

**August 19, 2025**

**CONSENT**

**AGENDA ITEM 3.H.: CRANE USAGE AGREEMENT**

**BACKGROUND:**

Logistec USA has served as the Port's crane operator since 2008, with its current agreement set to expire on September 30, 2025. Upon expiration, the Authority will offer port-owned mobile harbor cranes for rental, with operations managed by the Port's newly established crane department. This transition is anticipated to create a new revenue stream.

The Crane Usage Agreement outlines the terms and conditions for crane utilization and will remain in effect for five (5) years upon execution. The Executive Director will sign the agreement on behalf of the Authority.

**ATTACHMENT:**

Crane Usage Agreement

**COST AND FUNDING SOURCE:**

N/A.

**CONSEQUENCES IF DEFERRED:**

Delay in implementing the Crane Usage Agreement

**LEGAL COUNSEL REVIEW: Yes**

**RECOMMENDATIONS:**

Move to approve and authorize the Executive Director to execute the Crane Usage Agreement with all entities utilizing port-owned cranes.

**CRANE USAGE AGREEMENT  
MANATEE COUNTY PORT AUTHORITY**

This Crane Usage Agreement (“Agreement”) is made and entered into by and between the Manatee County Port Authority, a political entity of the State of Florida, with its principal place of business located at SeaPort Manatee, 300 Tampa Bay Way, Suite One, Palmetto, Florida 34221 (“Authority”) and \_\_\_\_\_, who is authorized to transact business in the State of Florida, with a place of business located at \_\_\_\_\_ (“Crane User” or “User”), (the Authority and User are referred to herein individually as “Party” or collectively as “Parties”).

**RECITALS**

WHEREAS, the Authority owns and operates a public seaport facility in the northwestern portion of Manatee County, Florida, known as “SeaPort Manatee” (or “Port”) and is seeking to encourage, develop and stimulate the flow of waterborne commerce through SeaPort Manatee, and

WHEREAS, the Authority owns and maintains mobile harbor crane(s) and certain crane attachments at SeaPort Manatee; and

WHEREAS, the mission of the Authority is to be an economic catalyst, and the Authority has identified an opportunity to facilitate tenant success and growth by providing access to capital-intensive equipment without the burden of ownership or long-term commitments; and

WHEREAS, the Authority has developed a dynamic Crane Use Program designed to provide port tenants, licensed stevedores, and other authorized users with access to high-quality lifting equipment to support vessel loading/unloading, terminal operations, and associated cargo-handling activities (“Crane Use Program”); and

WHEREAS, entities which desire to participate in the Authority’s Crane Use Program must execute a fully binding crane usage agreement, which outlines the legal terms and responsibilities of crane use; and

WHEREAS, User is desirous of renting such cranes from the Authority from time to time; and

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants contained in this Agreement, it is agreed by and between the Parties as follows:

**1. Recitals.** The above recitals are true and correct and agreed to by the Authority and User as if such recitals were fully set forth in the Agreement.

**2. Effective Date and Term.** The term of this Agreement (the “Term”) shall be up to five (5) years beginning on October 1, 2025, or the Execution Date of this Agreement, whichever date occurs later and continuing through and including September 30, 2030.

**3. Termination.** Unless prohibited by other provision(s) of this Agreement, the Parties may terminate this Agreement at any time upon 48 hours advance written notice to the other Party.

**4. Crane Use Program.** Execution of this Agreement will authorize the User to participate in the Authority’s Crane Use Program. The program is dynamic and is reviewed annually to assess the effectiveness of procedures, compliance with regulations, and consider operational feedback from tenants and crane users. During the Term of this Agreement, the major responsibilities of the Parties will include:

- A.** Authority will review and update the SeaPort Manatee Tariff, from time to time, with fees and charges for participation in the Crane Use Program and use of the cranes and crane attachments, and publicly post a copy of the Tariff to the Authority’s website: <https://www.seaportmanatee.com/business/finance/>. User agrees it has received, reviewed, and agrees to abide by the SeaPort Manatee Tariff, including but not limited to the rates and fees in such Tariff.
- B.** Authority will ensure Authority-owned cranes are properly maintained and meet inspection standards prior to and immediately following each Use Period (as defined below).
- C.** User will maintain status and good standing as a Licensed Marine Terminal Operator or Stevedore, licensed to conduct business at the Port.
- D.** User will submit a **Crane Reservation Request Form**, the form of which will be provided by the Authority, and any paperwork requested by the Authority (e.g., proof(s) of insurance; proof of certification for proposed operator(s)). Reservations are to be submitted at least 24 hours in advance for use during regular working days. Reservations for crane use on Saturdays, Sundays or holidays must be made 24 hours in advance, but not later than 3:00 p.m. (EST) on the last regular working day prior to the Saturday, Sunday or holiday requested starting time. While User may request a specific crane, there is no guarantee the Authority will provide such crane or any crane.
- E.** The Authority will prioritize active reservation requests from all authorized users based on weekly service over single service, crane availability and scheduling conflicts, account status, active vessel operations at berth, time/date of request, cargo sensitivity or perishability, and maintenance readiness status of requested equipment.
- F.** The Authority will issue a reservation confirmation in writing once availability and compliance with the Crane Use Program requirements are verified. Written

confirmation(s) will establish respective mobilization, Use Periods, and demobilization times.

