

# PORTLAND TUGBOAT, LLC

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## TOWING CONTRACT

Date .....

Messrs.....

.....

(hereinafter "Owners")

We hereby agree as agents for and on behalf of PORTLAND TUGBOAT, LLC (hereinafter "Portland Tugboat") to perform all the Tugboat assistance required by all vessels owned or operated by you on time charter or otherwise, in the Port of Portland Harbor and Casco Bay and vicinity, at the rates and upon the terms and conditions as stated herein.

The owner, operator, charterer, agent, representative, or any other person ordering tug services to assist a vessel in accordance with this Contract shall be collectively referred to herein below as "Owner." By signing this Contract, any person or company who orders tug services represents and warrants that they are authorized to do so on behalf of the Owner of the vessel to be assisted. Such person and/or company further agrees to indemnify and hold Portland Tugboat harmless from all damages and expenses that may be sustained or incurred by Portland Tugboat in the event and in consequence of such person or company not having such authority.

Owner agrees that during the term of this contract, Portland Tugboat may issue written notice of an adjustment to the rates, terms and conditions applicable to services provided hereunder to reflect changes in the cost of operations, working hours, conditions or in consequence of any change in law or regulations. It is understood and agreed that said notice of adjustment shall be an agreed amendment to this Contract, without need for additional signatures, unless Portland Tugboat receives written notice of rejection of said adjustment at least thirty (30) days before said adjustment is to become effective.

This mutual agreement to remain in effect from ..... and from year to year commencing this date and thereafter until notice of cancellation by either party, by giving thirty (30) days notice prior to the annual expiration date.

PORTLAND TUGBOAT, LLC,

By.....

**EFFECTIVE OCTOBER 15, 2016**

ACCEPTED

.....

Signature of Owners, Charterers or Agents

**TERMS:** Net 30 days. In the event Owner fails to make payment when due or fails to pay entire balance due under this contract or invoice, Owner will be considered in default and will be responsible for all cost of collection including reasonable attorney's fees and court costs. In addition, Owner agrees to pay 1.5% interest per month on all outstanding balances. Payments received from or on behalf of Owner shall be applied as follows: FIRST to satisfy all fees, costs (including attorney's fees) and interest due and owing on any invoice rendered to Owner commencing with the oldest such invoice and then to each subsequent such invoice and SECOND to satisfy all tug service charges arising hereunder commencing with the oldest open invoice and then to each subsequent invoice. Portland Tugboat hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

**DOCKING AND UNDOCKING ASSISTANCE: DOCKING AND UNDOCKING ASSISTANCE:** Unless otherwise indicated, the base period charge is determined by using the DWT of the vessel assisted, and the berth or zone involved. Shifting a vessel alongside at the same berth shall be considered a docking subject to the rates contained in this schedule.

**DWT:** Is the highest measurement of the vessels deadweight tonnage as published in the current edition of Lloyd’s Register of Shipping.

**NOTIFICATION OF TUG SERVICE:** Four (4) hours of definite notice is required.

**1. TANKERS**

**A. Portland Pipeline – Escorting, Docking, Undocking**

*The following rates, applicable to all vessels calling at Portland Pipeline, are based upon operational requirements mandated by the Pipeline*

Vessel Size in DWT	
Up to 120,000 DWT	\$70,000
over 120,001 DWT	\$90,000

**B. All other Tanker berths – Docking or Undocking up to 2 Tugs**

Vessel Size in DWT	0800 - 1600
Up to 30,000 DWT	\$6,500
30,001 - 40,000 DWT	\$7,800
40,001 - 50,000 DWT	\$9,100
50,001 - 60,000 DWT	\$10,400
Over 60,001 DWT	\$11,700

**2. ALL OTHER VESSELS**

**A. All other vessels - Docking or Undocking**

	1 Tug	2 Tugs
Zone	0800 - 1600	0800 – 1600
1	\$3,120	\$5,460
2	\$3,640	\$6,240
3	\$4,160	\$6,760

**ADDITIONAL TUGS:** Tugs in addition to those provided for in the base rate for any operation will be available at a rate of \$3,640.00, all surcharges, including fuel surcharge, will apply.

Any contracted discount only applies to docking/sailing rates as above.

