

Port of Lewiston
Tariff No. 004

**Port of Lewiston
Terminal Tariff
Naming:
Rules and Regulations
Governing
Port Services and Privileges
Throughput & Other Terminal Charges and Rates**

**Applying at
The Port of Lewiston Container Yard
at Lewiston, Idaho
County of Nez Perce**

**Note: This Tariff Cancels Port of Lewiston
Tariff FMC-T No. 003**

**By Authority of the
Port of Lewiston Commission
Lewiston, Idaho 83501**

Effective: January 1, 2022

Effective Date January 1, 2022

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Section 1. Application of Tariff

- 1.1 **Effective Date** – This Tariff shall be effective from the date as shown on the cover page.
- 1.2 **Note to Public** – This Tariff is notice to the public that the rates, charges, rules, and regulations contained herein apply to all users with specific notice or quotation. The paper Tariff is filed only as a convenience for use of customers of the Port of Lewiston.
- 1.3 **Reservation of Agreement Rights** – The Port of Lewiston reserves the right to enter into agreements with common carriers, shippers and/or their agents and other facility users concerning rates and service providing such agreements are consistent with existing local, state and federal laws and regulations.
- 1.4 **Use of Facilities Deemed Acceptance of Tariff** – Use of the terminal facilities shall be deemed an acceptance of this Tariff, including any revisions or supplements, along with all specified terms and conditions contained herein.
- 1.5 **Authority for Additional Rules and Regulations** – The Port of Lewiston by resolution or ordinance may from time to time adopt additional rules and regulations that supplement or revise the rules, regulations and requirements contained in this Tariff and when so adopted they shall have the same force and effect as though expressly set forth in this Tariff.

Section 2. Performance of Services on Port Facilities

- 2.1 **Rights of Operation Reserved** – The Port of Lewiston reserves the right to perform and furnish all equipment, supplies and material in connection with the operation of its marine terminal facilities. No person, firm or corporation shall be allowed to perform any services on the terminal facilities without written permission from the terminal. Those permitted to perform services shall apply, as well as adhere to, this Tariff and any additions, revisions, or supplements.

Section 3. Abbreviations

Cts	-	Cents
\$	-	Dollar
%	-	Percent
FMC	-	Federal Maritime Commission

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Ft	-	Foot or Feet
Lbs.	-	Pounds
NOS	-	Not otherwise specified

Section 4. Definitions

- 4.1 **“Port” or “P.O.L.”** refers to the Port of Lewiston, and shall be deemed to include its commissioners, directors, employees and agents.
- 4.2 **“Containerized Cargo”** is any cargo, which is shipped in ocean carrier’s marine containers.
- 4.3 **“Containers”** are defined as intermodal containers in 20’ / 40’ / 45’ / 48’ / 53’ lengths, rigid or collapsible, with or without wheels, of such type, size and construction as to meet ISO specifications for stacking and marine transport.
- 4.4 **“Facility User”** means any person or entity authorized, invited or providing services, labor, materials, supplies or equipment on or in connection with the Port marine terminal facilities or who otherwise uses or benefits from the use of the marine terminal facilities and/or services of the Port for any purpose, including, but not limited to, docking and unloading, loading, moving, handling, and storing materials, supplies, equipment, cargo, merchandise or any other property. “Facility User” includes but is not limited to vessels, carriers (including ocean, inland water, rail, and truck), vessel owners, vessel charterers and operators, steamship lines or agencies, stevedores, freight forwarders, brokers, shippers, consignees, consignors, and any person or entity that possesses an interest in any cargo or merchandise or other property located on or moving over the terminal facilities. “Facility User” shall also be deemed to include the Facility User’s respective officers, partners, owners, employees, contractors, subcontractors, vendors, agents, and invitees.
- 4.5 **“Ton” or “short ton”** is equivalent to 2,000 pounds.
- 4.6 **“Metric ton”** is equivalent to 2,204.6 pounds.
- 4.7 **“Free Time”** is the specified period during which cargo may occupy spaced assigned to it on terminal property free of wharf demurrage or terminal charges immediately prior to loading or subsequent discharge of such cargo on or off the vessel.
- 4.8 **“Dockage”** is the charge assessed against a vessel for berthing or mooring at a wharf, piling, pier, bulkhead structure, bank, or slip at or adjacent to the terminal facilities or to a vessel berthed at the facilities.

