

CONTRACT OF PRIVATE CARRIAGE

IT IS HEREBY AGREED this \_\_\_ day of \_\_\_\_\_, by and between HAWAIIAN TUG & BARGE CORP., a Hawaii corporation and subsidiary of Saltchuk Resources, Inc., whose principal place of business and mailing address is Pier 21, P.O. Box 3288, Honolulu, Hawaii 96801 (hereinafter "Carrier") and \_\_\_\_\_, whose mailing address is \_\_\_\_\_ (hereinafter "Shipper"), as follows:

ARTICLE 1. SERVICES TO BE FURNISHED.

1.1 CARRIER agrees to carry and SHIPPER agrees to ship the below-described cargo, subject to the covenants and conditions of this Contract:

\_\_\_\_\_.

(hereinafter the "Cargo").

1.2 SHIPPER shall not deliver or cause to be delivered to CARRIER any cargo or substance for carriage pursuant to this Contract, and CARRIER shall not be required to ship any cargo or substance, the possession or carriage of which may result in seizure of the Vessels described in Article 2, or either of them, by any governmental authority or other person, firm or corporation.

1.3 All documentation for the Cargo shall be the sole responsibility of SHIPPER and CARRIER shall not be responsible for any consequence arising through any act or omission of SHIPPER in connection with the export or entry declarations in respect of the Cargo. Any penalty incurred by CARRIER by reason thereof shall be reimbursed by SHIPPER to CARRIER, and for any delay caused to the Vessels thereby, CARRIER shall receive additional compensation at the rate set forth in Article 7.

1.4 It is agreed that the service to be provided by CARRIER and the Vessels shall be that of the private carriage of SHIPPER's Cargo.

1.5 Neither CARRIER nor the Tug's master shall be required to issue a bill of lading or a receipt of any kind for any cargo SHIPPER shall cause to be loaded on the Barge.

ARTICLE 2. DESCRIPTION OF VESSELS.

Tug \_\_\_\_\_ (herein the "Tug")  
Barge \_\_\_\_\_ (herein the "Barge")  
(herein collectively the "Vessels").

ARTICLE 3. CARRIAGE, LOADING AND UNLOADING.

3.1 The Cargo shall be transported by CARRIER from the Port of \_\_\_\_\_ to the Port of \_\_\_\_\_.

3.2 The exact locations of loading and discharge of the Cargo within said Ports shall be as designated by SHIPPER; PROVIDED, HOWEVER, the Vessels shall not be required to proceed to any location for loading or discharge which they cannot safely reach or at which they cannot at all times of tide and weather safely lie afloat. In the event the Vessels cannot safely reach or safely lie afloat at the point of loading or discharge designated by SHIPPER, loading and discharge shall take place at the nearest facility for loading or discharge available thereto, all increase in cost, risk and expense resulting therefrom to be borne by SHIPPER. In any event, if the CARRIER's Vessel(s), are damaged because the load or discharge site designated by SHIPPER is unsafe, SHIPPER shall be responsible for such damage.

3.3 CARRIER shall be responsible for making up the tow and for determining the method and position in which it shall be towed and the time of sailing.

3.4 Loading, stowage, trim and discharge of the Cargo shall be at the sole cost, risk and expense of SHIPPER.

ARTICLE 4. TERM OF SERVICE.

The Barge shall be delivered to the designated location for loading on or about \_\_\_\_\_. Carriage shall commence as soon as practicable after completion of loading. The day of loading shall be designated by the SHIPPER.

ARTICLE 5. RATE OF FREIGHT.

The rate of freight (hereinafter "Freight") shall be \_\_\_\_\_(\$\_\_\_\_\_), plus tax and wharfage. Such sum shall be fully and irrevocably earned by CARRIER upon completion of loading and arrival at \_\_\_\_\_. The Freight shall be paid in United States currency by SHIPPER without setoff or discount at CARRIER's office address first set out hereinabove within thirty (30) days after forwarding of CARRIER's invoice to SHIPPER. CARRIER may require that all or a portion of the Freight be paid in advance of loading.

ARTICLE 6. LAYTIME.

SHIPPER shall be allowed laytime for loading and discharge as follows:

Loading -

Discharge -

Said laytime shall commence for loading when a Notice of Readiness to load has been tendered by CARRIER to SHIPPER and shall commence for discharge when a Notice of Readiness to Discharge has been tendered by CARRIER to SHIPPER.

