

TOWAGE AGREEMENT

IT IS AGREED THIS ____ day of _____, between HAWAIIAN TUG & BARGE, a Hawaii corporation and subsidiary of Saltchuk Resources, Inc., whose principal place of business and mailing address is Pier 21, Post Office Box 3288, Honolulu, Hawaii 96801, ("TUG OWNER"), and _____, whose mailing address is _____ ("CUSTOMER"), as follows:

ARTICLE 1. SERVICES TO BE FURNISHED.

1.1 TUG OWNER agrees to furnish the tug _____ the ("Tug"), and to use reasonable efforts to tow the _____ (the "Tow"), from the Port of _____ to a designated location to be determined. The towage shall commence upon the direction of CUSTOMER.

1.2 TUG OWNER shall not be required at any stage of performance of this Agreement to proceed to any location which the Tug and Tow cannot safely reach or at which the Tug and Tow cannot at all times of tide and weather safely lie afloat. TUG OWNER does not guarantee any particular speed during the voyage and does not warrant delivery of the Tow at destination at any particular date or time or to meet any particular market or in time for any particular use.

1.3 CUSTOMER shall not deliver or cause to be delivered to TUG OWNER any cargo or substance for towage pursuant to this Agreement, and TUG OWNER shall not be required to tow any cargo or substance, the possession or towage of which may result in seizure of the Tug or Tow by any governmental authority or other person, firm or corporation.

1.4 All documentation for the Tow shall be the sole responsibility of CUSTOMER and TUG OWNER shall not be responsible for any consequence arising through any act or omission of CUSTOMER in connection with the export or entry declarations in respect of the Tow. If TUG OWNER or the Tug incurs a penalty or if the Tug or Tow is delayed as a result of CUSTOMER's failure to satisfy its obligations in the preceding sentence, CUSTOMER shall reimburse TUG OWNER for any such penalty and shall pay TUG OWNER additional compensation at the rate set forth in Article 3 for any such delay.

ARTICLE 2. LUMP SUM CHARGE.

CUSTOMER shall pay towage charges to TUG OWNER for the towage service provided for in this Agreement in the amount of _____ and no/100 dollars (\$_____), PER DAY/PRORATED HOURLY (plus applicable taxes and other charges referenced below in Article 7, Port and Other Charges). The towage charges specified above shall

become fully and irrevocably earned by TUG OWNER upon commencement of the towage service regardless of whether or not the Tow or cargo aboard it, if any, is lost, disabled, or the Tow or cargo aboard it, if any, is unable or unfit to continue to destination. Payment of the towage charges (and other amounts required by Article 7 to be paid to TUG OWNER) shall be made by CUSTOMER to TUG OWNER without discount or setoff at TUG OWNER's office address first set out hereinabove within seven (7) days after forwarding of TUG OWNER's invoice to CUSTOMER.

ARTICLE 3. DELAY CHARGES.

3.1 Unless otherwise provided below, CUSTOMER shall not be permitted any laydays (freetime):

3.2 If TUG OWNER is delayed in performing the towage service as a result of the Tow's not being ready when the Tug arrives to commence towage or thereafter as a result of any cause attributable to the fault of CUSTOMER or to CUSTOMER's default in performing this Agreement, CUSTOMER shall pay to TUG OWNER for the period of any such delay, in addition to any other amounts required by the terms of this Agreement to be paid by CUSTOMER to TUG OWNER, the Tug's daily rate of hire at the rate of \$_____ per running hour or fraction of any such running (consecutive) day, payable upon invoicing by TUG OWNER; PROVIDED, HOWEVER, if the period of delay exceeds ten (10) running (consecutive) days, CUSTOMER shall, at TUG OWNER's option, be liable to TUG OWNER for actual damages for detention at a rate not less than the Tug's daily rate of hire specified above. If the period of delay exceeds ten (10) running (consecutive) days, TUG OWNER shall have the option to terminate this Agreement subject, however, to survival of all rights and claims accruing to TUG OWNER under the terms of this Agreement.

