

MORAN TOWING OF TEXAS INC.



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Schedule of Rates, Terms and Conditions

Effective March 1, 2011

TOWAGE AGREEMENT Sabine District and vicinity

Dated: _____

It is hereby agreed between Messrs: _____ (hereinafter called "OWNERS") and Moran Towing of Texas Inc., (and its successors) (hereinafter called "MORAN") that MORAN will furnish tugs for and attend to all the towage requirements within the Sabine District and vicinity, of vessels owned, managed or controlled by OWNERS, and OWNERS agree to place all of their towage requirements within the Sabine District and vicinity with MORAN in accordance with the current "Schedule of Rates, Terms and Conditions" below, as may be amended from time to time.

OWNERS agree that MORAN shall have the right at any time, upon thirty (30) days advance notice to OWNERS, to increase its rates or adjust terms or conditions, but if OWNERS do not consent to such changes, they may cancel this Contract upon fifteen (15) days written notice to MORAN.

This Contract shall remain in force from _____ and shall continue thereafter from year to year until cancelled by either party giving to the other sixty (60) days notice in writing prior to the annual expiration date.

Acceptance:

OWNERS

Moran Towing of Texas Inc.

BY _____

Vice President

IT IS UNDERSTOOD THAT ALL TUG SERVICES PERFORMED BY MORAN ARE SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE THEN CURRENT "SCHEDULE OF RATES, TERMS AND CONDITIONS".

SCHEDULE OF RATES, TERMS AND CONDITIONS

It is understood that all tug service to a self-propelled vessel, whether or not such vessel is making use of its own propelling power, is furnished subject to the terms and conditions set forth in this Schedule.

1 RATES FOR ONE TUG ASSISTING ONE VESSEL: (Includes only one docking or one undocking)

	Sabine Jetty	Sabine Anchorage	Keith Lake Bend	Texas Isle	Valero	Port of Port Arthur	PABTEX	NRI	Total	Port Neches	Smith's Bluff	Stanolind	Beaumont	Trinity/CBI	Port of Orange	Pier Road
Sabine Jetty	-	3,319	3,872	4,141	4,512	4,512	5,197	5,732	5,872	6,135	6,472	7,035	7,439	7,834	7,035	7,439
Sabine Anchorage	3,319	-	3,319	3,872	4,141	4,141	4,860	5,197	5,486	5,743	6,050	6,472	6,956	7,439	6,472	6,956
Keith Lake Bend	3,872	3,319	-	3,319	3,872	3,872	4,477	4,860	5,197	5,486	5,872	6,307	6,809	7,239	6,307	6,809
Texas Isle	4,141	3,872	3,319	-	2,712	2,860	4,141	4,477	4,678	5,149	5,486	6,283	6,664	7,035	6,135	6,664
Valero	4,512	4,141	3,872	2,712	-	4,141	4,512	4,860	5,197	5,486	6,050	6,472	6,956	7,439	6,472	6,956
Port of Port Arthur	4,512	4,141	3,872	2,860	4,141	-	3,872	3,986	4,141	4,477	5,197	5,872	6,135	6,472	5,732	6,363
PABTEX	5,197	4,860	4,477	4,141	4,512	3,872	-	3,319	3,872	4,141	4,477	5,197	5,872	6,135	4,860	5,197
NRI	5,732	5,197	4,860	4,477	4,860	3,986	3,319	-	2,860	4,007	4,307	4,860	5,546	6,050	4,512	4,860
Total	5,872	5,486	5,197	4,678	5,197	4,141	3,872	2,860	-	3,872	4,141	4,477	5,197	5,872	4,860	5,197
Port Neches	6,135	5,732	5,486	5,149	5,486	4,477	4,141	4,007	3,872	-	3,872	4,141	4,477	5,197	5,197	5,872
Smith's Bluff	6,472	6,050	5,872	5,486	6,050	5,197	4,477	4,307	4,141	3,872	-	3,872	4,141	4,477	6,135	6,472
Stanolind	7,035	6,472	6,307	6,283	6,472	5,872	5,197	4,860	4,477	4,141	3,872	-	3,872	4,141	6,472	7,035
Beaumont	7,439	6,956	6,809	6,664	6,956	6,135	5,872	5,546	5,197	4,477	4,141	3,872	-	3,872	7,035	7,439
Trinity	7,834	7,439	7,239	7,035	7,439	6,472	6,135	6,050	5,872	5,197	4,477	4,141	3,872	-	7,439	7,834
Port of Orange	7,035	6,472	6,307	6,135	6,472	5,732	4,860	4,512	4,860	5,197	6,135	6,472	7,035	7,439	-	3,872
Pier Road	7,439	6,956	6,809	6,664	6,956	6,472	5,197	4,860	5,197	5,872	6,472	7,035	7,439	7,834	3,872	-