- G. User will ensure provision of a certified crane operator.
- H. Authority will mobilize and set up crane(s) and equipment.
- I. User will inspect equipment before use and report deficiencies and execute a **Certificate of Acceptance**, the form of which will be provided by the Authority. The Use Period will commence after the Authority's receipt of the Certificate of Acceptance and conclude after the written notice (as defined below) has been returned to the Authority and the Authority has concluded with its post-use inspection.
- J. User will adhere to all safety, compliance, and operational requirements, as listed in this Agreement or the Tariff.
- K. Authority Technicians will be available on Port and the Technicians will be responsible for setting up the crane(s) at respective vessel hatches at the request of the stevedore.
- L. At the end of each Use Period, User will provide written notice that the crane(s) and equipment have been returned to the Authority, and the Use Period has concluded.
- M. Authority will conduct a post-use inspection after each Use Period.
- N. Authority will demobilize crane(s) and equipment.
- O. Authority will invoice User for fees and charges accumulated during each Use Period, in accordance with the Tariff.

**5. Ownership and Inspections by the Authority.** The cranes shall always remain the sole and exclusive property of the Authority.

- A. Upon reasonable notice to User, the Authority or its agents shall have free access to the cranes at reasonable times and in a reasonable manner for the purpose of inspections.
- B. No accessions, additions, alterations or improvements to the cranes of any nature, shall be made without the Authority's written consent, but if any are made, they immediately shall become part of the cranes and shall become the Authority's property unless otherwise agreed by the Parties.
- C. User shall always keep the cranes free and clear from all claims, liens and encumbrances, arising by, through or on account of the User.

D. This Agreement is intended to allow for limited use of the cranes and must not be construed as a sale of the cranes to the User.

**6. Delivery, Acceptance, and Return.** User's appointed representative shall, for the purpose of acceptance, inspect the crane(s) prior to the Use Period, execute a **Certificate of Acceptance** and provide the executed **Certificate of Acceptance** to the Authority. Possession of the crane(s) shall be passed to the User after the Authority's receipt of the Certificate of Acceptance.

If during such inspection, User reasonably determines that the crane does not meet the Parties' agreed upon delivery configuration set forth in the **Crane Reservation Request Form**, User may reject the crane by providing to the Authority, in writing, notice of such rejection and the reasons thereof. Upon such rejection, the Authority may elect to (i) repair the crane to a condition which satisfies delivery configuration stated in **Crane Reservation Request Form**; or (ii) replace the crane with similar cranes which satisfies delivery configuration in **Crane Reservation Request Form**. If User waives its right to inspect each crane prior to the commencement of the Use Period, each crane will be deemed acceptable by User in its then current condition.

Crane shall be returned to the Authority fully operational and with no missing parts, free of any wreck or collision damage, and free of defects. The crane's wheel rim thickness shall be returned at the same measurement as delivered. Normal wear and tear accepted. Prior to the end of each Use Period, User shall at its sole cost and expense, return the cranes to the location(s) of Acceptance, unless reasonably instructed otherwise by the Authority. The User will provide written notice to the Authority that the crane(s) have been returned and following the Authority's inspection, possession of the crane(s) transfer back to the Authority. Notices should be emailed to: [CraneDepartment@seaportmanatee.com](mailto:CraneDepartment@seaportmanatee.com).

**7. Taxes, Customs and Duties.** User shall pay all customs, duties, use, excise, ad valorem, stamp, documentary and similar taxes or fees on or relating to this Agreement, or the use, registration, rental, maintenance, license, possession or operation of the crane, and shall file any returns required therefor, and shall hold the Authority harmless and indemnify the Authority, in accordance with section 12 of this Agreement, against any liability and expense, including attorney fees and costs, on account of the User's failure to do the same.

**8. Use.** User shall cause the crane- to be operated and used in strict compliance with all applicable Occupational Safety and Health Administration regulations and rules, together with any other applicable federal, state or local government laws, ordinances, regulations or rules having control or jurisdiction over the activities and uses of cranes. The operation and use of the cranes shall be carried out by employer insured and NCCCO certified (National Commission for the Certification of Crane Operators) operators selected and trained by User to optimize productivity and safety in the operation of the cranes.