ARTICLE 4. TOW WARRANTED SEAWORTHY; MULTIPLE TOWS.

4.1 CUSTOMER warrants and represents that the Tow, at the time it is tendered to the Tug for towage (i) shall be seaworthy and in all respects ready for and capable of making the specified voyage, and (ii) shall be properly and sufficiently equipped with navigation lights, towage shape, chain bridle and towing bits.

4.2 TUG OWNER 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. TUG OWNER shall have the absolute right to tow more than one towed vessel, whether in tandem or by any other method which TUG OWNER deems proper.

4.3 TUG OWNER is under no obligation to inspect the Tow for seaworthiness.

ARTICLE 5. CONDITION OF THE TUG; SURVEY.

5.1 TUG OWNER covenants that the Tug, at the time of commencement of the towage service under this Agreement, shall be in a seaworthy condition to the extent due diligence can make it so and shall be provided with all certificates, licenses and documents required by the United States Coast Guard and the American Bureau of Shipping to perform the specified towage service. TUG OWNER 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.

5.2 Prior to the commencement of the towage service a survey of the Tow (and Tug, if required) shall be conducted by a mutually agreeable surveyor at the sole cost and expense of CUSTOMER to enable CUSTOMER and its underwriters to obtain a certificate of surveyors approving the Tug, the Tow and the towing arrangement for the intended voyage and to determine the condition of the Vessels. If the surveyor shall recommend a specific voyage route or limitation in speed or anything else which will delay delivery of the Tow and cargo aboard it, if any, at the designated destination or otherwise materially change the scope of performance upon which the towage charges in Article 2 above was determined by TUG OWNER, TUG OWNER shall be entitled to receive and CUSTOMER shall pay an additional charge for such delay or change in scope of performance computed at the Tug's daily rate of hire set forth in Article 3, Delay Charges, plus the costs of fuel consumed by the Tug.

ARTICLE 6. VESSEL SUBSTITUTION; DELEGATION.

TUG OWNER shall have the right (but not the obligation) without restriction as to number of times to substitute another tug for the Tug, provided the substituted tug shall be reasonably equivalent in capacity and capability to the Tug. Any such substitution shall not alter the terms, covenants or conditions of this Agreement. TUG OWNER shall have the right to delegate any of its duties under this Agreement, whether by subcontract or otherwise, and to assign this Agreement to an affiliate or successor in interest, provided that no such delegation or assignment shall diminish TUG OWNER's responsibility to CUSTOMER.

ARTICLE 7. PORT AND OTHER CHARGES.

CUSTOMER shall be liable for the direct payment of (i) that portion of all port charges, pilotage fees, canal fees, dockage, wharfage, harbor entrance fees, agency fees, and similar fees for services or use of facilities, and all taxes (except net income taxes) incurred or accruing as a result of or in connection with services rendered under this Agreement, (ii) all fees, taxes and dues levied, assessed or accruing against the cargo or the Tow, and (iii) ramp rental charges, additional tug assistance or barge

shifting costs necessitated by CUSTOMER's instructions or directions or otherwise deemed prudent by TUG OWNER.

ARTICLE 8. LIBERTIES.

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

ARTICLE 9. CARGO HANDLING.

If cargo is to be carried aboard the Tow, CUSTOMER shall be responsible for all cost, risk and expense of loading, stowage, trimming and discharge of cargo. In the event that CUSTOMER requests and TUG OWNER consents to use the services of the master and/or crew of the Tug to load cargo aboard or discharge cargo from the Tow, CUSTOMER shall pay TUG OWNER for such services at the cargo handling rate set forth in TUG OWNER's applicable collective bargaining agreement plus an additional charge of twenty-one percent (21%) to cover handling and administration costs.

