, (c) for claims resulting from any acts, omissions, negligence, gross negligence, or willful misconduct of the Municipality, or its employees, agents, or servants; or (d) claims resulting from any acts, omissions, negligence, gross negligence, or willful misconduct of any third party.

(b) Anchorage agrees to indemnify Matson and save it harmless from all loss, claims, or damage, including damage to persons or property, no matter how caused, arising out of the act, omission or neglect by Anchorage, its subcontractors, officers, agents, employees, or crane operators, or resulting from or caused or occasioned by the Municipality's design, construction, operation and/or maintenance of the Cargo Terminal 1 premises except (a) for claims resulting from any acts, omissions, negligence, gross negligence, or willful misconduct of Matson, or its employees, agents, or servants; or (b) claims resulting from any acts, omissions, negligence, gross negligence, or willful misconduct of any third party.

VII. Right of First Refusal.

A. This Right of First Refusal does not apply to (i) any transaction by or among Matson and an affiliate of Matson, pursuant to which the Matson Cranes will continue to operate in the Port of Alaska under the terms of this Agreement, (ii) any transaction related to or in connection with a change in control, acquisition, merger, consolidation, business combination, or other similar transaction involving Matson, its parent, or its affiliates, pursuant to which the Matson Cranes will continue to operate in the Port of Alaska under the terms of this Agreement; (iii) any disposition or removal of one or more of the Matson Cranes from the Port of Alaska due to damage by casualty or other loss to said Matson Crane or Cranes; or (iv) a

temporary removal or transfer of one or more Matson Cranes from the Port of Alaska pending replacement by a substitute crane or cranes.

B. In the event Matson intends to sell, divest, or transfer ownership of or control over one or more of the Matson Cranes to a third party and Matson receives a bona fide offer from a third party to purchase one or more of the Matson Cranes, which offer includes, or will result in, permanent removal of the purchased crane or cranes from the Port of Alaska ("Purchase Offer"), and Matson elects to proceed with a sale in accordance with such offer, Matson shall first give written notice of receipt of the Purchase Offer and a summary of its terms and conditions ("Notice of Offer") to Anchorage. Within 60 days after receipt of the Notice of Offer from Matson, Anchorage shall notify Matson in writing whether Anchorage will exercise its Right of First Refusal to purchase the Matson Crane or Cranes that are the subject of the Purchase Offer. The purchase price shall be the Fair Market Value as of the date of Anchorage's written exercise of the Right of First Refusal in response to the Notice of Offer for the Matson Crane or Cranes involved in the Purchase Offer, provided however, Matson and Anchorage hereby acknowledge and agree that the purchase price to be paid by Anchorage shall not be greater than _____ Dollars (\$_____). Fair Market Value shall be determined as set forth below in Section VII (D), (E), (F), (G), (H) and (I) of this Agreement.

C. If Anchorage fails to give written notice of its election to exercise the Right of First Refusal within such 15 day period, Anchorage's Right of First Refusal shall terminate and be of no further force and effect and Matson will be free to sell the Matson Crane or Cranes to such third party buyer or any subsequent buyer on such terms and conditions contained in the Notice of Offer.

D. If Anchorage, by written notice to Matson, elects to exercise its Right of First Refusal and purchase the Matson Crane or Cranes that are the subject of the Purchase Offer, then within 15 days after making such election Anchorage and Matson shall meet and attempt to reach an agreement on the Fair Market Value. "Fair Market Value" means the price, as of the date in question, which a seller, willing but not obligated to sell, would accept for the subject property and which a buyer, willing but not obligated to buy, would pay therefor in an arm's length transaction for the subject property. If an Agreement is reached, Anchorage shall have 60 days to pay the purchase price to Matson for the Matson Cranes or Crane involved in the Purchase Offer.

E. If Matson and Anchorage are unable to agree on the Fair Market Value, either party may give written notice to the other party and in such notice shall designate an appraiser (the "First Appraiser"). Within 15 days after the service of such notice, the other party shall give written notice to the party accepting the First Appraiser or rejecting the First Appraiser and designating a second appraiser (the "Second Appraiser"). If the First Appraiser is accepted, the First Appraisal shall

proceed to determine the Fair Market Value and then notify Anchorage and Matson of the Fair Market Value so determined, which shall be binding upon the parties. Anchorage shall have 60 days after the date of notice from the First Appraiser of the Fair Market Value to pay Matson the purchase price. The parties shall jointly pay the fees and expenses of the First Appraiser.

F. If the First Appraiser is not accepted and a Second Appraiser is designated, the First and Second Appraisers shall meet within 15 days after the Second Appraiser is designated and attempt to agree upon the Fair Market Value. If the First and Second Appraisers agree on the Fair Market Value, they shall notify Anchorage and Matson of the Fair Market Value so determined, which shall be binding upon the parties. Anchorage shall have 60 days after the date of notice from the First and Second Appraiser of the Fair Market Value to pay Matson the purchase price. Each party shall pay the fees and expenses of the appraiser designated by such party.

G. If, within 15 days after the Second Appraiser is designated, the First and Second Appraisers are unable to agree upon the Fair Market Value, they shall appoint a third appraiser (the "Third Appraiser"). Within 15 days of appointment of the Third Appraiser, the Third Appraiser shall review the appraisal reports of the First and Second Appraisers and determine the Fair Market Value based solely on which of the Fair Market Values reported by the First Appraiser and the Second Appraiser are in the opinion of the Third Appraiser the most accurate Fair Market Value. After determining the Fair Market Value, the Third Appraiser shall give written notice thereof to the parties, and the Fair Market Value so stated shall be binding upon the parties. Each party shall pay the fees and expenses of the appraiser appointed by such party. The parties shall jointly pay the fees and expenses of the Third Appraiser. Anchorage shall have 60 days after date of notice from the Third Appraiser of the Fair Market Value to pay Matson the purchase price.

