

## **VALDEZ RAMP CONSTRUCTION AGREEMENT**

This Valdez Ramp Construction Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF VALDEZ (the "City") and ALASKA MARINE LINES, INC. ("AML") (sometimes herein referred to individually as "Party" and together as the "Parties").

### **RECITALS**

WHEREAS, The City owns certain tidelands and dock facilities in Valdez, Alaska known as the Valdez Container Terminal, which is operated as a marine terminal suitable for performing marine-related cargo services at the Port of Valdez; and

WHEREAS, when an AML integrated tug and barge arrives at the Valdez Container Terminal, containers are discharged and back-loaded by forklifts via a short ramp at the Valdez Container Terminal, depicted in Exhibit A (the "Ramp"); and

WHEREAS, AML desires to modify the Ramp in a manner that will permit AML to more safely and efficiently discharge and back-load its containers over the Ramp via forklift at all or most stages of the tide ; and

WHEREAS, cost estimates are roughly \$300,000 for the ramp improvements, abutment work, and winches, and the City desires to have such improvements constructed, and is willing to reimburse AML for up to \$300,000 of the cost of construction through credits to rates charged under the Port of Valdez Terminal Tariff ("Tariff"), as provided herein; and

WHEREAS, these improvements are contemplated in the City of Valdez Waterfront Master Plan and the Capital Facilities Department Long Range Plan.

WHEREAS, the Parties intend, by this Agreement, to set forth their mutual understanding concerning the construction, ownership and costs with respect to said improvements.

NOW, THEREFORE, based upon the Recitals above, which are a material part of this Agreement, the Parties agree as follows:

1. Project Scope. The scope of the project is the modification and upgrade of the Ramp and addition of winches to allow more safe and efficient discharge and back-loading of AML's containers (the "Project") and includes the following major components as generally depicted in Exhibit B:

- a. Design, project management and construction of the modifications and upgrades.
- b. Installation of 50-ton barge winches, abutment and concrete approach, and bollards.

2. AML's Project Responsibilities. AML shall be responsible for the design, project management and construction of the Project within the initial budget approved by the City and any change orders approved by the City. AML shall be responsible for all Project costs in excess of Three Hundred Thousand Dollars (\$300,000) including any budget overruns. AML shall

coordinate both the Project design and construction with the City so that the final product is acceptable to the City. Prior to commencing work on the Project, AML shall submit to the City for approval all plans and specifications for the Project, including the selection of a general contractor. AML agrees not to commence any associated work until the aforesaid approval has been received. The City agrees to promptly and timely review the plans and specifications and will not unreasonably withhold any approval thereof. The final plans and specifications, reviewed and approved by both AML and the City shall be attached hereto as Exhibit C. AML shall require the contractor to pay Davis-Bacon wages as required by law. AML shall also acquire and maintain in good standing all permits and licenses necessary for construction of the Project.

3. The City's Responsibilities. The City's total commitment to the Project cost shall not exceed Three Hundred Thousand Dollars (\$300,000). The City shall promptly and timely review the Project design, and will not unreasonably withhold any approval thereof. The City shall promptly review the plans and specifications for the Project and the budget for the Project and any change orders in excess of Ten Thousand Dollars (\$10,000) to seek City Council approval, and any other approvals necessary for the Project to proceed and for this Agreement to be fully enforceable. The City shall assist as reasonably required in AML's obtaining of all permits and licenses necessary for construction of the Project, but AML remains responsible for all requirements thereof.

4. Construction Standards. AML shall ensure that any contractor performing work on AML's portion of the Project shall perform said work:

- a. In a skillful manner using qualified workers;
- b. In accordance with all plans, drawings and specifications as approved by the City;
- c. In compliance with all applicable building codes, federal, state, and local and laws and regulations;
- d. In compliance with all applicable U.S. Coast Guard and Homeland Security rules and regulations.

5. Warranty. AML shall obtain from its general contractor a warranty of no less than one year starting from first beneficial use of the modified Ramp. The warranties shall provide that all defects in materials and workmanship of the Project shall be repaired or replaced free of charge. If a defect makes safe use of the Ramp impossible, then both AML and the contractor will use their best efforts to return the Ramp to service as soon as reasonably possible. The City shall have a right to enforce this warranty against AML and the contractor, and no costs associated with work under this warranty shall count toward the Final Total Cost below.

6. Title to and use of improvements. Upon completion of the Project, all improvements, modifications and upgrades to the Ramp performed by AML shall become the property of the City. The improvements shall be available for use by third parties and shall not be reserved for the exclusive use of AML.

7. Payment; Tariff Credit. Upon completion of construction, AML will submit to the City statements detailing AML's costs for labor, materials and equipment for work performed on the Project (the "Final Total Cost"). The City shall not unreasonably reject such statements

of costs but shall have final approval of such statements. In no event shall the City's total share of the Final Total Cost exceed Three Hundred Thousand Dollars (\$300,000.00). The City will charge AML and its affiliate, Bering Marine Corporation ("BMC"), rates for use of the Valdez Container Terminal at the Tariff rates applicable to all third-party users. The City shall setoff all such Tariff rate charges incurred by AML or BMC as a credit against the City's share of the Final Total Cost until the City's share of the Final Total Cost, which shall not exceed Three Hundred Thousand Dollars (\$300,000.00), is reduced to zero. No setoff shall be applied until all Project work is completed, the modified Ramp is in service, and the Final Total Cost has been approved by the City. The setoff shall expire on December 31, 2029 subject to renewal by new agreement of both Parties. The City agrees to charge all third parties minimum Tariff rates for use of the completed Project at a rate at least equal to the rate charged to AML.