ARTICLE 10. LIMITATIONS OF AND EXEMPTIONS FROM LIABILITY.

10.1 TUG OWNER, the Tug and its owners, operators, agents and charterers shall be entitled to assert by way of limitation of or exemption from liability and principle of law or any provision of any statute or regulation of the United States, or other applicable jurisdiction, that affords a vessel and its owners (or a carrier if cargo is carried aboard the Tow) a limitation of or exemption from its liability. The provisions of any such principle of law, statute or regulation, including, without limitation, the Limitation of Liability Statutes of the United States are incorporated into this Agreement by this reference as though fully set forth in this Article. Nothing contained in this Agreement shall be construed to deprive TUG OWNER of any other right to limit its liability. CUSTOMER waives any claim that this is a personal contract of TUG OWNER.

10.2 TUG OWNER, the Tug and its owners, operators, agents and charterers shall not be responsible for any loss, damage, injury, death, or delay or failure in performing this Agreement, arising or resulting from acts of God, force majeure, perils of the sea, ice, saving or attempting to save life or property at sea, latent defects in the Tug 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 TUG OWNER, criminal acts by third parties, war or other hostilities, acts of terrorism, riot or civil commotion, acts or omissions of CUSTOMER

or cargo owner or the agents or representatives of either, or any other cause of any nature whatsoever to the extent it is beyond the control and without the fault of TUG OWNER. Regardless of whether or not the same have been arranged by TUG OWNER, TUG OWNER shall have no liability with respect to the services of any assisting tugs which are not owned or operated by TUG OWNER or its affiliates or with respect to the Tow's riding crew, if any, or with respect to any lights or signaling equipment on the Tow.

10.3 Except as otherwise expressly set forth in this Agreement, TUG OWNER 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. TUG OWNER shall not be liable for any indirect, incidental or consequential damages of any nature whatsoever, even if TUG OWNER has been advised of the possibility of such potential loss or damage.

10.4 This Agreement is between TUG OWNER and CUSTOMER only, and is not and should not be construed to be for the benefit, direct or indirect, of any other person.

ARTICLE 11. INDEMNITY.

11.1 CUSTOMER shall indemnify, defend and hold TUG OWNER harmless from all claims, demands, actions, causes of action and liabilities of any nature whatsoever (including costs and attorneys' fees incurred by TUG OWNER in defending against all such liabilities or in enforcing this indemnity provision) which, during the term of performance of this Agreement, arose out or were connected with (i) failure of CUSTOMER to perform or satisfy any covenant or condition required by the terms of this Agreement to be performed or satisfied by CUSTOMER, (ii) negligent acts or omissions or other fault of CUSTOMER, or (iii) violation of any environmental pollution statute or regulation for pollution attributable to the Tow or cargo aboard it, if any.

11.2 TUG OWNER shall indemnify, defend and hold CUSTOMER harmless from all claims, demands, actions, causes of action and liabilities of any nature whatsoever (including costs and attorneys' fees incurred by CUSTOMER in defending against all such liabilities or in enforcing this indemnity provision), which, during the term of performance of this Agreement, arose out or were connected with (i) failure of TUG OWNER to perform or satisfy any covenant or condition required by the terms of this Agreement to be performed or satisfied by TUG OWNER, (ii) negligent acts or omissions or other fault of TUG OWNER, or (iii) violation of any environmental pollution statute or regulation for pollution attributable to the Tug, if any.

11.3 All obligations and liability of CUSTOMER and TUG OWNER in this Article 11 shall survive termination, cancellation or expiration of this Agreement.

ARTICLE 12. CUSTOMER INSURANCE.

12.1 As part of the bargained for consideration for this towage service, CUSTOMER shall procure and maintain, at its sole cost and expense, during the entire period of performance of this Agreement by TUG OWNER, the following insurance with companies satisfactory to TUG OWNER:

(a) Hull and Machinery Insurance upon the Tow in an amount equal to its full actual delivered value, and All Risk Marine Cargo Insurance (including risks of loading and discharging) on any cargo aboard the Tow in an amount equal to its full actual delivered value, plus freight, on terms equivalent to the broadest coverage available from American underwriters, provided, any deductible or franchise shall not exceed \$25,000 and shall be for the sole account of CUSTOMER; and

(b) Protection and Indemnity Insurance insuring its liability as owner of the Tow, without limitation, wreck removal expenses and for third party claims (including those involving its employees) arising from death or personal injury, or from loss or damage to property, with a minimum limit of \$5,000,000 applicable to any one accident or occurrence, provided, any deductible or franchise shall not exceed \$25,000 and shall be for the sole account of CUSTOMER; and

(c) Pollution Insurance, if the Tow or anything aboard the Tow contains oil or hazardous substances, insuring (i) costs of cleanup in the event of a spill or leakage (with a minimum limit sufficient to meet any minimum amount required by law), and (ii) liability for third party claims in the event of a spill or leakage (with a minimum limit of \$5,000,000 applicable to any one accident or occurrence), provided, any deductible or franchise applicable to (i) and (ii) above shall not exceed \$25,000 and shall be for the sole account of CUSTOMER; and

12.2 Each of the aforesaid policies shall provide for thirty (30) days' notice to TUG OWNER of cancellation or modification and shall name TUG OWNER and its affiliates as additional assureds and expressly waive subrogation against TUG OWNER and its affiliates, any vessel used by TUG OWNER or its affiliates in the performance of this Agreement and the master and crew of any such vessel. It is the intent of TUG OWNER and CUSTOMER that all liabilities of TUG OWNER and its affiliates in the performance of this Agreement and the master and crew of any such vessel, arising out of or connected with this Agreement shall be covered by appropriate marine insurance and the rate prescribed for the towage service have been predicated upon this basis. In the sole event that CUSTOMER satisfies its obligation to procure and maintain Protection and Indemnity Insurance pursuant to Article 12.2 above by a membership in a foreign Protection and Indemnity Club of

which TUG OWNER is not a member and which, without exception, refuses to name nonmembers as additional assureds, TUG OWNER and its affiliates agree to waive the aforesaid requirement that they be named additional assureds on such Protection and Indemnity Insurance so long as the subject Protection and Indemnity Club waives subrogation against TUG OWNER and its affiliates, any vessel used by TUG OWNER or its affiliates in the performance of this Agreement and the master and crew of any such vessel.

12.3 Prior to the commencement of performance by TUG OWNER under this Agreement, CUSTOMER shall furnish TUG OWNER with certificates or duplicate copies evidencing compliance with this Article 12. No act of TUG OWNER, in commencing performance under this Agreement or otherwise, shall constitute a waiver of compliance with this Article 12 by CUSTOMER.

ARTICLE 13. TUG OWNER INSURANCE.

13.1 TUG OWNER shall, during the entire period of its performance under this Agreement, procure and maintain the following insurance at its sole cost and expense:

(a) Hull and Machinery Insurance upon the Tug in an amount equal to the full actual value of its interests insured, provided, any deductible or franchise shall be for the sole account of TUG OWNER; and

(b) Protection and Indemnity Insurance insuring its liability as owner of the Tug for wreck removal expenses and for third party claims (including those involving its employees) arising from death or personal injury, or from loss of or damage to property, with a minimum limit of \$5,000,000 applicable to any one accident or occurrence, provided, any deductible or franchise shall be for the sole account of TUG OWNER.