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- 4.9 **“Wharfage”** is the charge assessed on all cargo, merchandise, property and passengers passing or conveyed over, onto, or under wharves or terminal grounds or between vessels when berthed at a wharf, piling, structure, pier, bulkhead structure, bank, or slip at or adjacent to terminal. Wharfage is solely the charge for use of wharf or terminal and does not include charges for any other service.
- 4.10 **“Package”** for purposes of any liability limitation in this Tariff or any applicable law (international or domestic) relating to the carriage of goods refers to number of packages or shipping units stated on the face of the bill of lading, sea waybill or other contract of carriage in the box or column provided for packages. Except as foresaid, if the goods are consolidated on a pallet or in a container, the pallet or container shall be deemed to be the package or customary freight unit.
- 4.10 **“Holidays”** when used or referred to in this Tariff means the following holidays:
- New Years’ Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day
- Any other legal holidays or work closure days that are prearranged by the Port at the container facility or other facility used by the Facility User.

Section 5. Conditions Governing All Facility Users Access to or Provision of Services or Conduct of Operations on Port Facilities

Any Facility User who in any manner provides services, labor, material, supplies or equipment on Port marine terminal facilities or who comes upon or uses or receives the services of the Port and/or its marine terminal facilities does so subject to the following conditions:

- 5.1 **Independent Contractors** – In any service relationship with the Port, Facility Users shall be independent contractors, each to the other, and they shall not be agents or employees, one for the other or for the Port, for any purpose.
- 5.2 **Use Deemed Acceptance of Tariff and Rules and Regulations** – Any use of the terminal facilities shall be deemed an acceptance of this Tariff along with all specified terms and conditions contained herein. The Port reserves the

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right to set work and safety rules, conditions for use and operations procedures applicable to specific locations or operations within the Port's facilities in addition to commercial rules stated in this Tariff. It is the responsibility of the Facility User to be aware of the physical characteristics of the facilities (which includes, without limitation, responsibility for determining whether the docks or other parts of the facilities can handle any cargo, merchandise or other property placed on or moved over them), the terms of this Tariff and all rules or conditions applicable for activities at the facilities of the Port.

- 5.3 **Specific Commodity Rates Prevail** – Rates provided for specific commodities will prevail over Not Otherwise Specified (NOS) rates and any general commodity rate. When no specific or NOS rates are set forth in this Tariff, such charges shall be based on a time, equipment and materials basis.
- 5.4 **Compliance with Law; Workmanlike Performance** – As a condition to the right to conduct business or operate on Port property, Facility Users warrant that all operations by Facility User will always be conducted in full compliance with all applicable federal, state, county and city laws, statutes, regulations, ordinances, and rules, which specifically include without limitation, taking all necessary safety and fire precautions and complying with all applicable environmental laws and all recognized commercial and marine safety practices, procedures, laws and regulations. Facility Users further warrant that all operations will always be conducted with necessary labor and equipment under competent supervision, with all proper dispatch and in good and workmanlike manner. The conduct of such business or operations on Port property shall be deemed to be an offer of such warranty, and its acceptance by the Port. If any breach of these warranties causes or subjects the Port to any losses, suits, claims, damages, expenses or liabilities, Facility User shall defend, indemnify and hold the Port harmless, and reimburse the Port for and against any such any losses, suits, claims, damages or liabilities, claims, damages, expenses or liabilities (including attorneys' fees incurred by the Port).
- 5.5 **Indemnity & Insurance** – As a further condition of access to and use of the Port terminal facilities and the services provided by the Port, each Facility User shall comply with and be bound to the Insurance and Indemnity requirements contained in Sections 7 and 8 of this Tariff, which include, amongst other things, procuring and maintaining the specified insurance coverages and indemnifying, defending and holding the Port harmless from and against any claims, damages, losses, and expenses (including attorneys' fees) for injury to or death of any person, (including employees of the Port), or from damage to or destruction of any property (including property of the Port or Facility User), arising from or related to the operations of the Facility User or its use of the terminal facilities or services, however caused, excepting damages, losses or injuries caused by the negligence of Port, or its employees or agents.

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- 5.6 **Scheduling and Cooperation** – Shall cooperate fully with the Port in all respects:
- (a) In making appropriate use of proper facilities and equipment in each operation,
 - (b) In advising as far in advance as possible the types and quality of cargo to be handled,
 - (c) In estimating the arrival and departure of vessels,
 - (d) In giving advance information on any special problems which exist or arise,
 - (e) In restoring terminal working areas to a clean, safe and orderly condition on completion of the operation.
- 5.7 **Lashing/Securing/Marking** – Each Facility User shall also ensure that all cargo, property and merchandise shall be properly lashed, secured and marked. The Port assumes no responsibility or liability with respect to lashing or securing or marking such property. Facility User shall be solely responsible and thus shall defend, indemnify and hold the Port harmless from and against any claims, damages, losses, and expenses (including attorneys' fees) for injury to or death of any person, (including employees of the Port), or damage to or destruction of any property (including property of the Port or Facility User), caused by or resulting from improper or deficient lashing, securing or marking of Facility User's property, which include damages or injuries occurring during any loading, unloading, or lifting operations.

Section 6. Responsibility for Loss, Damage and Delay of Property

- 6.1 **POL's Responsibility Limited** – Except as caused by the Port's negligence and subject always to the limitations of and exemptions from liability stated in this Tariff and otherwise provided by applicable law, POL shall not be liable for any loss, damage or delay of cargo, merchandise or other property of Facility User from any cause whatsoever, including, but not limited to animals, insects, rodents, vermin, decay, deterioration, evaporation, shrinkage or loss of quality or value for inherent vice of product cargo, interruptions in electrical power, breakdown of communication facilities, fire, frost, leakage or discharge from fire protective sprinklers, oxidation or rusting, civil disorder, insurrection, terrorist act, epidemic, pandemic, quarantine, riot, strike, slowdown or labor stoppage of persons in the service of others; wind, flood, earthquake, governmental acts or omissions, war, acts of God, or other causes of similar nature.
- 6.2 **Limits of Liability** – No provision contained in this Tariff shall relieve the Port from liability for injuries or damages caused by its own negligence nor require any Facility User to indemnify or hold harmless the Port from liability

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for the Port's negligence, but in all cases the Port's maximum liability for loss or damage to cargo, merchandise or any other property of Facility User shall in no event ever exceed \$500 per package lawful money of the United States, or in case of goods not shipped in packages, \$500 per customary freight unit unless the Facility User prior to using the facilities or services declares in writing a higher value and pays the Port, in addition to the other charges set forth in this Tariff, a premium computed at two percent (2%) of the declared value of each package or customary freight unit. In the event of such additional payment, the Port shall be liable only to the extent of said declared value of each such package or freight unit and only if such loss or damage results from the Port's negligence.

6.3 **Waiver of Other Damages** --- Notwithstanding any other provision of this Tariff, neither Port nor any Port Parties shall be liable to Facility User or any other party for any indirect, consequential, incidental, special damages or punitive damages of any kind whatsoever, including without limitation, any damages consisting of lost revenues, lost profits, lost income, loss of goodwill, loss of market, lost business opportunity, interruption of business, loss and/or loss of ability to use or punitive damages, regardless of how caused, including if caused by the Port's negligence.

6.4 **Demurrage- Railroad Cars and Vessels**

(a) **Railroad Cars** – Except to the extent caused solely by the Port's negligence, the Port shall neither assume nor possess any responsibility or liability for railroad car demurrage. Demurrage resulting from any other cause, including, but not limited to, delays arising from strikes, slowdowns, labor actions or riots of any persons in the employ of the Port or service of others, shall not be assumed by the Port.

(b) **Vessels** – Except to the extent caused solely by the Port's own negligence, the Port shall neither assume nor possess any responsibility or liability for any vessel demurrage.