All tug services furnished by us to a self-propelled vessel, whether or not such vessel is making use of its own propelling power, are subject to the following terms and conditions and at the rates contained in this schedule. Receipt by or on behalf of Owners of any service described in this Contract shall constitute acceptance by Owners of all the terms and conditions set forth herein. Portland Tugboat reserves the right to decline any order for service hereunder.

**GENERAL/BASE PERIOD:** Time starts when the tug or tugs report at the location ordered and stops when they are dismissed. The rates shown are for the base period (2 hours), are the minimum charge for the operation, and apply weekdays between the hours of 0800 and 1600. In addition to the base rate, any time used in excess of two hours will be charged at the tariff hourly rate in one half (1/2) hour increments, any fraction thereof to constitute a full half hour.

**OVERTIME PERIODS:** All work performed between 1600 and 0800 on weekdays, or at any time on Saturdays, Sundays, or holidays observed in the port will be subject to an overtime surcharge of 35% in addition to the base rates set forth above. The overtime surcharge shall be applied to the base rates set forth in this schedule, as well as all hourly rates.

#### **RATES FOR TUGS WORKING BY THE HOUR**

**In Harbor:** The hourly weekday rate is \$1,235.00 per hour per tug, with a minimum of two (2) hours per tug between the hours of 0800 and 1600 hours Monday to Friday. Between the hours of 1600 and 0800 Monday to Friday and on Saturday, Sunday, and Holidays, the overtime surcharge contained in this schedule shall be applied in addition to the base hourly rate. Running time from and to the tug's berth shall be included in the calculation of time used..

**Out of Harbor:** Rates furnished upon request.

**TRACTOR TUG:** If a tractor tug is specifically requested or required, the rate applicable to that tug shall be an additional 50% of above scheduled rates and/or any applicable hourly rate.

**ADDITIONAL SERVICES:** For services performed in-harbor that do not involve the docking or undocking of a vessel which is making use of her own propelling power, rates will be quoted upon request. Fractional parts of an hour will be charged in one half (1/2) hour increments.

**ESCORT TUG/TETHERED TUG:** Escorting from Witch Rock to stream prior to docking or from stream to Witch Rock after undocking is an additional charge of \$5,200.00 for the tethered tug and \$3,640.00 per tug for all additional escort tugs. All surcharges, including fuel surcharge, will apply.

**ICE CHARGES:** When a tug or tugs are operating under ice conditions, an additional charge will be made, amounting to 50% of the base rate, and 50% of any hourly charges in excess of base rate. The term "ice conditions" shall be taken to include any ice encountered while enroute to or from or at the location of the operation.

**LINE HANDLING:** When a tug is required to handle lines in connection with a docking, undocking or other service, a charge of \$1,560.00 per hour, per tug will apply, in ½ hour increments with a 1 hour minimum, subject to overtime/weekend/holiday surcharges.

**CANCELLED ORDERS:** When a tug is ordered and then cancelled, a charge of two-thirds (2/3) of the applicable rate will be made. When an order is cancelled after any tug reports to the location ordered, the charge will be three-quarters (3/4) of the applicable rate. There will be no charge if the orders are cancelled at least four (4) hours prior to the ordered time.

**DETENTION:** For detention of a tug caused by the vessel not being ready or other conditions beyond our control, the time of the detention will be charged at an hourly weekday rate per tug of \$1,235.00, with a 35% surcharge for detentions during overtime or weekend and holiday periods. Detentions will be prorated to the nearest half (1/2) hour. In addition, if the vessel is delayed for any reason not attributable to Portland Tugboat after commencement of the work, all such delays shall be charged at the same hourly rate as detentions, including applicable surcharges, prorated to the nearest half (1/2) hour.

**HOLIDAYS OBSERVED:** New Year's Day, Martin Luther King's Birthday, Presidents' Day, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day. When a holiday falls on a Saturday or Sunday, the following Monday is the observed holiday.

**OTHER SERVICES:** Prices for services rendered in connection with dead ship tow, salvage, ocean towing, and vessels aground or in distress will be separately quoted upon request. These services, or services not otherwise covered by this Contract, may be governed by the terms and conditions of an appropriate BIMCO form contract or such other contract as may be agreed by the parties. However, in all such cases, all terms and conditions contained in this Contract are understood and agreed by Owner to be incorporated into and made a part of any such BIMCO form contract or such other contract as may be agreed by the parties and shall apply to all matters and issues where said BIMCO form contract or other contract is silent.

**TUG INTERESTS:** Portland Tugboat, its owners, officers, directors, insurers, employees, any tugs providing services pursuant to this Contract, their respective owners, affiliates, operators, charterers, managers, underwriters, masters and crews shall be collectively referred to herein below as "Tug Interests."

**FORCE MAJEURE:** Tug Interests shall not be responsible or liable for any expense, loss, damage or claim whatsoever caused by or resulting from delay, failure, act or omission hereunder due to strikes, lockouts, labor disturbances, riots, fire, earthquakes, storm, lightning, epidemics, war, disorders, acts of God, acts of the public enemy, terrorists, port congestion, shortage of tugs, mechanical breakdowns, priorities in service, or any other cause whatever beyond their control.

**EMPLOYMENT OF OTHER TUGS:** All or part of any service performed hereunder may be subcontracted without notice to Owners. Any such subcontractor shall be considered an independent contractor and not an agent, servant or employee of Portland

Tugboat. If at any time Portland Tugboat tugs are not conveniently available for the desired services, Portland Tugboat will endeavor to designate or engage other tugs from other sources to provide tug service, but Tug Interests shall not be responsible or liable for damages if Portland Tugboat is unable, at any time, for any reason, to furnish such services, either through its own tugs or by engaging tugs from any other source. Any tug designated or engaged by Portland Tugboat to perform services under this Contract, and its owners, master and crews shall, while performing any service pursuant to this contract, have the benefit of all contract provisions herein and shall be considered third party beneficiaries of this Contract with all limitations of liability herein. Further, Tug Interests do not expressly or implicitly warrant the seaworthiness, power, equipment, performance or competency of the Master, crew or any tugs used or engaged by Portland Tugboat in the performance of this Contract, but which are otherwise not owned, operated or controlled by Tug Interests. If for any reason, at any time, Portland Tugboat is unable or otherwise unwilling, in its sole discretion, to provide tugs to serve Owner's vessel, Owner is at liberty to engage tugs from any other owner or operator. In such circumstance, Portland Tugboat shall have no obligation to reimburse Owner for any price differential or any other cost incurred by Owner.

**DAMAGE CLAIM TIME LIMITS:** Owners shall notify Portland Tugboat of any damage to the vessel assisted that allegedly occurred during the performance of services hereunder. Such notice shall be in writing and shall be delivered as soon as practicable, but not later than 48 hours following occurrence. Portland Tugboat shall be afforded an opportunity to inspect or survey such damage before commencement of any repairs. Any action in any forum to recover damages from Tug Interests, or any of them, shall be commenced within one year after the occurrence giving rise to the claim, failing which said claim shall be deemed waived.

**LIMITATION OF LIABILITY:** The furnishing of any service or anything done in connection therewith, shall not be construed to be or give rise to a personal contract, and it is understood that Tug Interests shall have the benefit of all exemptions from and limitations of liability to which an owner of a vessel is entitled under the Limitation of Liability Statutes of the United States. TUG INTERESTS WARRANT THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF WORKMANLIKE SERVICE.

Unless entitled to immunity or to defenses to, exemptions from and limitations of liability provided under this Contract or under any applicable law, rule or regulation that would reduce their liability to an amount less than that hereinafter set forth, Tug Interests shall be liable only to the extent of their negligence, which negligence shall not be assumed but must be affirmatively proven, for claims, demands, causes of action, liabilities and costs (including third party claims) arising out of or in connection with any occurrence or series of occurrences related to the provision of tug services pursuant to this Contract up to a maximum aggregate amount of two hundred fifty thousand dollars (U.S.\$250,000.00). Owner understands and agrees that tug services provided hereunder are rendered at all times under the supervision and command of Owner's servants (including the Master of the vessel being assisted and docking pilots), or of State pilots, none of whose actions or inactions may be imputed to Tug Interests. Owner further understands and agrees that the rates charged by or on behalf of Tug Interests for tug services are predicated upon the limitations of liability and the indemnities set forth in this Contract. Should Owner desire that Tug Interests retain liability in excess of two hundred fifty thousand dollars (U.S. \$250,000.00) it will notify Portland Tugboat in writing, whereupon Portland Tugboat will quote rates for tug services hereunder predicated on higher liability limits. Any such quote must be accepted by Owner in writing at least twenty-four (24) hours prior to commencement of tug services to the vessel being assisted, failing which the rates and liability limitations otherwise provided herein shall prevail. Nothing herein shall be construed to waive or limit the right of Tug Interests to assert any defenses to liability available to it or to avail itself of any rights of limitation or exemption from liability under any applicable law, rule or regulation. Owner and any vessel assisted hereunder assume all risk of, and shall indemnify Tug Interests from and against, any and all loss or damage sustained by Owner, Tug Interests or by any other vessel, property or person that results from the parting, heaving or sudden movement of any hawser or other line, by whomsoever furnished or howsoever caused. Notwithstanding anything to the contrary in this Contract or elsewhere, Owner understands and agrees that the rates charged hereunder are also predicated on Owner's agreement that Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.

Owner agrees to indemnify, defend and hold Tug Interests harmless from and against any and all claims, demands, causes of action, liabilities and costs (including attorney's fees, penalties, fines and third party claims of whatever nature) in excess of the applicable amounts set forth above that are attributable to the acts or omissions, whether or not negligent, of Tug Interests, or any of them, or to unseaworthiness of any tug and which arise out of or in connection with any occurrence or series of occurrences related to the provision of tug services pursuant to this Contract. Except as set forth below, the parties intend for this indemnity to apply in all instances including, without limitation, allisions, collisions, personal injury, fire, explosion, grounding, oil spills and third party claims. Owner warrants that Owner possesses sufficient and adequate insurance on the vessels assisted pursuant to this Contract, including hull and machinery, P&I, cargo and pollution coverage, to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the tug services provided hereunder, with all rights of subrogation for losses under said insurances waived as to Tug Interests and with Tug Interests entitled to all benefits under said insurances of additional or coassureds, as applicable. Nothing herein shall preclude Tug Interests from recovering from any responsible party for any damages sustained by any tugs, or their Masters or crews, providing services hereunder.

**PILOTAGE:** Tug Interests do not furnish pilots or pilotage to vessels making use of or having available their own propelling power, so that whenever any licensed pilot, or a captain of any tug which is furnished to or is engaged in the services of assisting a vessel making use of or having available her own propelling power at the commencement of such service, participates in directing the navigation of

such vessel, or in directing the assisting tugs, from onboard such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner, operator and charterer and being subject to the exclusive supervision and control of the vessel's personnel. Any such service performed by any such person is beyond the scope of his employment, if any, for Tug Interests and neither those furnishing the tugs or lending any such person, nor Portland Tugboat shall be liable for any act or omission of any such person. For the purposes of this paragraph, vessels making use of or having available their own propelling power shall be deemed to include tug/barge units and vessels of any description having, at any time the service is commenced, another tug in assistance. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of Portland Tugboat.

With respect to vessels that are not owned by the person or company ordering the tug service, it is understood and agreed that such person or company warrants that it has authority to bind the vessel owners to all the provisions of the preceding paragraph, and agrees to indemnify and hold Tug Interests harmless from all damages and expenses that may be sustained or incurred in the event and in consequence of such person or company not having such authority.

In consideration of Portland Tugboat transporting a docking and/or state pilot without charge to and/or from the vessel being assisted hereunder, Owner agrees that it shall indemnify, defend and hold harmless Tug Interests from and against all claims, demands, causes of action, liabilities and costs (including attorney's fees) incurred in connection with or arising out of any claim by or on behalf of a pilot for personal injury or death sustained while being transported by Portland Tugboat to or from the vessel being assisted, excepting only any injury sustained by said pilot to the extent attributable to the gross or willful negligence of Portland Tugboat. As used herein, the term "being transported by Portland Tugboat" shall include, without limitation, all time when the pilot is (i) present on Portland Tugboat's shoreside premises enroute to or from the vessel being assisted, and (ii) boarding or disembarking from a tug or other vessel supplied by or on behalf of Tug Interests. As used herein the term "pilot" shall also include any assistant pilot, trainee or other person who may accompany the pilot in any capacity.

**MISCELLANEOUS:** If any provision of this contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect.

**FUEL SURCHARGE:** All rates published in this schedule are subject to the prevailing fuel surcharge, published elsewhere.

**EFFECTIVE DATE:** The above rates, terms and conditions supersede all previously published schedules and are effective from October 15, 2016.