

**SCALE HOUSE USE AGREEMENT  
AT THE  
VALDEZ CONTAINER TERMINAL SCALE FACILITY**

This SCALE HOUSE USE AGREEMENT AT THE VALDEZ CONTAINER TERMINAL SCALE FACILITY ("Agreement") is hereby entered into on this 10th day of November, 2014, by and between the CITY OF VALDEZ ("City"), an Alaska municipal corporation, whose address is P.O. Box 307, Valdez, Alaska 99686 and SAMSON TUG AND BARGE ("Samson"), an Alaska corporation, whose address is P.O. Box 559, Sitka, AK 99835.

**WITNESSETH:**

WHEREAS, the City is the owner of a Scale Facility that is located on the Valdez Container Terminal (VCT); and,

WHEREAS, Samson is engaged in the trucking and freight movement business and desires to use the Scale House at the Scale Facility; and,

WHEREAS, the City seeks to act in such a fashion to facilitate the trucking and freight industry.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the City and Samson as follows:

1. Use of Real Property and Scale Facility. The City grants to Samson the right and privileges to use the Scale House at the Scale Facility for the purpose of office space. A description of the property is shown in Exhibit A.
2. Term. This agreement shall be for a Term of FOURTEEN (14) months, commencing on November 10, 2014 and terminating on December 31, 2015 unless this Agreement is terminated at some earlier date under the terms and conditions set out herein below.
3. Extended Term. Samson shall have the right to extend the Term of the Agreement for a period of FIVE (5) years if and insofar as Samson gives written notice to the City of an intention to exercise this option no later than THIRTY (30) days prior to the expiration of the Term and that, at such time, Samson is not in default in the performance of any of the terms and conditions of this Agreement or has failed to comply with any of the terms and conditions hereof.
4. Fee. Samson shall pay to the City, in exchange for the right and privilege to use the Scale House as is permitted under this Agreement, and for the Term thereof, a monthly rate of SIX HUNDRED DOLLARS (\$600.00). This fee shall be paid directly to the City of Valdez, P.O. Box 307, Valdez, Alaska 99686 in advance on the first of each month. Accounts delinquent over thirty

(30) days will be assessed interest at the maximum legal rate of interest per year on a monthly basis.

5. Necessary Improvement. Samson agrees to make any necessary repairs and improvements to the Scale House to make it operational at the sole expense of Samson. No liens shall be placed on City property as a result of improvements performed by Samson. The ownership of the improvements and repairs shall be the City.

6. Specific Equipment Permitted. The type and kind of equipment that Samson is permitted to place, install, operate and maintain upon the Scale House under this Agreement is limited to the equipment needed to operate an office at the Scale House.

7. Consent Required. Samson shall not place or install any equipment, or make any alteration, addition, or improvement to any existing equipment previously placed or installed, or place or put any improvement on or to the Scale House or commence any such undertaking without prior written consent of the City. As a condition precedent to such consent, Samson shall deliver to the City written plans and specifications for all such work. Such consent will not be unreasonably withheld by the City. It is not the intent of this paragraph to restrict or prevent any maintenance required.

8. Interference with Terminal Operation. Samson shall not place, install, maintain or operate any equipment on or come upon, occupy or use the Scale House, Scale Facility, or Real Property so as to hamper the operation or use of the VCT as a cargo handling facility.

9. Compliance with Government Regulations. Samson shall comply and assumes sole responsibility for compliance with any and all economic, operational, safety, and other requirements as are or may be imposed by federal, state, municipal or other law or regulatory body, that apply or relate thereto pursuant to its involvements in the operation of the Scale Facility.

10. Transportation Worker Identification Credential (TWIC). Samson understands that the Scale Facility is located on a regulated facility as defined by the U.S. Coast Guard, Department of Homeland Security and agrees to comply with any and all regulations in 33 CFR, Chapter 1, Subchapter H, Part 105 – Maritime Security: Facilities.

Samson agrees to provide the Port office with a list of all employees or contractors needing access to the VCT. All employees and contractors shall have a valid TWIC or be escorted by a valid TWIC holder that has been approved for access to the VCT.

All employees and contractors shall present their valid TWIC to the Port office located at 412 Ferry Way, Valdez, Alaska to be approved for access to the

VCT. Samson agrees to notify the City in the event an employee approved for access to the VCT leaves the company or has their TWIC revoked.

11. Indemnification. Samson hereby assumes the entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the existence, placement, installation, maintenance, use, or operation of equipment or improvements upon the Scale House, Scale Facility, or Real Property under this Agreement. Samson agrees to indemnify, hold harmless, and fully defend the City, its agents, servants, and employees to the fullest extent of the law, from and against all loss, expenses (including attorneys fees and costs), damage, or injury growing out of, resulting from, or occurring in maintenance, operation, or use of equipment or improvements upon the Scale House, Scale Facility, or Real Property under this Agreement.

12. Insurance. Samson, during the term of this Agreement, shall carry at its expense comprehensive general liability insurance covering the Scale Facility in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit to protect against liability for personal injury, death, or property damage which might arise from the construction, occupancy, or use of the Property and the operations conducted on it. Samson shall give to the City yearly a certificate from all carriers showing the dates and expiration of any and all policies as well as the limits of liability.