In the event a vessel is unreasonably delayed in its estimated time of departure from the Port, due to a cause for which the Port is legally liable, Port liability will be computed on the actual down time during regular terminal working hours only and such down time constitutes the extent and limit of Port liability. In no case shall the Port be responsible for other damages, including without limitation, loss of profits, loss of markets, special or consequential damages.

(c) **Waiver of Charges for Delays** – Delays or losses in loading, unloading, receiving, delivering or handling of cargo arising from strikes, slowdowns or riots by any persons in the service of others or arising from any other cause shall not entitle owners, shippers, consignees, or carriers to waive or avoid payment of any terminal charges or expenses.

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- 6.5 **Responsibility During Free Time Period** – Except as limited by specific provisions in this Tariff, liability for loss, damage or delay to cargo, merchandise or property during free time periods shall be limited as set forth in the ocean carrier’s receipt or bill of lading.
- 6.6 **Responsibility As Warehousemen** – Except as limited by specific provisions in this Tariff, liability for loss, damage or delay to cargo, merchandise or property while in the care or control of POL at any time other than the free time periods specified in this Tariff shall be that of a warehouseman only, with POL’s liability further limited to only losses or damages caused by the POL’s negligence.

Section 7. Insurance

The rates and charges provided in this Tariff do not include any amounts for insurance coverage, and expressly do not include insurance to protect Facility User’s interest in any vessels, equipment, materials, supplies, cargo, merchandise, or any other property while at or moving over the terminal facilities or any Port property. Except as otherwise provided in a separate written agreement between the Facility User and the Port, every Facility User shall comply with the insurance requirements set forth below.

- 7.1 **Required Insurance:** Every Facility User or any other party using the Port terminal facilities shall obtain and maintain the following insurance coverages:
- (a) **Workers Compensation Insurance** (including Longshoremen and Harbor Workers Act and/or Jones Act coverage, if applicable). This coverage is required under Federal and State statutes for all the party’s employees performing its work. Employer’s Liability insurance is required in an amount not less than \$1,000,000.
 - (b) **Commercial General Liability and/or Comprehensive Marine General Liability** insurance, with coverage of at least \$5,000,000 for each occurrence. This coverage shall include broad form contractual liability, including liability assumed under contract, pollution liability and broad form property damage covering property in the insured’s care, custody, and control. This insurance shall cover claims against the insured for personal injury, death, or property damage arising out of the loading or unloading of a vessel or handling or moving any property or any other activities while at the terminal facilities and adjoining areas. Any exclusions for claims arising out of or involving the ownership, maintenance or use of watercraft by Facility User shall be deleted.
 - (c) **Automobile Liability insurance.** In the event that motor vehicles are used in connection with the Facility User’s business or operations at the marine terminal facilities, each Facility User shall maintain an automobile liability policy or policies insuring against liability for bodily injury,

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death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any of the Facility User's motor vehicles (including owned, hired and non-owned motor vehicles) on and around the Terminal. Coverage shall be in an amount not less than \$5,000,000.00 each accident.

- (d) **Protection & Indemnity insurance.** In the event that vessels are used in connection with the Facility User's business or operations at the marine terminal facilities, each Facility User shall maintain Protection and Indemnity insurance in an amount not less than \$5,000,000.00 per occurrence, in a form of policy as broad as protection and indemnity clauses SP-23 (Revised) or SP-38 (1955). Any "as owner" language shall be stricken or deleted via endorsement to ensure the policy provides coverage to the Port as an additional insured.
- (e) All policies shall be endorsed to waive subrogation against the Port. Except for the worker compensation policies, all policies shall also be endorsed to name the Port (which necessarily includes its commissioners, officers, managers and employees) as an additional insured in respects to all uses of the Port facilities, including all activities or operations conducted or performed at same. All insurance policies shall also be endorsed to provide primary and non-contributing liability coverage with respect to any policies maintained or available to the Port. Every party shall submit to the Port certificate(s) of insurance as evidence of the required coverage and provide that the Port shall be given at least 30 days prior written notice of cancellation.