#### ARTICLE 7. DEMURRAGE.

In the event of delay, resulting from loading or discharge of the Cargo in excess of the aforesaid lay time or from any other cause not due solely to the fault of CARRIER or any event or condition referenced hereinafter in Article 12, EXEMPTIONS FROM LIABILITY, SHIPPER shall pay demurrage to CARRIER, in addition to any other amounts required by the terms hereof to be paid by SHIPPER to CARRIER, at the rate of \$\_\_\_ for the Tug and Barge per running hour, or fraction thereof, payable day by day; PROVIDED, HOWEVER, if the period of delay shall exceed ten (10) running days, SHIPPER shall be liable to CARRIER for actual damages for detention at a rate not less than the aforesaid demurrage rate. If the period of delay exceeds ten (10) running days, CARRIER shall have the option to terminate this Contract subject, however, to survival of all rights and claims accruing to CARRIER under the terms of this Contract prior to the time of such termination.

#### ARTICLE 8. CONDITION OF VESSEL.

8.1 CARRIER hereby covenants that the Barge at the time of commencement of loading the Cargo and the Tug at the time of commencement of towing pursuant to the terms hereof shall be in a seaworthy condition to the extent due diligence can make them so and shall be provided with all certificates, licenses and documents required by the United States Coast Guard to carry cargo and operate in the waters encompassed by this Contract. CARRIER makes no other warranties, express or implied, except as expressly provided in this Contract and, to the extent permitted by law, disclaims any implied or statutory warranties except as expressly provided in this Contract.

8.2 Prior to the commencement of loading the Cargo, an on-hire survey of the Vessels shall be conducted by a mutually agreeable surveyor at the sole cost and expense of SHIPPER to enable SHIPPER and its cargo underwriters to obtain a certificate of surveyors approving the Tug, the Barge and the towing arrangement for the intended use and to determine the condition of the Vessels. The surveyor's reports and certificates shall be

conclusive between CARRIER and SHIPPER as to the towing arrangement and the Tug and the Barge, and as to their suitability for the service provided for herein. If the surveyor shall recommend a specific voyage route or limitation in speed or any other matter which will delay delivery of the Cargo at the designated destination or otherwise materially change the scope of performance upon which the Freight was determined by CARRIER, CARRIER shall be entitled to receive and SHIPPER shall pay additional freight for such delay or change in scope of performance computed at the demurrage rate set forth in Article 7, DEMURRAGE, plus the costs of fuel consumed by the Tug. Upon completion of discharging the Cargo, an off-hire survey of the Barge (and the Tug, if damaged) shall be conducted by a mutually agreeable surveyor. In the event such off-hire survey discloses damage to the Barge for which SHIPPER is responsible pursuant to the terms hereof, the cost and expense of such survey, including any necessary haul-out, shall be paid by SHIPPER, otherwise the cost shall be shared equally by CARRIER and SHIPPER. The cost of all other surveys, including necessary haul-out, shall be the responsibility of CARRIER, unless the survey shall have been necessitated by damage to the Vessels, or either of them, for which SHIPPER is responsible pursuant to the terms hereof, in which event the costs of survey and necessary haul-out shall be the sole responsibility of SHIPPER.

ARTICLE 9. VESSEL SUBSTITUTION; DELEGATION.

CARRIER shall have the right but not the obligation, without restriction as to number of times, to substitute another vessel (hereinafter "Substituted Vessel") for the Vessels described hereinabove in Article 2, or either of them, provided said Substituted Vessel shall be reasonably equivalent in capacity and capability to the vessel for which substituted. Such substitution shall not alter the terms, covenants or conditions hereof. CARRIER shall have the right to delegate any of its duties hereunder, whether by subcontract or otherwise, and to assign this Contract to an affiliate or successor in interest, provided that no such delegation or assignment shall diminish CARRIER's responsibility to SHIPPER.

ARTICLE 10. PORT AND OTHER CHARGES.

SHIPPER shall be liable for the direct payment of: wharfage, agency fees incurred or accruing as a result of or in connection with this Contract; and all fees, taxes and dues levied, assessed or accruing against the Cargo or on account of any sums of the terms hereof to be paid by SHIPPER to CARRIER; and any additional tug assistance or Barge shifting costs necessitated by SHIPPER's instructions or directions.

ARTICLE 11. DAMAGE DUE TO LOADING, STOWAGE OR DISCHARGE.