- Assisting Vessel from Sea Buoy to Sabine Jetties..... \$5,199
- Assisting Vessel from Sabine Sea Buoy to Sabine Buoys 29/30..... \$3,319
- Assisting Vessel from Sabine Buoys 29/30 to Sabine Jetty \$2,153
- Assisting Vessel from Beaumont Basin to dock Neches Industrial Park and ExxonMobil Coke \$3,319
- Assisting Vessel from Beaumont Basin to dock ExxonMobil Chemical \$2,861
- Assisting Vessel shifting berth to berth, same area \$3,068
- Assisting Vessel to turn in area other than in the immediate vicinity of berth and dock (this now also includes, but is not limited to, service of vessels above Texas Island to any facility behind Texas Island) \$2,714
- Assisting Vessel to undock and turn in area other than in the immediate vicinity (this now also includes, but is not limited to sailing from Sun # 5)..... \$2,714
- Assisting Vessel to line shift, berth to berth, at same dock \$2,153
- Docking or undocking one Vessel \$2,046

2 DETENTION

The Rates set forth in paragraph 1 include waiting time of up to one-half hour measured for docking from the time the tug reports to the dock and, for undocking, from the time the tug reports at the scheduled sailing time. Waiting time for each tug in excess of one-half hour shall be charged at a rate of \$665.00 per tug per hour or pro-rated for part of an hour. In addition, if the vessel is delayed for any reason not attributable to MORAN after commencement of the work, all such delay shall be charged at a rate of \$665.00 per tug per hour, or pro-rated for part of an hour.

3 CANCELLATION

When a tug is ordered and is then cancelled, a charge of \$665.00 per tug will be made for every hour, or pro rata for any part thereof, that has elapsed from the time the tug leaves its station until it arrives back at its tug station.

4 OCEAN AND COASTWISE TOWING RATES

Prices and terms for ocean and coastwise towing will be quoted upon request.

5 EMPLOYMENT OF OTHER TUGS

If at any time MORAN tugs are not conveniently available for the required services, MORAN will endeavor to designate or engage other tugs to provide service, but MORAN shall not be liable for damages in case it is not able, at any time, for any reason, to furnish such service. Any tug designated or engaged by MORAN to perform services under this contract, and its owners, master and crews shall, while performing such services, have the benefit of all Contract provisions herein. However, if for any reason, at any time MORAN is unable to have tugs owned or specified by it on hand to serve Owner's vessels; Owner is at liberty to engage any other tugs to serve it at such time but without the right to charge MORAN any difference in price. In agreeing to endeavor to provide this service, it is understood and agreed that MORAN does not either expressly or impliedly warrant the seaworthiness, power, equipment, or competency of the crew of the tug or tugs supplied or furnished by MORAN in the performance of this Contract.

6 DISTANCES IN MILES

Whistle Buoy Sabine Entrance	0.0	Port Neches Docks	34.3
Sabine	6.8	Smith's Bluff Docks	37.3
Port Arthur Canal	9.9	Reserve Fleet	40.9
Sabine-Neches Canal	16.2	Oil Tanking	44.4
Motiva, Port Arthur	16.8	ExxonMobil	49.1
Valero	18.0	Beaumont City Docks	49.7
Martin Luther King Bridge	19.9	Trinity Shipyard	50.2
Neches River	28.3	Sabine River	32.3
Total	30.3	Orange City Docks	39.5

7 DELAY TIME

The Rates set out in this Paragraph I are based upon voyages to be completed within the times specified below. If a voyage is not completed within the specified time, MORAN shall be compensated for all additional time used at the rate of \$665.00 per hour or pro rata for any part thereof, per tug.

1. Between Beaumont or Stanolind anchorage area and Sabine or Sabine Jetty, 7 hours allowed for voyage.
2. Between Smith's Bluff or Port Neches, or Total and Port Arthur, 3 hours allowed for voyage.
3. Between Port Arthur and Sabine or Sabine Jetty, 3 hours allowed for voyage.
4. Between Sabine and Sabine Sea Buoy, 2 hours allowed for voyage.
5. Between Orange and Sabine or Sabine Jetty, 7 hours allowed for voyage.
6. Between Beaumont, or Stanolind anchorage area or Orange and Port Arthur, 5 hours allowed for voyage.
7. Between Smith's Bluff, or Port Neches, or Total, and Sabine or Sabine Jetty, 5 hours allowed for voyage.
8. Between Orange and Beaumont, 6 hours allowed for voyage.