Section 8. Indemnification / Himalaya Clause /Excess Cargo

- 8.1 **Indemnity** – Facility User shall defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port, together with its commissioners, officers, employees, servants and agents, from and against, and reimburse the Port for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against or incurred by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following: (a) any act, omission or negligence of the Facility User; (b) any use, occupation, management or control of the marine terminal facility by the Facility User, whether or not due to the Facility User's own act or omission and whether or not occurring on the marine terminal facility; (c) any breach, violation or nonperformance of the regulations, rules and terms of this Tariff; (d) any damage caused by the Facility User on or to the marine terminal facility; (e) any violation of Environmental Law or Hazardous Substance Release at or in the vicinity of any of the Port's marine terminal facilities that are associated with or relate to, or are caused by Facility User or any of

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Facility User's vessels, vehicles, equipment, cargo, property, operations, or activities.

The foregoing indemnity obligation expressly includes any claims, damages or losses for injury or death of any person (including employees of Facility User) or damage to or destruction of any property (including Facility User Property) occurring at or resulting from the presence on the terminal facilities, or any services provided by the Port, however caused, excepting damages, losses or injuries caused by the negligence of Port, or its employees or agents. Further, in instances where the Port is shown to have been negligent and where the Port's negligence accounts for only a percentage of the liability involved, the obligation of the Facility User will be for that entire portion or percentage of liability not attributable to the negligence of the Port.

- 8.2 **Himalaya Clause** – It is hereby expressly agreed between the Port and each ocean carrier, inland water carrier and inland land carrier (including rail and truck) (collectively “Carriers) using the Port’s facilities that as a condition and in consideration of using those facilities, the Port, as well as any and all of its employees, servants, agents and/or independent contractors (hereinafter referred to in this paragraph as “Port Parties”) used or employed in connection with the performance of any of the Carriers’ obligations under their various waybills, Bills of Lading or other contracts of carriage (collectively referred to as “Contracts of Carriage”) shall be treated as and shall be express beneficiaries of those Contracts of Carriage. As such, the Port and Port Parties shall have the benefit of all rights, defenses, exemptions from or limitations on liability and immunities of whatsoever nature to which the Carrier(s) are or may be entitled under the provision of any Contract of Carriage or by law so that the Port and Port Parties shall not, under any circumstance, be under any liability in either contract or tort greater than that of the Carrier(s) themselves. Each Carrier shall indemnify the Port and Port Parties from and against, and reimburse the Port and Port Parties for, any liability, damage and claim (and all expenses connected therewith, including reasonable attorneys’ fees and costs) arising out of loss or damage of cargo if such Carrier fails to incorporate in its bill of lading, or through contract or otherwise fails to apply to the cargo, such rights, defenses, exemptions and immunities and as a result the Port or any Port Parties are unable to take advantage of any such rights, defenses, exemptions and immunities that would otherwise be available to the Port or Port Parties. In the event of conflict between the protections afforded by any Contract of Carriage issued by ocean and inland carriers, the Port may elect to rely upon the Contract of Carriage affording the lower limit of liability.
- 8.3 **Excess Cargo Value** – Regardless of the cause, including damages caused by the Port’s negligence, Carriers will indemnify the Port from and against, and reimburse the Port for, any liability, damage and claim (and all expenses connected therewith, including attorneys’ fees and costs) arising out of cargo

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loss or damage occurring on the Port's marine terminal facilities or as a consequence of services provided by the Port at such facilities in excess of \$500 per package lawful money of the United States, or in case of goods not shipped in packages per customary freight unit, if the shipper has declared a value in excess of \$500 per package or customary freight unit and paid to Carrier a higher freight rate by reason of such excess value declaration.

- 8.4 **Other Cargo or Property** – For cargo, merchandise or other property of Facility User that does not fall within the confines of Sections 8.2 and 8.3, which, includes without limitation, property that is not moving as cargo by ocean or inland marine carrier (such as specialty crane service or truck to truck or truck to rail movements), the Port shall have no liability for any loss or damage in excess of \$500 per package, or in case of goods not shipped in packages, \$500 per customary freight unit, regardless of the cause, including damages caused by the Port's negligence. Facility User will thus indemnify the Port from and against, and reimburse the Port for, any liability, damage and claim (and all expenses connected therewith, including attorneys' fees and costs) arising out of such property loss or damage occurring on the Port's marine terminal facilities or as a consequence of services provided by the Port at such facilities in excess of the foregoing \$500 per package or customary freight unit limitation amounts.