13. Termination. This Agreement may be terminated by the City upon Samson's failure to perform or comply with any of the conditions or obligations contained in the Agreement, for the filing of a petition of bankruptcy or insolvency, for reorganization, or for the appointment of a receiver or trustee, by or against Samson. In such event, the City shall give Samson ten (10) days prior written notice of the termination and Samson shall have thirty (30) days to remove any of its equipment from the Scale House and Real Property. The City reserves the right to terminate this agreement upon thirty (30) days' written notice to Samson should the City determine this use is not the highest and best use for this facility.

14. Assignment. Samson shall not assign (by operation of law or otherwise) or transfer this Agreement or any interest therein without the prior written consent of the City.

15. Use by Others. Samson will be required to operate the Scale Facility as a public scale. If Samson desires to operate the scale and charge a reasonable fee that has been approved by the City, Samson may request a lease amendment to include the scale and will be charged an additional FIVE HUNDRED FIFTY DOLLARS (\$550.00) per month for a total of ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150.00) per month to lease the entire Scale Facility. Any fees charged in excess of the annual rental rate set under this agreement shall be remitted to the City.

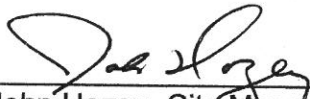
16. Snow Removal. Samson will be responsible for all snow removal necessary for its use under this Agreement.
17. Electrical Installation/Usage. Samson may utilize, if feasible, the existing port master meter to access power to the Scale House. The City will bill Samson for reimbursement of power used by Samson under this Agreement.
18. Utilities. Samson shall be responsible for providing and paying for fuel used for heating the facility. Samson shall be responsible for sewage disposal for the holding tank at the Scale House and for the charges associated with pumping the holding tank.
19. Interruption of Business. There may be times when the nature of freight shipped across the VCT could require Samson to cease use of the Scale House/Facility for a period of time. Should that occur, the City will not be responsible for the cost of such interruption to Samson.
20. Military Use of the Scale Facility. The City reserves the right to require Samson to vacate the Scale House/Facility during military operations at the VCT. During these operations, military personnel shall be granted full access to the Scale House/Facility.
21. Right of Access. City retains the right of access and inspection to the property.
22. Prohibition of Liens. Samson shall not suffer or permit any liens, including without limitations, mechanic's or materialmen's liens, to be recorded against the Property. If any such liens shall be recorded against the Property, Samson shall cause the same to be removed, or, in the alternative, if Samson in good faith desires to contest the same, Samson shall be privileged to do so, but, in such case Samson hereby agrees to indemnify and hold the City harmless from all liability for damages occasioned to be discharged and removed prior to any attempt at execution of such judgment. Nothing contained in this permit shall be construed to be a waiver of AS 09.38.015 (c), as may be amended from time to time.
23. Unrestricted Access to VCT by City. At no time shall Samson's use of the Scale House under this Agreement interfere with the City's access to the VCT. Any such restriction by Samson shall be grounds for termination of this Agreement by the City.
24. Entire Agreement. This Agreement sets forth the entire understandings of the City and Samson, and no modifications may be made hereto except in writing signed by both parties. Titles of paragraphs are informational only and shall not be used in a court of law to interpret any of the provisions contained herein. This Agreement shall be interpreted and enforced

according to the laws of the State of Alaska and venue shall be in the Third Judicial District, Valdez, Alaska.

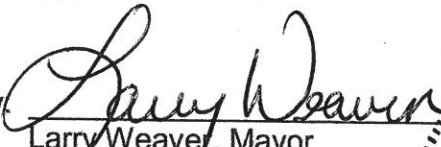
IN WITNESS WHEREOF, the parties have duly executed this Agreement this 10th day of November, 2014.

**CITY OF VALDEZ**

Date: 11/26/2014

By:   
John Hozey, City Manager

Date: 11/26/2014

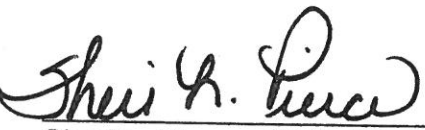
By:   
Larry Weaver, Mayor

Attest:

Approved as to Form:

**WALKER & RICHARDS, LLC**

JAKE W. STASER

By:   
Sheri L. Pierce, CMC, City Clerk

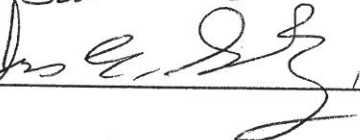
By:  For:  
William M. Walker



**SAMSON TUG AND BARGE**

James R. Scholz

Date: 11/10/14

By:  shoreside operations  
Manager

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

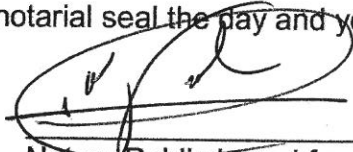
By: \_\_\_\_\_

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 10 day of November 2014, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared James E. Scholz, known to me and to me known to be the individual named in and who executed the foregoing document, and he acknowledged to me that he signed and sealed the same as his free and voluntary act for the uses and purposes therein set forth.

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



  
Oziel Villaseñor  
Notary Public in and for Alaska

My Commission Expires: 06/14/17