H. Any appraiser designated to serve as provided herein, shall be disinterested and shall have at least five (5) years' recent experience in appraising cranes similar or comparable to the Matson Crane or Cranes that are the subject of the Purchase Offer.

I. In the event Anchorage does not pay Matson the purchase price for the Matson Crane or Cranes that are the subject of the Notice of offer, either (i) after Anchorage and Matson have agreed on the Fair Market Value for the Matson Crane or Cranes that are the subject of the Notice of Offer, or (ii) after the Fair Market Value has been determined by the appraisal process has been completed; then Anchorage's Right of First Refusal shall terminate and be of no further force and effect and Matson will be free to sell the Matson Crane or Cranes to the party who

made the Purchase Offer or to any other or subsequent buyer on such terms and conditions acceptable to Matson

VIII. AMENDMENTS TO THE PUA. Matson and Anchorage agree to no later than July 1, 2028, enter into an amended PUA which will be effective upon the Matson Cranes Substantial Completion as defined in Section III.3 of the Crane Agreement.

IX. ADDITIONAL COVENANTS.

A. The Municipality agrees there shall be no charge imposed by the Municipality for occupancy or use of Cargo Terminal 1 premises by the Matson Cranes or those operating or servicing the Matson Cranes.

B. Matson shall pay actual costs for all electricity used by the Matson Cranes.

C. The time frequency and method of use and operation of the Matson Cranes shall be determined by Matson at its sole discretion. For third party use of the Matson cranes, the user will pay Matson the parties' agreed upon rate, and Matson will pay the Municipality the applicable tariff rate. Matson during third-party use shall provide maintenance and repairs, fuel, and utilities.

X. AUTHORIZATION

Anchorage represents that the execution and delivery of this Agreement does not, and the consummation of the transaction contemplated herein will not, violate any provisions of its Charter, any statute to which it is subject, or any agreement to which it is a party and that Anchorage has taken all action required by law, its Charter or otherwise to authorize and approve the execution and delivery of this Agreement and the consummation of the transactions contemplated herein. This Agreement is a valid and binding agreement of Anchorage.

XI. PARTIES IN INTEREST.

This Agreement shall inure to the benefit and be binding upon the Parties and their respective successors and assigns.

XII. MISCELLANEOUS.

A. The representations and warranties made in this Agreement and in any documents delivered in connection therewith shall survive the closing.

- B. The Parties each represent and warrant that there are no claims for brokerage commissions or finder's fees in connection with the transactions contemplated herein resulting from any action taken by Matson or Anchorage.
- C. This instrument contains the entire agreement between the Parties with respect to the transactions contemplated herein.
- D. This agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by each of the Parties.

XIII. LIENS AND ENCUMBRANCES.

Matson shall not cause or permit through any act of Matson, or of any other person for whose acts it is responsible, the creation or existence of any labor, mechanic's or materialmen's liens to be imposed upon or to exist against the Matson Crane or the Cargo Terminal 1 premises, or any portion thereof, and in the event any such lien or other claim shall be placed against the Matson Crane or its appurtenances or the Cargo Terminal 1 premises, or any part thereof, Matson shall promptly, upon demand of Anchorage, take all steps necessary to discharge the lien or claims and to secure the release and satisfaction thereof in writing and to furnish Anchorage with the original or duplicate original of the release and satisfaction.

XIV. APPROVAL BY FEDERAL MARITIME COMMISSION.

To the extent that this Agreement relates to fees and charges assessed by Anchorage as owner of the Port, this Agreement shall be submitted to the Federal Maritime Commission for its approval under the Shipping Act of 1984. This Agreement shall not become effective until it is approved by the Federal Maritime Commission, if such approval is required.

XV. DEFAULT. Each Party 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:

(A) The failure of a Party to pay any sum of money due under this Agreement within ten (10) days after the due date.

(B) The failure of a Party to perform or observe any covenant or condition of this Agreement, unless the default is of a kind that is curable within thirty (30) days, provided that if the default is of a nature that requires more than a thirty (30)-day period to cure, then in such case no default shall be declared so long as the defaulting Party shall commence the curing of the default within such thirty (30) day period after notice from the non-defaulting Party and thereafter shall diligently and continuously prosecute the curing of same.

(C) The failure of a Party to perform or observe any covenant or condition of any other Agreement between the Parties, not cured within any applicable period for cure.

(D) The voluntary or involuntary commencement of a case by or against a Party under any chapter of the United States Bankruptcy Code unless the petition is dismissed within sixty (60) days after the date of filing.

XVI. GOVERNING LAW AND JURISDICTION.

This Agreement shall be construed in accordance with the laws of the State of Alaska. The parties agree that any action to be commenced regarding any provision of this agreement may be commenced and brought by either party in the Superior Court, Third Judicial District, State of Alaska.

XVII. **WAIVER OF TRIAL BY JURY.** EACH PARTY HEREBY WAIVES TRIAL BY JURY IN REGARD TO ANY CLAIM A PARTY HAS OR MAY ASSERT AGAINST THE OTHER PARTY OF ANY KIND OR NATURE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, OR IN REGARD TO ANY DISPUTE BETWEEN THEM OF ANY KIND OR NATURE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the day and year first above written.

MUNICIPALITY OF ANCHORAGE

**MATSON NAVIGATION
COMPANY OF ALASKA, LLC**

Name:
Title:
Date:

Name:
Title:
Date: