

# ***EASTPORT PORT AUTHORITY***

**3 MADISON STREET – PO BOX 278**

**EASTPORT, MAINE 04631**

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**WEBSITE: [www.portofeastport.org](http://www.portofeastport.org)**

**EMAIL: [eastportportauthority@myfairpoint.net](mailto:eastportportauthority@myfairpoint.net)**

Messrs. ....

Date.....

.....  
(hereinafter "Owners")

We hereby agree as agents for and on behalf of EASTPORT PORT AUTHORITY (hereinafter "Port Authority") to perform all the Tugboat assistance required by all vessels owned or operated by you on time charter or otherwise, in the Port of Eastport Harbor and Passamaquoddy 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 the Port Authority harmless from all damages and expenses that may be sustained or incurred by the Port Authority in the event and in consequence of such person or company not having such authority.

Owner agrees that during the term of this contract, the Port Authority 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 the Port Authority 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.

EASTPORT PORT AUTHORITY,

By.....

**EFFECTIVE SEPTEMBER 1, 2010**

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 cost. In addition, Owner agrees to pay 1 1/2% interest per month on outstanding balance. The Port Authority hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

**DRY CARGO, FREIGHTERS AND ALL OTHER TYPE VESSELS EXCEPT TANKERS**

	<b>A</b>	<b>A</b>	<b>B</b>	<b>B</b>	<b>C</b>	<b>C</b>	<b>D</b>	<b>D</b>
<b>VESSEL</b>	0800-1600		1600-2200 0400-0800		2200-0400		Hourly	
PRIMARY	2500.00	2750.00	2750.00	3000.00	3000.00	3250.00	375.00	475.00
SECONDARY	1250.00	1450.00	1450.00	1650.00	1650.00	1850.00	300.00	400.00

**BLACK FIGURES - WEEKDAY RATES** – Charge in excess of four (4) hours of base period goes hourly  
**RED FIGURES - SAT., SUN. & HOLIDAY RATES** – Charge in excess of four (4) hours of base period goes hourly

All tug services furnished by us to a self-propelled vessel, which is making use of its own propelling power, are subject to the following terms and conditions and at the rates contained in this schedule.

**GENERAL/BASE PERIOD:** Time starts one hour prior to when the tug or tugs are to report at the location ordered and stops one hour after the time that they are dismissed and finally released. The rates shown are for the base period (4 hours) and are the minimum charge for the operation. Time in excess of the base period will be charged at the hourly rate in one-quarter hour increments, any fraction thereof to constitute a full quarter hour.

**DOCKING AND UNDOCKING ASSISTANCE:** The base period charge is determined by using the class of vessel and location involved, the starting or finishing time, whichever is higher.

**TUG USE DETERMINATION:** The Port Authority exercises a primary vessel operation and at its sole discretion will determine which order its vessels are to be utilized on any and all tug operations. The Port Authority does recognize that for ships under 10k DWT there may be an opportunity to utilize a smaller secondary vessel at its lower cost as the primary vessel for the move. As such the Owner may request such a utilization of a secondary vessel in these circumstances after consultation between the Owner, Vessel Captain, Harbor Pilot and Tug Captain to determine circumstances and feasibility. The Port Authority may grant said request but does so at the Owners sole risk at to the effectiveness for said move as the risk relates to utilizing said secondary vessel.

**THIRD TUG CHARGE:** When a third tug is required for docking and undocking a vessel the rate for the additional tug is at the per hour rate of \$250.00, minimum two (2) hours.

**ADDITIONAL SERVICES:**

For services performed in connection with the docking, undocking or shifting of a vessel which is not making use of it’s own propelling power, the charges applicable will apply, plus an additional charge of 50%. Fractional parts of an hour will be charged in one half (1/2) hour increments. Warping of a vessel already at dock which is required for normal cargo operations whether the vessel utilizes its own power propelling power or not may be charged a the hourly rate with a 2 hour minimum charge with fractions charged as previously stated. Specialized moves not related to commercial docking, undocking or shifting of a vessel as part of commercial port activities are subject to a negotiated rate.

**ESCORT TUG/TETHERED TUG:** Escorting from Cherry Island to dock facilities prior to a docking that otherwise does not utilize tug services for docking at the regular rate or from dock facilities to Cherry Island after an unassisted undocking is at a charge of \$1500.00 for a tethered tug and \$750.00 any/all un-tethered escort tugs not to exceed normal transit time of 2 hours. Escorts that exceed this 2 hour base limit will be subject to an hourly rate as previously described.

**CANCELLED ORDERS:** If orders are cancelled at least four (4) hours prior to the ordered time, there will be no charge. The charge for orders cancelled less than 4 hours prior to ordered time will be one-third (1/3) of the applicable rate. When an order is cancelled after any tug is underway to the location ordered, the charge will be two-thirds (2/3) of the applicable rate.

**LINE HANDLING:** When a tug/line boat is required to handle lines in connection with a docking, undocking or other services, a charge of \$250.00 per hour, per vessel will apply. One hour minimum, then 1/2-hour increments.

**HOLIDAYS OBSERVED:** New Year's Day, Martin Luther King's Birthday, President's 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.

For consideration of workforce availability, the Port of Eastport will observe a no work period from the time of 16:00 on Christmas Eve through 16:00 on Christmas Day. Work on these dates otherwise are subject to applicable rates.

**OTHER SERVICES:** Prices for services rendered in connection with dead ship tow not associated with commercial port activities, salvage, ocean towing, and vessels aground or in distress will be separately quoted on request. These services, or services not otherwise covered by this Contract, may be governed by the terms and conditions of a BIMCO 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 Contract or such other contract as may be agreed by the parties and shall apply to all matters and issues where said BIMCO Contract or other contract is silent.

**TUG INTERESTS:** The Port Authority, 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 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:** If at any time the Port Authority tugs are not conveniently available for the desired services, the Port Authority will use its best efforts to designate other tugs from other sources to provide tug service, but Tug Interests shall not be liable for damages if the Port Authority tugs are unable, at any time, for any reason, to furnish such services, either through its own tugs or by tugs from any other source. Tug Interests 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 and 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 Tug Interests 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, the Port Authority is unable or otherwise unwilling, in its sole discretion, to provide or designate tugs to serve Owner's vessel, Owner is at liberty to engage tugs from any other owner or operator. In such circumstance, the Port Authority shall have no obligation to reimburse Owner for any price differential or any other cost incurred by Owner.

**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 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. Unless entitled to defenses or limitations of liability provided under this Contract or under any applicable law, rule or regulation that would reduce its 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 the Port Authority in writing, whereupon the Port Authority 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. 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 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 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 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 co assureds, 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 the Port Authority 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 the Port Authority.

**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.

**EFFECTIVE DATE:** The above rates, terms and conditions supersede all previously published schedules and are effective from May 1, 2010.