The User agrees to:

- A. User shall be responsible for the payment of all registrations, certificates, licenses, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Authority or User.
- B. The crane shall be used and operated only by properly qualified, trained personnel authorized by the User.
- C. User shall comply with all applicable federal, state, municipal and local laws, ordinances, rules, and regulations relating to the rental, possession, insuring, use and operation of the crane.
- D. User shall be solely responsible for the payment of any and all fines, penalties, or forfeitures, including without limitation the confiscation of the crane levied upon or arising out of the use, operation, maintenance or insuring of the crane in violation of any law, ordinance, rule or regulation of any governmental authority.
- E. User shall pay all costs, expenses and charges incurred in connection with the rental and use of the crane.
- F. User will provide immediate notice to the Authority's Crane Department by email for all issues that arise between the User and crane users / tenants. Notices should be emailed to: [CraneDepartment@seaportmanatee.com](mailto:CraneDepartment@seaportmanatee.com)

## **9. General Insurance Requirements.**

- A. During the Term of the Agreement, the User shall provide, pay for, and maintain with insurance companies satisfactory to Manatee County Port Authority (Authority), the types of insurance described herein.
- B. All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Manatee County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- C. The Authority shall be specifically included as an additional insured on the User's Liability policies with the exception of the User's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The Authority's additional insured status should be extended to all Completed Operations coverages.
- D. The User shall deliver to the Authority, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the

Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the Authority, on a timely basis, if requested by the Authority.

- E. If the User fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the User refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the Authority, the Authority may, at the Authority's sole discretion, terminate or suspend this Agreement and seize the amount of User's performance bond, letter of credit, or other security acceptable to the Authority.
- F. The User shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the Authority requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the User shall promptly authorize and have delivered such statement to the Authority.
- G. The User authorizes the Authority and/or its insurance consultant to confirm all information furnished to the Authority, as to its compliance with its Bonds and Insurance Requirements, with the User's insurance agents, brokers, surety, and insurance carriers.
- H. All insurance coverage of the User shall be primary to any insurance or self-insurance program carried by the Authority. The Authority's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the User in this Agreement.
- I. The acceptance of delivery to the Authority of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the Authority that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance comply with the Agreement requirements.
- J. No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written **Notice to Proceed** is issued by the Authority.
- K. The insurance coverage and limits required of the User under this Agreement are designed to meet the minimum requirements of the Authority. They are not designed as a recommended insurance program for the User. The User alone shall be responsible for the sufficiency of its own insurance program. Should the User have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

- L. During the term of this Agreement, the Authority and its agents and contractors may continue to engage in necessary business activities during the operations of the User. Except the cranes and crane attachments, no personal property owned by the Authority used in connection with these business activities shall not be considered by the User's insurance company as being in the care, custody, or control of the User.
- M. Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, the User shall be responsible for all deductibles and self-insured retentions.
- N. All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- O. The User shall provide the Authority thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- P. Renewal Certificate(s) of Insurance shall be provided to the Authority at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the User.
- Q. If the User utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the User will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of the User. In addition, the User will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for the User contained within this Agreement. The User shall obtain Certificates of Insurance comparable to those required of the User from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the Authority upon request. User's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate User from the direct primary responsibility User has to the Authority hereunder. The Authority will look directly to User for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

#### **10. Specific Insurance Coverages and Limits.**

All requirements in this Insurance Section shall be complied with in full by the User unless excused from compliance in writing by the Authority.

The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the Authority.

**A. Workers' Compensation and Employers' Liability Insurance** shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

If the User has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, the User will be required to issue a formal letter (on the User's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does **not** apply to firms engaged in construction activities.

**B. USL&H Coverage** shall be maintained by the User that will respond to claims filed under the United States Longshoremen and Harbor Workers Act (33 USC sections 901-950). The limits of such coverage shall be at least \$1,000,000.

**C. Commercial General Liability Insurance** shall be maintained by the User on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Users, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$2,000,000.00 Combined Single Limit each Occurrence and Aggregate
--	---

Completed Operations Liability Coverage shall be maintained by the User for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess, Umbrella and/or Bumbershoot policy is equal to or more comprehensive than the Primary Commercial General Liability policy.

Any Care, Custody and Control exclusions/limitations must be removed. The policy shall not limit/exclude crane operations.

**D. Stevedores Legal Liability Insurance** shall be maintained by the User and shall include coverage for damages to cargo, vessels being loaded and unloaded, other vessels, docks, wharves, and seawalls. The limits of such coverage shall be at least \$2,000,000.