13.2 Each of the aforesaid policies shall provide for thirty (30) days' notice to CUSTOMER of cancellation or modification and shall name CUSTOMER as an additional assured and expressly waive subrogation against CUSTOMER. It is the intent of CUSTOMER, in the performance of this Agreement or arising out of or connected with this Agreement shall be covered by appropriate marine insurance and the rate prescribed for the towage service have been predicated upon this basis. In the sole event that TUG OWNER satisfies its obligation to procure and maintain Protection and Indemnity Insurance pursuant to Article 12.2 above by membership in a foreign Protection and Indemnity Club of which CUSTOMER is not a member and which, without exception, refuses to name nonmembers as additional assureds, CUSTOMER agrees to waive the aforesaid requirement that it be named additional assured on such Protection and Indemnity Insurance so long as the subject Protection and Indemnity Club waives subrogation against CUSTOMER in the performance of this Agreement.

13.3 Prior to the commencement of performance by CUSTOMER under this Agreement, TUG OWNER shall furnish CUSTOMER with certificates or duplicate copies of policies evidencing compliance with this Article 13. No act of CUSTOMER, in commencing performance under this Agreement or otherwise, shall constitute a waiver of compliance with this Article 13 by TUG OWNER.

ARTICLE 14. TUG OWNER'S LIEN.

TUG OWNER shall have a maritime lien on the Tow and on all cargo aboard the Tow, and all freights and sub-freights, to secure payment of any amounts due under this Agreement. CUSTOMER will not suffer, or permit to be continued, any lien or encumbrances 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 TUG OWNER in the Tug.

ARTICLE 15. SALVAGE.

All derelicts and salvage shall be for TUG OWNER's benefit.

ARTICLE 16. GENERAL PROVISIONS.

16.1 All notices and communications required by the terms of this Agreement from TUG OWNER to CUSTOMER and from CUSTOMER to TUG OWNER shall be made in writing and addressed to the respective address of the other party as set forth above in the preamble or such other address of which the party seeking to give notice has been advised in writing.

16.2 This instrument constitutes the entire agreement between the parties with respect to the intended towage service. Neither party is relying or may rely on any written or oral collateral, prior or contemporaneous agreement, assurance, representation or warranty not set forth in this instrument. No modification of this instrument shall be implied in law, equity or admiralty, nor shall any express modification be effective unless in writing signed by the party to be charged.

16.3 In the event payment is not made when due, TUG OWNER shall be entitled to charge to and recover from CUSTOMER all costs and expenses, including reasonable attorneys' fees, incurred in collecting the overdue amount. All sums due and to become due under this Agreement, 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 of this Agreement 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 the United States, whichever is controlling.

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

16.5 This Agreement shall be for the benefit of and be binding upon both parties, their successors and permitted assigns.

16.6 All limitations of and exemptions from liability and entitlement to indemnity, applicable to TUG OWNER by law or the terms of this Agreement, shall apply to TUG OWNER, Hawaiian Electric Industries, Inc., affiliates of either, their officers, directors, employees and agents, and to any vessel owned or chartered by any of the above, and the master and crew of any such vessel.

16.7 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.

16.8 Unless notice in writing of specific loss, damage or any other claim of any nature whatsoever is given to TUG OWNER in accordance with Article 16.1 above within five (5) days after delivery of the Tow to the port or place designated as the destination, such delivery shall be deemed to be prima facie evidence of the delivery of the Tow and cargo aboard it, if any, in good order and condition. TUG OWNER and the Tug shall be discharged from all liability in respect of loss or damage claims arising under this Agreement unless suit or action is brought within one (1) year after delivery of the Tow and cargo aboard it, if any, or within one (1) year after the date when the Tow and cargo aboard it, if any, should have been delivered.

16.9 The interpretation of this Agreement and of the rights and obligations of the parties 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.

16.10 If any term or provision, or any part of any term or provision, of this Agreement 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 17. SPECIAL PROVISIONS.

ARTICLE 18. WARRANTY OF PERSON SIGNING.

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

ACCORDINGLY, the parties have signed this Agreement as of the date first set forth above.

HAWAIIAN TUG & BARGE

By: _____

Its: _____

"TUG OWNER"

By: _____

Its: _____

"CUSTOMER"