8 ADDITIONAL CHARGE

A 35% additional charge is added to all Rates referred to in this Paragraph I for work performed between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and for work performed during any hour on holidays and weekends. If the holiday falls on Saturday, this overtime will be billed on the Friday prior to the holiday. If the holiday falls on Sunday, this overtime will be billed on the Monday following the holiday. When service is ordered to be performed during overtime period and is not completed until after termination of overtime period, the vessel shall be charged at the additional rate. When service is ordered to be performed during the regular period and is not completed until after an overtime period has commenced, the vessel shall be charged at the additional rate.

9 ASSISTING DEADSHIPS

For deadship moves, a 100 % additional charge will be added to all Rates referred to in this Schedule and are not subject to discount.

10 USE OF TRACTOR TUGS

When services of a tractor tug are specifically required or requested, or when used in a single tug assist, the effective tug assist rate and any applicable hourly rate shall be increased by 50%.

11 EMERGENCY TOWING

When a tug not engaged in towing is called to render assistance to a vessel in the harbor, or for special services rendered, the charge for this type of service will be \$1,580.00 per tug for the first hour and \$870.00 for each additional hour or fraction thereof and subject to all terms and conditions herein: time starts when tug leaves from the point where she then is and time stops when tug arrives back at a designated lay berth. These charges are not subject to a discount.

12 VESSELS AGROUND; IN DISTRESS OR ASSISTING DEAD SHIPS

These terms and conditions do not cover services to vessels aground or in distress or when services are performed during heightened Coast Guard port conditions. Such services are governed exclusively by the terms and conditions of a BIMCO form contract used by MORAN for such services.

13 FUEL SURCHARGE

All rates published in this Schedule are subject to prevailing fuel surcharges. These charges are not subject to a discount.

14 FORCE MAJEURE

MORAN, the tugs, their respective owners, affiliates, operators, charterers, managers, underwriters, masters, and crews (collectively, the "Tug Interests"), shall not be responsible or liable for any expense, loss, damage or claim whatsoever caused by or resulting from delays, failures or omissions hereunder in the performance of services due to strikes, lockouts, labor disturbances, riots, fire, earthquakes, storm, lightning, epidemics, war, disorders, acts of God, acts of the public enemy, port congestion, mechanical breakdowns, shortage of tugs, priorities in service, or any other cause whatever beyond their control.

15 LIMITATION OF LIABILITY

- a) The furnishing of any service or anything done in connection therewith, shall not be construed to be or to 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. MORAN WARRANTS THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIMS ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF WORKMANLIKE SERVICE.
- b) 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 shall 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 thousand dollars (U. S. \$200,000.00). Owner understands and agrees that tug services provided hereunder are rendered at all times under the supervision and command of Owners' 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 the Tug Interests. Owner further understands and agrees that the rates charged by or on behalf of MORAN 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 \$200,000.00 it should notify MORAN in writing, whereupon MORAN 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 limitation 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 them or to avail themselves of any rights of limitation or exemption from liability under any applicable law, rule or regulation.
- c) 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 the Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.
- d) Owner agrees to indemnify, defend and hold harmless the Tug Interests from and against any and all claims, demands, causes of action, liabilities and costs (including attorneys' fees and third party claims of whatever nature) in excess of the applicable amounts set forth in 15(b) above that are attributable to the acts or omissions, whether or not negligent, of the Tug Interests, or any of them, or to the 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 in subparagraph 12(f) below, the parties intend for this indemnity to apply in all instances including, without limitation, allision, collision and third party claims. Owner warrants that it 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 an additional assured or co-assured, as applicable.
- e) Nothing herein shall preclude MORAN from recovering from any responsible party for any damages sustained by any tugs providing service hereunder.
- f) Subparagraphs 15 (b) and (d) above shall not apply to deadship moves. As used in this Contract, a "deadship" is a vessel which has lost the use of its power or steering.
- g) If any provision of this Contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect.

16 PILOTAGE

MORAN does 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 service of assisting a vessel making use of or having available her own propelling power, participates in directing the navigation of such vessel, or in directing the assisting tugs, from on board such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner and operator for all purposes and in every respect, his services while so engaged being the work of the vessel assisted, her owner and operator, 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 MORAN and Tug Interests shall not be liable for any act or omission of any such person. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of this company. 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 owner to all the provisions of the preceding paragraphs, 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.

PAYMENT TERMS

Net thirty (30) days. In the event that payment is not made when due, in whole or in part, Moran shall be entitled to recover all costs of collection, including reasonable attorney's fees and court costs, and interest of one and one-half percent (1½%) 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.