**E. Business Automobile Liability Insurance** shall be maintained by the User as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident

Or

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident
---	--

If the User does not own any vehicles, this requirement can be satisfied by having the User's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

**11. Responsibility for Loss or Damage, and Insurance.** During the User's period of possession, User shall be responsible for all loss or damage to the cranes, normal wear and tear excepted, including but not limited to, damages resulting from negligent acts or omissions of User or User's employees, agents or subcontractors. If the crane(s) is rendered unusable as a result of any damage or loss, User shall immediately notify the Authority and make the Crane(s) available for inspection by the Authority. In such event, this Agreement shall continue (no Termination) until full repairs to any damage are made by User.

User shall provide the Authority with a certificate of insurance naming the Authority as loss payee in an amount not less than the Casualty Value for the Cranes. The Authority shall also be named as an additional insured as its interest may appear on User's Commercial General Liability Insurance and Crane Liability Insurance policy.

All payments due to the Authority shall be made within ten (10) days of User's receipt of said funds from User's insurance company.

**12. Release, Indemnification and Assumption of Risk.** In consideration of the User being permitted to use and operate the crane, the User agree as follows:

- A. Release. THE USER IRREVOCABLY AND UNCONDITIONALLY RELEASES, FOREVER DISCHARGES, AND AGREES NOT TO SUE OR BRING ANY OTHER LEGAL ACTION AGAINST THE INDEMNIFIED PARTY with respect to any and all claims and causes of action of any nature, whether currently known or unknown, which the User, or any of them, have or which could be asserted on behalf of the User in connection with the User's use or operation of the crane, including, but not limited to claims of negligence, product defect, breach of warranty, and/or breach of contract, whether or not due to or caused by the negligence of the Indemnified Party, their respective successors in interest, independent contractors, insurance carriers, agents, employees, representatives, assignees, officers, directors, Authority members attorneys, and members.

By signing this Agreement, the User hereby agrees as follows:

User hereby RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE assume liability for and indemnify, hold harmless the Manatee County Port Authority, its Authority members, officers, directors, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorneys' fees in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury (including death), property damage, relief, or loss of use, that User may sustain to arising out of my use of the crane and related activities, whether or not due to or caused by the negligence of the Authority members, officers, directors, employees, agents, and attorneys. **USER IS FULLY AWARE OF THE RISKS AND HAZARDS CONNECTED WITH USE AND OPERATION OF THE CRANE, INCLUDING THE RISK OF INJURIES WHICH COULD CAUSE DEATH. USER IS VOLUNTARILY PARTICIPATING IN USING OR OPERATING THE CRANE AND ASSUMES FULL RESPONSIBILITY FOR ANY RISK OF LOSS, PROPERTY DAMAGE, OR PERSONAL INJURY THAT MAY BE SUSTAINED AS A RESULT OF USER'S PARTICIPATION.**

The User waives its entitlement, if any, to immunity under section 440.11, Florida Statutes. Nothing contained in this Agreement is intended to nor shall it be construed as a waiver of sovereign immunity by the Authority, nor shall it be construed as a waiver of any defenses or limitations to any claims, including those based on the doctrine of sovereign immunity or section 768.28, Florida Statutes.

- B. Assumption of Risk. The User agree and understand that using or operating a crane can be HAZARDOUS AND INVOLVES THE RISK OF PHYSICAL INJURY AND/OR DEATH. The User acknowledges that use and operation of a crane is inherently dangerous and fully realize the dangers in using and operating a crane. The risks and dangers in the use and operation of a crane include, but are not limited to: changing weather conditions, improper use of equipment, high

water, high wind, other users at the seaport, and mental and physical distress. THE USER ACKNOWLEDGES AND UNDERSTANDS THAT THE DESCRIPTION OF THE RISKS LISTED ABOVE IS NOT COMPLETE AND THAT PARTICIPATING IN THE ACTIVITY MAY BE DANGEROUS AND MAY INCLUDE OTHER RISKS.

The User agrees and understands that there are dangers and risks associated with the use of the crane and that INJURIES AND/OR DEATH may result from such use, including, but not limited to the acts, omissions, representations, carelessness, and negligence of the Indemnified Party. By signing this Agreement, the Undersigned recognize that property loss, injury and death are all possible while using the crane. RECOGNIZING THE RISKS AND DANGERS, THE UNDERSIGNED UNDERSTAND THE NATURE OF THE ACTIVITY AND VOLUNTARILY CHOOSE FOR PARTICIPANT TO PARTICIPATE IN AND EXPRESSLY ASSUME ALL RISKS AND DANGERS OF USING THE CRANE, WHETHER OR NOT DESCRIBED ABOVE, KNOWN OR UNKNOWN, INHERENT, OR OTHERWISE.