Section 9. Claims

- 9.1 **Loss or Damage Claims** – Unless notice of loss of or damage to cargo or merchandise or other property is given in writing to the Port at the time of removal of the property from the Port (or within three (3) days of removal if the loss or damage was not apparent) such removal shall be prima facie evidence of delivery of the property in the same condition as received by or in the Port facilities. The Port shall be discharged from all liability in respect of cargo or merchandise or other property unless suit is brought within one (1) year of the occurrence of the alleged loss or damage to the property.
- 9.2 **Recovery of Overcharge Claims** – Claims for recovery of overcharges must be filed in writing with the Port within twelve (12) months following the date of the invoice against which the overcharge is claimed.
- 9.3 **Valuation of Property for Claim Purposes** – Any claims against the Port shall be based upon and limited to the lower of (1) actual cost of the cargo or merchandise or other property plus freight, if paid or (2) fair market value. Claims for partial loss or damage of merchandise shall be prorated based upon the weight of the lost or damaged portion versus the entire shipment. The Port's maximum liability for damage or loss, if any, shall be limited by the specific provisions in this Tariff.

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Section 10. Rights of Terminal

- 10.1 **Rights Reserved** – Right is reserved by the Port to furnish all equipment, supplies, and materials and to perform all services in connection with the operation of terminals under the rates and conditions named herein.
- 10.2 **Right to Refuse Cargo** – Right is reserved by the Port, without responsibility for demurrage, loss or damage attaching, to refuse to accept, receive, or unload:
- (a) cargo for which previous arrangements for space, receiving, unloading or handling have not been made by shipper, consignee or carrier.
 - (b) cargo deemed extra offensive, perishable or hazardous.
 - (c) cargo, the value of which may be determined as less than the probable terminal charges.
 - (d) cargo, not placed in packages or containers suitable for standing the ordinary handling incident to its transportation.
 - (e) Right to exclude explosives, hazardous and inflammable commodities: At the terminal's option, subject to federal, state and city regulations, special arrangements may be made to process explosive, hazardous or inflammable commodities or materials at the marine terminal facilities.
- 10.3 **Right to Remove, Transfer or Warehouse Cargo** – Cargo remaining after expiration of free time, and cargo shut out at clearance of vessel may be piled or re-piled to make space, transferred to other locations or receptacles with all expense and risk of loss or damage for account of owner, shipper, consignee, agent or carrier as responsibility may appear.
- 10.4 **Right to Withhold Delivery of Cargo** – Right is reserved by the Port to withhold delivery of cargo until all accrued terminal charges and/or advances against said cargo have been paid in full.
- 10.5 **Right to Sell for Unpaid Charges** – Cargo on which unpaid terminal charges have accrued may be sold to satisfy such charges and costs.
- 10.6 **Owners' Risk** – Cargo on open ground is at owner's risk for loss or damage. Absent a separate written agreement with the Port to provide security services at an agreed charge, Facility User understands and agrees the Port will provide no watchman or security services to guard against or protect the cargo or any Facility User Property from theft or other loss.
- 10.7 **Right to Withhold Delivery** – Port reserves the right to withhold delivery of any cargo until all accrued terminal charges have been paid.

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- 10.8 **Responsibility for Property Damage** – Facility Users damaging or causing damage to Port property will be responsible for costs of repair. Facility User will be billed for repairs to damaged property at cost, including overhead.
- 10.9 **Piling Damage Replacement** – Vessels, together with the owners, charterers and operators, will be responsible for and charged for the replacement of any pilings damaged during their occupancy of a POL berth. Damage identified during or after a vessel's departure will be deemed to have occurred during the vessel's berthage unless POL is notified by the vessel's agent in writing prior to tie-up, of any pre-existing damage to the piling.

