

Customer #: \_\_\_\_\_  
High Value: Yes\_\_\_\_, No\_\_\_\_  
Insurance verified: Y N NA

## **PORT OF NOME STORAGE USE PERMIT**

THIS AGREEMENT made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_ by and between the PORT OF NOME AND \_\_\_\_\_.

WHEREAS, the PORT OF NOME holds legal interest in the titles to the land and facilities comprising the Port of Nome and operates certain upland facilities suitable for the storage of equipment and/or cargo at the Port of Nome; and

WHEREAS, \_\_\_\_\_ desires to store equipment and/or cargo at the Port of Nome.

NOW, THEREFORE, the parties agree as follows:

### Section 1. Definitions.

- A. "Cargo" shall include all freight, merchandise, supplies, equipment, tools, fuel, and other tangible goods held for shipment or movement within the Port of Nome.
- B. "Permit" means this Storage Use Permit.
- C. "Permittee" means the permit holder authorized to occupy storage space at the Port of Nome.
- D. "Port" means the Port of Nome and/or City of Nome located at Nome, Alaska.
- E. "Port Director" is either the director of the Port employed and designated by the Nome Common Council or the designee of that Port Director, such as the Harbormaster, consistent with existing Nome Ordinances governing the Port of Nome.
- F. "Port of Nome Facilities" includes all causeway docks, revetments, marine headers, industrial pad, barge ramp, harbor floats, east and west Small Boat Harbor docks, storage areas and tidelands of the outer harbor, Small Boat Harbor and Snake River. Unimproved beaches bordering the Bering Sea and unimproved submerged lands of the Bering Sea are not included as "facilities".
- G. "Storage" means the placement of cargo within certain upland facilities in the Port of Nome as specified by the Port Director or his designee.

Section 2. Term.

A Permittee requiring the use of Port Facilities for storage for any length of time beyond 30 days shall be in accordance with this Permit. The term of this agreement shall commence on \_\_\_\_\_, 20 \_\_\_\_ and remain in effect until terminated by either party, as provided in Section 18, below.

Section 3. Payment.

A. Permittee will be assessed fees for cargo storage which will be calculated on a weekly basis and **billed in advance upon the execution of the Permit. Charges will be based on existing tariff storage rates and shall be due within thirty (30) days of invoice date.** Permittee is solely responsible for prepaid charges and no refunds or credits will be given. **The Port will not assist any user in the sale of prepaid space.**

B. Should Permittee at any time fail to make payment within thirty days, the Port Director or his designee shall have the authority to confiscate and/or remove stored equipment or cargo until such time as the past due charges are paid in full. At this time an arrangement to secure future payments will be established or permit will be terminated.

Section 4. Notices.

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

Port/City:	Port Director Port of Nome P.O. Box 281 Nome, Alaska 99762	Permittee: _____ _____ _____ _____
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Section 5. Storage Description/Value.

- Container Van                      Value w/contents: \_\_\_\_\_
- Barge/Dredge                      Value: \_\_\_\_\_
- Vessel                                  Value: \_\_\_\_\_
- Other: \_\_\_\_\_                      Value: \_\_\_\_\_

Section 6. Responsibilities of Permittee.

During the term of this Permit:

A. The Permittee may store cargo only in those areas designated by the Port Director for that purpose and in a manner approved by the Port Director or his designee. Under no circumstances shall the Permittee establish any residential quarters inside containers or on the property at any time for any reason.

B. The Permittee shall not make any permanent improvements to the storage space. Removable fixtures are acceptable with the advance written permission of the Port Director or his designee. The Port shall not be responsible for the design of any fixtures or the conditions thereof.

#### Section 7. Cooperation.

This Permit is a nonexclusive authority for the Permittee to store cargo as set forth in Section 5 and the Permittee understands that similar authority may be held by others. The Permittee shall cooperate with all other persons authorized to work at the Port. The Port Director or his designee may order the Permittee to schedule its activities so as to accommodate the work of other persons and the Permittee shall comply with such an order.

#### Section 8. Facility Damage.

A. The Permittee may not deface, damage, destroy, or alter any portion of the Port Facilities. The Permittee may repair or replace such damage, destruction, or alteration at his own expense and by means of his work force if he pledges to do so within 24 hours after the incident and proposes a schedule of performance satisfactory to the Port Director or his designee. If the Permittee fails to give timely notice to the Port Director or his designee as required by this section, he shall no longer have the right to repair or replace such damage, destruction, or alteration and the Port Director or his designee may proceed to so perform. The Permittee shall pay the Port for the cost of repair or replacement, including twenty-five percent (25%) administrative overhead costs, within fifteen (15) days after presentation of a bill by the Port.