- C. Indemnification.** The User, and its parents, subsidiaries and affiliates, jointly and severally agree to indemnify, protect, defend and hold harmless the Authority and the Authority's members, directors, officers, agents and employees (the "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal (collectively, "Losses"), arising out of the execution, performance nonperformance of the duties of the User, or its agents, employees or contractors, under this Agreement, the enforcement of this Agreement, or resulting from the activities of the User, or its agents, employees or contractors, in any way connected to this including, but not limited to:
- 1)** Any bodily injury, death or damage to tangible property, suits in equity of whatever kind or nature, relief, or loss of use, to the extent caused by the User or relating to or arising out of the User's performance or non performance of this Agreement or the use or operation of the crane; any collision; any claims, grievances or lawsuits brought by or on behalf of the User's own employees or their representatives, pursuant to any state or federal law, including, but not limited to, the Federal Employer's Liability Act, or pursuant to employee protective conditions imposed by a governmental agency or a collective bargaining agreement arising out of the User's operations hereunder.
  - 2)** Any environmental contamination from the crane or on the Authority's facilities (whether arising out of any environmental protection or pollution law, or any liability in tort (strict liability or otherwise) or resulting from User's

operations or any default under this Agreement or failure of User to perform any obligation under this Agreement.

- 3) The Indemnified Party seeking indemnification under this Agreement shall: (a) give the User prompt written notice of the claim; (b) cooperate with the User in connection with the defense and settlement of the claim and (c) permit the User to control the defense and settlement of the claim; provided that the User will not settle the claim without the prior written consent of the Indemnified Party. User shall assume control of the defense of any claim asserted by a third party against the Indemnified Party for which User is obligated to indemnify, defend, and hold harmless the Authority and, in connection of such defense, shall appoint lead counsel in each case at User's expense. The Indemnified Party shall have the right, at its option, to participate in the defense of any third-party claim, without relieving User of any of its obligations hereunder. If User assumes control of the defense of any third-party claim in accordance with this section, User shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such claim.
- 4) Notwithstanding anything to the contrary in this section, User shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the Indemnified Party and all expenses, including experts' fees, if: (a) an adverse determination with respect to the third party claim would, in the good faith judgment of the Indemnified Party, be detrimental in any material respect to the Indemnified Party's reputation; (b) the third party claim seeks an injunction or equitable relief against the Authority; or (c) User has failed or is failing to prosecute or defend vigorously the third party claim. Each Party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third-party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.
- 5) This indemnification provision includes claims made by any employees of User against the Indemnified Party, and User hereby waives its entitlement, if any, to immunity under section 440.11, Florida Statutes. Nothing contained in this Agreement and specifically this indemnification provision is intended to nor shall it be construed as an additional waiver of sovereign immunity beyond the expressed written contractual obligations of the Authority contained within this Agreement. Excluded from the Indemnified Party's indemnification obligation are any claims for which the Indemnified Party is immune from suit under the doctrine of sovereign immunity or for any amount of a claim exceeding the limitations of liability established by section 768.28, Florida Statutes. The Indemnified Party does not in any manner waive its rights and immunities provided by applicable federal or state law and/or regulation under this section or otherwise under this Agreement.

- 6) The User's obligations under this section shall survive the termination or expiration of this Agreement and shall not be limited by any amount of insurance required to be obtained or maintained under this Agreement.

**13. Photos/ Video Images.** The Authority or anyone authorized by the Authority has permission to use User's photograph or video image taken during the use of a crane for promotional materials without compensation paid to User.

**14. Assignment.** This Agreement and the rights herein granted may not be assigned, sold, leased or transferred, in whole or in part, without the prior written consent of the Authority, which may be withheld in the Authority's discretion for any reason. The terms and provisions of this Agreement shall be binding upon the Parties and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The Authority may assign its rights and obligations under this Agreement to any successor to the rights and functions of the Authority or to any governmental agency to the extent required by applicable laws or government regulations or to the extent the Authority deems necessary or advisable under the circumstances.

**15. Default.** User shall be in default under this Agreement upon the happening of any of the following events or conditions ("Event of Default"):

- A. Default in the payment when due of any installment of rent, fees, charges, or of any other obligation for the payment of money owed by User to the Authority that are not received by the Authority within ten (10) business days after receipt of written notice of non-payment from the Authority.
- B. Default in the timely performance of any other term, liability, obligation, covenant or agreement of User and in failure to cure within ten (10) days of written notice from the Authority notifying User of the default.
- C. If User transfers substantial control of User's assets or User's business operations or activity to any other entity without prior written consent of the Authority.
- D. If User files a voluntary petition for bankruptcy or otherwise seeks the benefit of any bankruptcy, reorganization, arrangement, or insolvency law or makes a general assignment for the benefit of creditors.
- E. The discovery of any material misrepresentation or fraudulent statement made to the Authority in connection with any agreement or other application or forms submitted to the Authority in connection with this Agreement or the Cranes, following written notice by Authority and a failure by User to explain the matter to the Authority's satisfaction within ten (10) calendar days.