Any damage to the Vessels, or either of them, attributable in whole or in part to loading, stowage or discharge of Cargo pursuant to the terms hereof by SHIPPER, its agents, employees, independent contractors or representatives, shall be repaired at the sole cost, risk and expense of SHIPPER. During the period of any such repair, SHIPPER shall be liable for demurrage and damages for detention in accordance with the terms of Article 7, DEMURRAGE. Whenever damage to the Vessels, or either of them, is discovered by either party hereto, that fact shall be immediately conveyed to the other party and as soon thereafter as is practicable, but in any event prior to further service by the damaged vessel, the parties shall cause a survey or inspection to be conducted to determine the extent of the damage. In the event repair is the responsibility of SHIPPER pursuant to the terms hereof, such repair shall be undertaken immediately at the sole cost, risk and expense of SHIPPER, subject to the terms hereof. Any such repair shall be to the satisfaction of CARRIER and in compliance with all requirements of vessel certification, specifically, but without limitation, those pertaining to load line, American Bureau of Shipping and United States Coast Guard.

#### ARTICLE 12. EXEMPTIONS FROM LIABILITY.

CARRIER and the Vessels, their owners, operators, agents and charterers shall not be responsible for any loss, damage, injury, death, or delay or failure in performing this Contract, arising or resulting from acts of God, force majeure, perils of the sea, ice, error or default in the navigation or management of the Vessel, fire, saving or attempting to save life or property at sea, latent defects of the hull, machinery, equipment, hawsers or lines of the Vessel not discoverable by due diligence, public or proprietary acts of any governmental authority (whether executive, legislative, judicial or otherwise), labor disputes of whatsoever nature not attributable to a violation of law by CARRIER, criminal acts by third parties, war or other hostilities, acts of terrorism, riot or civil commotion, acts of omissions of SHIPPER or the agents or representatives of SHIPPER, or any other cause of any nature whatsoever to the extent it is beyond the control and without the fault of CARRIER. Regardless of whether or not the same have been arranged by CARRIER, CARRIER shall have no liability with respect to the services of any assisting tugs which are not owned or operated by CARRIER or its affiliates.

12.2 Except as otherwise expressly set forth in this Contract, CARRIER makes no express warranty of any kind with respect to its performance and, to the extent permitted by law, disclaims all implied and statutory warranties of any nature whatsoever.

#### ARTICLE 13. LIMITATION OF LIABILITY.

13.1 CARRIER shall be entitled to assert by way of limitation of liability any principle of law or any provision of any statute or regulation of the United States that would afford CARRIER a limitation of its liability and the provisions of any such statute or regulation limiting liabilities as aforesaid are incorporated herein by reference and made applicable hereto as though fully set forth herein. Nothing herein contained shall be construed to deprive CARRIER of any other right to limit its liability. SHIPPER waives any claim that this is a personal contract of CARRIER.

13.2 Neither the Vessels nor CARRIER shall be liable for any loss of, or damage to the Cargo, or delay in the delivery thereof, however, arising or resulting, even if caused by unseaworthiness of the Vessels, or either of them, or the contributing negligence of CARRIER, or lack of due diligence of CARRIER as required by Article 10.1.

13.3 CARRIER shall not be liable for any indirect, incidental or consequential damages of any nature whatsoever, even if CARRIER has been advised of the possibility of such potential loss or damage.

13.4 This Contract is between CARRIER and SHIPPER only, and is not and should not be construed to be for the benefit, direct or indirect, of any other person.

#### ARTICLE 14. INDEMNITY.

14.1 SHIPPER shall indemnify, defend and hold CARRIER harmless from and against any forfeiture, lien or penalty of whatsoever nature or description of or upon the Vessels, their equipment and machinery, provided such forfeiture, lien, penalty, tax or charge shall have arisen during the time of performance hereof and by the terms hereof be the responsibility of SHIPPER. Additionally, SHIPPER shall indemnify, defend and hold CARRIER harmless from any claim, demand, action, cause of action or liability of any nature whatsoever, including costs and attorneys' fees, arising out of or connected with (a) the performance hereunder by SHIPPER, whether negligent or not, or (b) the failure of SHIPPER to perform or satisfy any covenant or condition hereof.

14.2 All obligations and liability of SHIPPER and CARRIER in this Article 14 shall survive termination, cancellation or expiration of this Contract.

#### ARTICLE 15. LIBERTIES.

The Vessels shall have liberty to sail with or without pilots, to tow or be towed, and to deviate for the purpose of assisting vessels in distress, saving life or property, landing any ill or injured person on board or taking on fuel, supplies or other necessaries, or for repair.

ARTICLE 16. INSURANCE.