B. The Permittee shall give immediate verbal notice to the Port Director or his designee if it should become aware of defacement, damage, alteration, or destruction to any part of the Port facility. The Permittee shall also submit written notice of such an event to the Port Director within twenty-four (24) hours thereafter.

#### Section 9. Permits, Laws and Taxes.

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

B. The Permittee shall observe all rules and signs posted at the Port Facilities, including "No Smoking" signs, and shall observe all U. S. Coast Guard Safety Requirements, whether or not they are posted.

Section 10. Non-Waiver.

The failure of the Port 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 City thereafter to enforce each and every provision hereof.

Section 11. Assignments.

Except insofar as this Permit specifically allows assignments, any assignment by the Permittee 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 Permittee to assign any part of its interest or delegate duties under this Permit shall give the Port the right immediately to terminate this Permit without any liability.

Section 12. Amendment.

A. This Permit shall only be amended, modified or changed by a 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:

Permittee: \_\_\_\_\_ (title of position)

Port/City: PORT DIRECTOR OR HARBORMASTER

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

Section 13. Jurisdiction; Choice of Law.

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

Section 14. Severability.

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

Section 15. 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 16. Indemnification.

The Port of Nome and/or City of Nome ("Port") shall not be liable for injury or damage to persons or property occurring within or upon the premises, unless caused by or resulting from the negligence of the Port or any of the Port's agents, servants, or employees in the operation or maintenance of the premises. Except as otherwise provided in this section, Permittee covenants that the Port is to be free from liability and claim for damages by reason of any injury to any person or persons, including Permittee, its agents, employees, or contractors, or property of any kind whatsoever and to whomsoever belonging, including Permittee'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. Permittee covenants to defend, indemnify and save harmless the Port from all liability, loss, costs (including Permittee's or Port'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 Permittee.

Section 17. Risk of Loss.

The Permittee agrees that any cargo, vehicle, or other material of any kind which is stored or placed at the Port is so stored and placed at the sole risk of the Permittee. 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 Port, the Permittee shall not seek compensation or restitution of any kind from the Port or City of Nome.

Section 18. Permit Administration.

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

Section 19. Termination.

A. Either the Port or the Permittee 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.

- B. The Port may terminate this Permit without written notice to the Permittee upon removal of cargo from Port property by the Permittee, or upon nonpayment of storage fees as provided under Section 3(b) of this Permit, or upon a non-permissible assignment under Section 10 of this Permit.

Section 20. Insurance.

A. Findings:

The Port Director has determined that the value of property to be stored pursuant to this Permit periodically exceeds fifty thousand dollars (\$50,000).

The Port Director has determined that the property to be stored pursuant to this Permit is flammable, explosive, a hazardous substance, or a toxic substance.

B. If one or both of the boxes above have been checked, then the Permittee is required to carry property and/or liability insurance. **Property damage insurance shall at a minimum provide sufficient coverage to cover damage or loss to all of the Permittee's property stored under this Permit whether or not in the care, custody, or control of the Permittee.** In the event that the Permittee's property puts the property of the Port of Nome or other property at risk, the Permittee shall obtain liability insurance (including environmental liability insurance if appropriate) in an amount that the Port Director reasonably determines is sufficient to cover such risk.

C. If Permittee is required to obtain insurance under this section the Permittee shall cause the Port to be named and listed upon the policy 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 Port 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 Port.

D. Permittee shall furnish the Port Director or his or her designee a certificate of insurance in accordance with subsections (B) and (C) of this section. The certificate of insurance shall provide for written notice of any termination, cancellation, or expiration of the insurance to be delivered to the Port Director or his designee no less than thirty (30) days before the effective date thereof.

Section 21. Hazardous Materials.

Permittee may cause or permit hazardous material, lawful, necessary and useful to Permittee'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 Permittee breaches the obligations stated in the preceding sentence, or if the

presence of hazardous material on the premises caused or permitted by Permittee results in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs for which Permittee is legally liable to the Port for damage resulting therefrom, the Permittee shall indemnify, defend, and hold Port 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 Port by Permittee 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, if the presence of any hazardous material on the premises caused or permitted by Permittee results in any contamination of the premises, Permittee 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 Port'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. IN WITNESS WHEREOF, the parties have executed this permit on the date first hereinabove written.

PORT OF NOME:

\_\_\_\_\_  
Port Director or Harbormaster  
Date: \_\_\_\_\_

PERMITTEE:

\_\_\_\_\_  
Authorized Signature      Date

Company: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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