- F. If User uses or permits the use of the Crane(s) by anyone else not approved by the Authority or in violation of any law, rule, or regulation.
- G. A lapse in coverage occurs with respect to any insurance required by this Agreement or the Authority is not timely provided with any documentation required in this Agreement with respect to such insurance.
- H. If the User is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Iran Terrorism Sectors List, has business operations in Cuba or Syria or participates in a boycott of Israel.
- I. If the User fails to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the User during the term of the Agreement.
- J. If the User fails to disclose any current or prior interest in any contract with or grant or gift from a Foreign Country of Concern, in violation of sections 286.101 and 287.135, Florida Statutes.
- K. If the User uses coercion for labor or services as defined in section 787.06(2)(a), Florida Statutes.

**16. Remedies upon Default.** Upon the occurrence of any Event of Default or at any time hereafter, the Authority, in its sole and absolute discretion, may take any one or more of the following actions with respect to the Cranes:

- A. Declare all unpaid amounts of accumulated fees and charges to be immediately due and payable.
- B. Terminate the use of any or all Cranes by providing written notice to User.
- C. Require that User shall, upon written demand by the Authority and at User's expense, promptly make available to the Authority, any one or all Cranes at a place designated by the Authority.
- D. Proceed by appropriate action either at law or in equity to enforce performance by User of the applicable covenants of this Agreement or to recover damages for the breach of the Agreement or to rescind the use of any Crane(s).
- E. Exercise any and all rights and remedies available to the Authority under any applicable law. In addition, User shall be charged with and shall pay to the Authority all reasonable costs and expenses the Authority incurred as a result of each Event of Default by User.

None of the rights and remedies in this paragraph is intended to be exclusive, but

each such right or remedy shall as to each Crane be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to the Authority at law or in equity. Any repossession or subsequent sale or lease by the Authority of any Crane(s) shall not bar an action against User for a deficiency. To the extent permitted by applicable law, **USER WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY THE AUTHORITY AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY USER.**

Without limitation of any rights of the Authority otherwise existing or otherwise available to the Authority, it is expressly covenanted and agreed by the Parties that in the event of any assignment by operation of law of this Agreement, or of an adjudicated bankruptcy of User within the meaning of the Federal Bankruptcy Act, then the Authority may, at the Authority's election, terminate this Agreement upon five (5) days prior written notice to User.

**17. Public Records.** All papers, letters, maps, books, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristic, or means of transmission, made or received pursuant to law or in connection with the transaction of official business by the Authority are public records of the Authority in accordance with the Florida Constitution and Florida Statutes. Every person has the right to examine, inspect, and copy any such public records not specifically made exempt by provisions of the Florida Statutes. Any financial or proprietary information relating to User transmitted by User to the Authority may be a public record subject to disclosure to a requesting third person (not a party to this Agreement). If the Authority receives a request by a third party for the disclosure of any such public records relating to User, the Authority shall immediately notify User of said request, however, in no event will the Authority delay production of the public records in order to provide notice to User. The Authority will comply with said request to the extent required by law, unless User institutes an appropriate legal proceeding or suit against the Authority and/or the third person to restrain or otherwise prevent the particular public records' disclosure. If User institutes any such legal proceeding or suit and the Authority incurs any attorneys' fees, costs, damages, or penalties in connection with or because of the legal proceeding or suit, User shall pay to the Authority an amount equal to the total amount of said attorneys' fees, costs, damages, or penalties.

User agrees to comply with the Florida Public Records Act, as applicable, including, but not limited to section 119.0701 of the Florida Statutes. Documents which may be considered public records under Florida law include, but are not limited to: records related to the entry, management and implementation of the Agreement itself; emails/correspondence between the Authority and User related to the Agreement; emails or correspondence from all other entities related to the Agreement (i.e., subcontractors, suppliers, vendors, etc.); billing and related documents; plans or other documents that may be necessary, reports, etc.; subcontracts; and all vendor invoices. User agrees, to the extent required by law, to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in performing the services of the Agreement;
- B. Provide the public with access to the public records under the same terms and conditions that the Authority would provide the records and at a cost that does not exceed the cost provided for by law;
- C. Ensure that the public records that are exempt or confidential, and exempt from public record disclosure requirements, are not disclosed, except as authorized by law; and
- D. Meet all requirements where retained public records and transfer, at no cost, to the Authority, all public records in possession of User, upon termination or completion of the Agreement and destroy any duplicate public records that are exempt or confidential, or exempt from public record disclosure requirements.

Further, User agrees that all records stored electronically will be provided to the Authority in a format that is compatible with the information technology systems of the Authority. User shall promptly provide the Authority with a copy of any request to inspect or copy public records that Recenter receives and a copy of User's response to each request. User understands and agrees that failure to provide access to the public records will be a material breach of the Agreement and grounds for termination.