As part of the compensation for this Contract, SHIPPER shall procure and maintain, at its sole cost and expense, during the entire time of performance hereunder by CARRIER, including loading and discharge of the Cargo, the following insurance with companies satisfactory to CARRIER:

16.1 All Risk Marine Cargo Insurance insuring the Cargo in an amount equal to the full actual value thereof, plus Freight, on terms equivalent to the broadest coverage available from American underwriters (including insurance against risks of loading and unloading Cargo), with deductibles not to exceed \$\_\_\_ and which shall be for the sole account of SHIPPER.

16.2 The insurance required by the terms of Article 16.1 above shall name CARRIER and its affiliates as additional assureds and expressly waive subrogation against CARRIER and its affiliates, any vessel used by CARRIER or its affiliates in the performance of this Contract and the master and crew of such vessel.

16.3 The aforesaid insurance policy shall provide for thirty (30) days' notice to CARRIER of termination, cancellation or modification and shall be claused as primary to any insurance maintained by CARRIER for the same or similar risks or liabilities. Prior to the commencement of performance by CARRIER under this Contract, SHIPPER shall furnish CARRIER with certificates of insurance or duplicate copies of policies evidencing compliance hereunder or otherwise, shall constitute a waiver of compliance herewith by SHIPPER.

16.4 If SHIPPER is unable to obtain All Risk Marine Cargo Insurance as required in this Article 16, then SHIPPER shall promptly notify CARRIER, and shall advise CARRIER of the type of insurance available to SHIPPER. If the available insurance is not adequate in CARRIER's sole opinion, CARRIER may, at its option, secure insurance for the SHIPPER's behalf and at SHIPPER's sole cost. Nothing in this Paragraph 16.4 should be construed to require CARRIER to approve insurance not in compliance with the requirements of Article 16, or to require CARRIER to obtain insurance for SHIPPER, or to commence performance of this Contract before the requisite insurance is obtained.

16.5 SHIPPER's arranged cargo insurance shall be endorsed to pay, without right or claim for general average, all extra costs of discharging incurred on account of damage to the Cargo. No underwriter on any Cargo loaded on the Barge pursuant to this Contract shall have any claim, by subrogation, loan receipt, or otherwise, against the Vessels or CARRIER, for any loss paid, regardless of the nature of the circumstances thereof, and SHIPPER's policies of insurance shall be claused accordingly.

ARTICLE 17. CARGO COMMODITY LIST.

Upon completion of loading, SHIPPER shall provide CARRIER with a commodity list, setting forth a complete description of the Cargo and the weight thereof.

ARTICLE 18. GENERAL AVERAGE.

18.1 If during the course of performance hereunder, the Vessels put into any port or place because, in the judgment of the Tug's master, it shall be necessary to put into such port or place to restow any Cargo, all resulting costs and expenses, including delay, shall be for the sole account of SHIPPER without contribution in general average from either CARRIER or the Vessels.

18.2 Subject to the provisions of Article 18.1, in the event of accident, danger, damage or disaster, before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, CARRIER is not responsible, by statute, contract, or otherwise, the Cargo, SHIPPER and the owners of the Cargo, if other than SHIPPER, shall contribute with CARRIER in general average to the payments of any sacrifices, losses, or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Cargo. If a salving ship is owned or operated by CARRIER or its affiliates, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers. General average shall be adjusted, stated, and settled at the Port of San Francisco, California, or Los Angeles--Long Beach, California, or at any other port or place at CARRIER's option, according to the York/Antwerp Rules of 1974 (except Rule XXII), and as to matters not provided for by these rules, according to the laws and usages of the port or place of adjustment; PROVIDED, HOWEVER, under no circumstances shall any part of the value of the Tug at any stage of the adventure be required to contribute to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, or pay any salvage and special charges incurred in respect of the Cargo.

ARTICLE 19. BOTH TO BLAME COLLISION CLAUSE.

If either of the Vessels comes into collision or contact with another vessel or object (the "Non-carrying Vessel") as a result of the negligence of the Non-carrying Vessel and any act, neglect or default of CARRIER or of the master, mariners, pilot or servants of CARRIER in the navigation, management or maintenance of the Vessels, SHIPPER will indemnify CARRIER, its officers and employees, and the Vessels against all loss or liability claimed by the Non-carrying Vessel or her owners or any third parties against CARRIER which is paid or payable by the Non-carrying Vessel or her owners or any third parties to SHIPPER or the owners or underwriters of the Cargo (collectively, "Claimants") for any

loss, damage or claim of Claimants and set off, recouped, or recovered by the Non-carrying Vessel or her owners or any third parties as part of their claim against CARRIER, its officers, employees, or any of its vessels. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects that are at fault in respect of a collision or contract.

ARTICLE 20. CARRIER'S LIEN.