8. Insurance and Indemnification.

- a. Workers' Compensation. AML shall ensure that, with respect to all personnel performing work on the Project, AML or its contractors maintain in effect at all times during the construction of the Project, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance.
- b. Liability Insurance. Prior to construction of the Project, AML or its contractors shall secure such liability insurance as will protect both AML and the City and their respective contractors and affiliates from and against any and all claims and liabilities arising out of bodily harm (including death resulting therefrom) or property damage that may result from such construction. Without limiting the generality of the foregoing, such insurance shall include the following:
  - i. General liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, One Hundred Thousand Dollars (\$100,000) for damage to rented premises, One Thousand Dollars (\$1,000) for medical payments, One Million Dollars (\$1,000,000) for personal and advertising injury, Two Million Dollars (\$2,000,000) aggregate for bodily harm (including death resulting therefrom), and Two Million Dollars (\$2,000,000) for products and completed operations aggregate coverage.
  - ii. Automobile liability insurance (including owned, hired, and non-owned) with a combined single limit of not less than One Million Dollars (\$1,000,000) each accident for bodily harm (including death) and property damage.
- c. Evidence of Insurance. AML shall deliver to the City proof of insurance including but not limited to certificates of insurance and endorsements as the City may require prior to the construction of the Project or within such further time the City may allow in writing.
- d. Additional Insured. AML shall ensure that any policies of commercial general liability and automobile liability insurance required hereunder include the City as an additional insured and contain a waiver of subrogation in favor of the City.
- e. AML Indemnity. AML shall assume complete liability for any and all claims

resulting from the acts or omissions of AML relating to the construction of the Project. AML shall defend, indemnify and hold the City harmless from and against all claims, losses, costs, liabilities, damages, and expenses (including, but not limited to, attorneys' fees), directly or indirectly arising out of or due to:

- i. any negligence or strict liability of AML in connection with or incident to the Project;
  - ii. any claim asserted by the contractor or any subcontractor for breach of contract or other civil claims related to the construction of the Project;
  - iii. any bodily harm (including death) to any person or damage to any property in connection with the acts or omissions of AML relating to the Project;
  - iv. any lien or asserted liens upon the property of the City arising out of or in connection with work performed by AML or its contractors or subcontractors on the Project;
- f. City Indemnity. The City shall assume complete liability for any and all claims resulting from the acts or omissions of the City relating to the construction of the Project. The City shall defend, indemnify and hold AML and its affiliates harmless from and against all claims, losses, costs, liabilities, damages, and expenses (including, but not limited to, attorneys' fees), directly or indirectly arising out of or due to:
- i. any negligence, or strict liability of the City in connection with the Project;
  - ii. any bodily harm (including death) to any person or damage to any property in connection with the acts or omissions of the City relating to the Project;
  - iii. any failure of the City to comply with all applicable laws, ordinances, rules, regulations, orders, and other requirements of the City, now or hereafter in effect.

All indemnification by the City is subject to appropriation by the Valdez City Council.

9. Modification. At any time during the construction of the Project, the parties may reassess their needs and reaffirm, revise, extend, or create amendments or addenda to this Agreement. Any changes shall be by mutual agreement of the parties and confirmed in writing.

10. Integration. This Agreement embodies the entire agreement of the parties concerning the Project. There are no promises, terms, conditions or obligations other than those contained herein and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto in regard to the stated matters only.

11. No Agency or Partner Relationship. Nothing in this Agreement shall be deemed to create the legal relationship of a joint venture or a general or limited partnership between the parties nor shall either party be deemed an agent of the other with respect to any action taken hereunder.

12. Jurisdiction; Choice of Law. Any civil action rising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The laws of the State of Alaska shall govern the rights and obligations of the parties under this Agreement.

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

14. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument. Delivery by a party of a signed counterpart, or an execution page of this Agreement by facsimile transmission or a photocopy thereof, shall be as effective as delivery by it of a manually signed counterpart of this Agreement.

15. No Third-Party Beneficiaries. Except for Section 11, the provisions of this Agreement are for the benefit of the parties hereto and not for any other person or entity. This Agreement shall not provide any person or entity not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

16. Time of the Essence. The parties agree that time is of the essence in this matter. Timelines for Project completion will be established as the final design develops, but completion is expected in the first half of 2025 barring unanticipated conditions. Both parties agree to prompt reviews and approvals to expedite the Project.

17. Authority. The undersigned represent and warrant that they possess the authority to bind the party for which they have executed this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first herein above written.

**ALASKA MARINE LINES, INC.**

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

\_\_\_\_\_  
Printed name

Date: \_\_\_\_\_

Title: \_\_\_\_\_

FEDERAL ID #:  
\_\_\_\_\_

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Signature of Company Secretary or  
Attest

Date:  
\_\_\_\_\_

**CITY OF VALDEZ, ALASKA  
APPROVED:**

\_\_\_\_\_  
Dennis Fleming, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

Date: \_\_\_\_\_

**RECOMMENDED:**

\_\_\_\_\_  
John Douglas, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
Brena, Bell & Walker, P.C.

\_\_\_\_\_  
Jake W. Staser

Date: \_\_\_\_\_

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared \_\_\_\_\_ known to me and to me known to be the individual named in and who executed the foregoing document on behalf of Alaska Marine Lines, Inc. and executed the foregoing document as free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_