**IF USER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO USER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OF THE AUTHORITY AT (941) 722-6621, RECORDSCUSTODIAN@SEAPORTMANATEE.COM, SEAPORT MANATEE, 300 TAMPA BAY WAY, SUITE ONE, PALMETTO, FL 34221.**

**18. Federal Maritime Commission Requirements.** If it is determined by the Federal Maritime Commission or by either of the Parties that this Agreement is subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, the Parties, in cooperation with each other, shall promptly comply with said requirements. If the activities and operations of User at SeaPort Manatee pursuant to the provisions of this Agreement result in a determination that User is a marine terminal operator and if the charges, fees, rates and other income received by User from others in connection with the activities and operations of User as a marine terminal operation are subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, User shall promptly comply with said requirements as a marine terminal operator including any required tariffs. If the Federal Maritime Commission by a duly entered order disapproves of any of the provisions of this Agreement subject to the jurisdiction or regulations of the

Federal Maritime Commission, the particular disapproved provisions shall be deemed null and void and of no force and effect, with all of the remaining provisions of this Agreement remaining in full force and effect.

**19. Tariff.** To the extent same are not in conflict with or in derogation of the terms and conditions of this Agreement, User shall throughout the term or duration of this Agreement abide by and comply with all the rates, rules and regulations of the Authority set forth in the then current SeaPort Manatee Tariff as published by the Authority and duly filed with the Federal Maritime Commission. This covenant by User to abide by and comply with said SeaPort Manatee Tariff was a material inducement for the Authority to enter into this Agreement constituting substantial consideration to the Authority for this agreement, and any failure by User to fully abide by and comply therewith shall at the option of the Authority constitute a default by User entitling the Authority to exercise one or more of the remedies set forth in this Agreement. User acknowledges receipt from the Authority of a copy of the current SeaPort Manatee Tariff as published by the Authority and posted on the Authority's website, and further acknowledges that User understands all the provisions of said SeaPort Manatee Tariff.

**20. Labor Disputes.** SeaPort Manatee consists of various facilities operated by tenants pursuant to leases with the Authority and by the Authority itself, and it is necessary for the operation of the SeaPort that there be a degree of cooperation between User and the Authority. In the event there are any strikes, boycotts, walkouts, picketing or other labor disputes at SeaPort Manatee impacting upon the activities and operations of User pursuant to the provisions of this Agreement, then and in that event, User shall cooperate with the Authority in taking reasonable actions and undertakings necessary to preserve and protect normal lawful activities and operations at SeaPort Manatee. Such action may include the exchange of information between User and the Authority, arranging for a separate entrance to certain facilities at SeaPort Manatee and the institution and prosecution of legal proceedings. User shall exercise a reasonable effort to discourage and prevent any such labor disputes in connection with its activities and operations pursuant to the provisions of this Agreement. In the event of any such labor dispute in connection with said activities and operations by User, then and in that event, User shall take all reasonable action consistent with its requirements necessary to resolve said disputes and to prevent the disruption of the normal activities and operations at SeaPort Manatee. Nothing herein shall be construed to impair or limit the lawful rights of employees of User or the Authority, or to limit the lawful rights of any labor organization representing said employees.

**21. Security.** The Authority is subject to minimum standards, procedures and requirements imposed by federal and state laws and regulations in connection with the security of SeaPort Manatee as a seaport. SeaPort Manatee consists of various facilities operated by the Authority and the Authority's tenants pursuant to leases with the Authority, and the security of said facilities operated by the Authority and its tenants are beneficial to both the Authority and User necessitating that there be a degree of cooperation between the parties. User shall comply with all of the provisions of federal and state laws and regulations applicable to security at SeaPort Manatee, to the crane

and to the activities and operations of User relating thereto at SeaPort Manatee.

**22. Attorneys' Fees.** In the event of legal action or other proceeding arising under this Agreement, the prevailing party shall be entitled to recover from the adverse party all its reasonable attorneys' fees and costs incurred by the prevailing party in the prosecution or defense of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at the trial level or at the appellate level. This shall include any bankruptcy proceedings. The prevailing party also shall be entitled to recover any reasonable attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining the amount of attorneys' fees and costs due to the prevailing party. The reasonable costs to which the prevailing party will be entitled include costs that are taxable under any applicable statute, rule, or guideline, as well as costs of investigation, copying costs, electronic discovery costs, mailing and delivery charges, costs of conducting legal research, consultant and expert witness fees, travel expenses, court reporter fees and mediator fees, regardless of whether such costs are taxable under any applicable statute, rule or guideline.