CARRIER shall have a maritime lien upon all cargoes, and all freights and sub-freights, to secure payment of any amounts due under this Contract, including General Average contributions, which lien shall continue after delivery of Cargo into possession of SHIPPER or any storageman. SHIPPER will not suffer, or permit to be continued, any lien or encumbrance incurred by it or its agents, or under or through its directions or directions of its agents, which might have priority over the title and interest of CARRIER in the Vessels.

ARTICLE 21. SALVAGE.

All derelicts and salvage shall be for CARRIER's benefit.

ARTICLE 22. GENERAL PROVISIONS.

22.1 All notices and communications required by the terms hereof from CARRIER to SHIPPER and from SHIPPER to CARRIER shall be made in writing and addressed to the respective address of the other party as set forth in the preamble hereof or such other address of which the party seeking to give notice has been advised in writing.

22.2 This instrument constitutes the entire agreement of the parties with respect to all matters and things herein mentioned. It is expressly acknowledged and agreed by and between the parties that neither party is now relying upon any collateral, prior or contemporaneous agreement, written or oral, assurance or assurances, representation or warranty, of any kind or nature as to or respecting the condition or capabilities of the Vessels and the other matters and things, rights and responsibilities herein fixed and described. No modifications, waiver or discharge of any term or provision of this instrument shall be implied in law, equity or admiralty, nor shall any alteration, modification or acquittance of any such term or provision be effective for any purpose unless in writing signed by or upon behalf of the party charged therewith.

22.3 In the event payment is not made when due, CARRIER shall be entitled hereby to charge to and recover from SHIPPER all costs and expenses, including reasonable attorneys' fees, incurred in collecting the overdue amount. All sums due and to become due under this Contract, if unpaid when due, shall, if permitted by

law, bear interest at the rate of eighteen percent (18%) per annum from and after the date upon which the same shall have become due and payable pursuant to the terms hereof until paid in full. If the aforesaid rate is not permitted by the law of the State of Hawaii or of the United States, whichever is controlling, the interest rate applicable to delinquent payments shall be the maximum allowed to be agreed to under the law of the State of Hawaii or of the United States, whichever is controlling.

22.4 Captions used herein are for convenience of reference only and shall have no force or effect or legal meaning in the construction or enforcement of this Contract.

22.5 This Contract shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns.

22.6 All limitations of and exemptions from liability and entitlement to indemnity provided by law or the terms of this Contract shall apply to CARRIER, HAWAIIAN TUG & BARGE, affiliates of either, and all officers, directors, employees and agents thereof, and to any vessel owned or chartered by any of the above, and the master and crew thereof.

22.7 Mediation/Arbitration:

(a) Mediation: If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association or another mutually agreeable organization. If after mediation the dispute is not resolved then the following Arbitration clause applies.

(b) Arbitration: Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(c) Definitions: 1. Mediation: a neutral third party assists the contesting parties to reach a mutually acceptable settlement of their differences.

2. Arbitration: a quasi-judicial process of submitting a dispute to an impartial person who makes a decision that is legally binding and enforceable.

(d) Mediation and/or arbitration venue: State of Hawaii.

22.8 Unless notice in writing of loss or damage or any other claim of any nature whatsoever, giving the specific nature thereof, shall be given to CARRIER in accordance with Article 22.1 above within five (5) days after delivery of the Cargo to the port

or place designated herein, such delivery shall be deemed to be prima facie evidence of the delivery of the Cargo in good order and condition. CARRIER shall be discharged from all liability in respect of loss or damage claims arising hereunder unless suit or action is brought within one (1) year after delivery of the Cargo, or within one (1) year after the date when the Cargo should have been delivered.

22.9 The interpretation of this Contract and of the rights and obligations of the parties hereunder in law, equity or admiralty shall be governed by the substantive law of the State of Hawaii and the general maritime law of the United States, insofar as applicable.

22.10 If any term or provision, or any part of any term or provision, of this Contract is held by any court or other competent authority to be illegal or unenforceable, the remaining terms, provisions, rights and obligations shall not be affected.

ARTICLE 23. SPECIAL PROVISIONS.

ARTICLE 24. WARRANTY OF PERSON SIGNING.

The person signing below on behalf of SHIPPER warrants (i) having read and understood the above provisions, and (ii) having been authorized to sign this Contract on behalf of SHIPPER.

ACCORDINGLY, the parties have signed this Contract as of the date first set for above.

HAWAIIAN TUG & BARGE

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

Its: \_\_\_\_\_

CARRIER

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

Its: \_\_\_\_\_

SHIPPER