**23. Foreign Countries of Concern.** Pursuant to section 286.101, Florida Statutes, User shall disclose any current or prior interest of, any contract with, or any grant or gift received from a Foreign Country of Concern, as defined below, if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five (5) years. For purposes of this section, "Foreign Country of Concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern. User's disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. User represents that within one (1) year before proposing any contract to the Authority, User provided a copy of such disclosure to the Florida Department of Financial Services.

**24. Miscellaneous.**

- A. Amendments.** Neither this Agreement nor any Exhibit shall be amended, and no provision hereof or of any Exhibit shall be waived or varied unless by a writing signed by the Parties.
- B. Waiver or Delay.** No delay or omission by the Authority in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by the Authority of any Event of Default by User shall not be construed as a waiver of any future occasion.

**C. Notice.** All notices required or made pursuant to this Agreement shall be made in writing and must be delivered by email (with a requirement that the recipient acknowledge receipt), third party overnight courier (including overnight couriers' services such as Federal Express) or Certified Mail, Return Receipt Requested, postage paid addressed to the party to whom notice is given at the following addresses:

To the Authority:                   Manatee County Port Authority  
Executive Director  
300 Tampa Bay Way, Suite One  
Palmetto, Florida 34221  
(941) 722-6621  
[cbuqueras@seaportmanatee.com](mailto:cbuqueras@seaportmanatee.com)

Copy to:                               Port Counsel  
Bryant Miller Olive P.A.  
400 N Tampa Street, Suite 1600  
Tampa, FL 33602  
(813) 273-6677  
[jcowan@bmolaw.com](mailto:jcowan@bmolaw.com)

To the User:                         {Insert Name}  
  {Insert Title}  
  {Insert Address 01}  
  {Insert Address 02}  
  {Insert Phone Number}  
  {Insert Email Address}

or to such other address as either party may, from time to time designate to the other in writing.

**D. Governing Law.** The enforcement of this Agreement and the interpretation of the provisions of the Agreement are controlled and governed by the laws of the State of Florida. The Parties consent to jurisdiction over them in the State of Florida and agree that venue for any state action arising under this Agreement shall lie solely in the courts located in the 12th Judicial Circuit Manatee County, Florida, and for any federal action shall lie solely in the United States District Court, Middle District of the State of Florida.

The Authority and User recognize that this Agreement involves relatively complex business transactions; that this Agreement is lengthy, and its terminology is technical in nature and thus may be especially susceptible to misinterpretation; and in the event of a dispute as to rights and obligations under this Agreement, a Judge rather than a jury would be the most efficient and qualified trier of fact. Accordingly, the Parties are each desirous of leaving their respective rights to a jury trial with respect to any litigation or other legal

proceedings relating to or arising out of or in connection with this Agreement or its subject matter as follows:

**EACH PARTY BY EXECUTION HEREOF DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ANY RIGHT WHICH EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, ACTION, SUIT, OR PROCEEDING WHETHER AT LAW OR IN EQUITY BASED ON THIS AGREEMENT, ANY AMENDMENT OR ADDITION TO THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY OR THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, OR REPRESENTATIVES IN CONNECTION HERewith, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE. NO PARTY SHALL SEEK TO CONSOLIDATE ANY LITIGATION, ACTION, SUIT, OR PROCEEDING WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PROVISION IS MATERIAL AND MUTUAL INDUCEMENT TO ENTERING INTO THIS AGREEMENT.**

- E. No Third-Party Beneficiaries.** Neither the Authority nor User intends to benefit a third party directly or indirectly by this Agreement. Therefore, the Authority and User agree that this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.
- F. Binding Authority.** The Parties represent and warrant that each is authorized to enter into this Agreement without the consent and joinder of any other party and that the individuals executing this Authority have full power and authority to bind their respective party to the terms hereof.
- G. Severability.** If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. It is understood that the Authority shall not be subject to any liability to the User in the event any term herein is found to be invalid or unenforceable.
- H. Mutual Drafting.** This Agreement is the product of mutual drafting, each party having been represented by or having the opportunity to be represented by counsel, and therefore shall not be construed against either party.

- I. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties as to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, bids, and/or understandings.
- J. **Counterparts; Signatures.** This Agreement will become effective upon the Effective Date if the Agreement has been executed by all of the undersigned. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together will constitute one and the same instrument. This Agreement may be executed by electronic signature technology and such electronic signature shall act as the Parties' legal signatures on this Agreement and shall be treated in all respects as an original handwritten signature.

IN WITNESS WHEREOF, the Parties have caused this Crane Usage Agreement to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

MANATEE COUNTY PORT AUTHORITY

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

\_\_\_\_\_  
Executive Director

WITNESSES:

{Insert name}, LLC

s/ \_\_\_\_\_

Print name:

s/ \_\_\_\_\_

Print name:

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

Printed: \_\_\_\_\_

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

CRANE USER