Section 11. Collection & Guarantee of Charges – Responsibility For

- 11.1 **Terms of Payment** – Use of terminal facilities or service is conditioned upon satisfactory assurance to the terminal that all charges will be paid when due. Charges are due and payable as they accrue or on completion of service or use.
- 11.2 **Payment Terms** – All payments are due in available U.S. currency in advance or on the specified due date. Facility Users, prior to the use of facilities or receiving supplies, may receive extended payment terms, provided they have established credit worthiness or have posted adequate security acceptable to the terminal. In the case of delay or failure to pay invoices when due, the terminal reserves the right to demand payment of charges in advance before further services will be performed or before delivery of cargo against which charges have accrued. Any pending or alleged claims against the terminal will be allowed as an offset against invoices or accrued charges.
- 11.3 **Delinquent Invoices** – Invoices issued by POL are due and payable upon presentation.
- 11.4 **Freight Prepayment** – The right is reserved by POL to demand prepayment of all charges against perishable cargo, cargo of doubtful value, and household goods.
- 11.5 **Responsibility for Charges** – Facility Users shall be responsible, jointly and severally, for the payments of charges assessed in accordance with this Tariff. Rates, rules and regulations of this Tariff and liability for charges apply without regard to the provisions of any bills of lading, charter party agreement, contracts or any other conflicting provisions. All charges named in this Tariff will be assessed against cargo or merchandise, and are due from the Facility User, which specifically includes the Carrier, owner, shipper or consignee of the cargo or merchandise.
- 11.6 **Service Charges on Delinquent Accounts** – All charges will be delinquent thirty days after the date of the invoice and, as such, may be charged a service charge of 1.5% for each month or portion thereof that the particular invoice remains delinquent. All extra expense, including attorney fees and legal

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expense, litigation costs, or costs of agents employed to effect collection shall also be assessed to, and payable by, the Facility User.

- 11.7 **Payment in Advance** – The terminal at its discretion may require payment in advance for any and all services.

Section 12. Container Throughput Service and Charges

- 12.1 **Free Time** – Container throughput service shall be allowed free time of thirty (30) days on port property.

- 12.2 **Container Throughput Defined** – Throughput consists of a container moving from barge to yard and out gate or in gate and then moved to barge. Barges must be no greater than 42 feet in breath and be of either a flat-deck or well-deck design. Containers must be stowed fore-to-aft and lashed by means of cones. Barges of different design and containers stowed or lashed by other means will be assessed throughput charges on a case-by-case basis.

- 12.3 **Container Throughput Rates** – Services provided in the throughput of ocean containers and/or chassis individually are described below. Charges apply per service, per container.

- | | | |
|----|---|----------|
| A. | Round trip container throughput. Throughput of a loaded container (inbound or outbound) in one direction with empty or loaded container moved in reverse direction. | \$160.00 |
| B. | One way throughput (inbound or outbound) of a loaded or empty container in one direction. | \$80.00 |
| C. | Extra yard handling. This charge will apply to any movement of a container not described in the throughput made at the request of a steamship line, shipper, carrier, owner, agent or consignee, if rate not agreed to by separate service agreement. | \$80.00 |
| D. | Movement of chassis to or from barge or stacking onto another trailer/chassis. | \$80.00 |

Section 13. Chassis and Container Interchange

- 13.1 **Chassis and Container Storage** – Steamship lines and trucking companies may stage good order chassis on the Port grounds for staging of containers for loading/unloading. POL will load and unload containers to/from chassis at the request of the drayman, carrier, shipper, or Steamship line. The Port will not be responsible for damage done to any chassis and containers incurred at any time unless caused by the sole negligence of POL or its agents. POL will release chassis and container to Steamship line’s agents, contractors,

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customers, or employees at Steamship line's request only, in the form of a booking number, and accepts no responsibility or liability for claims as a result thereof.

- 13.2 **Container and Chassis Maintenance and Repair** – Ordinary minor repairs and preventive maintenance services may be performed to containers and chassis upon request. Estimates by Port of Lewiston personnel for this service are free.

13.3 **Miscellaneous Rates –**

- A. Container or chassis repairs per hour, min of 2 hr. \$150.00 per hour
(Cost plus 15% on all parts and materials)

Note: 2 extra handling picks apply with each repair.

- B. Container cleaning (if service not covered by separate service agreement) \$100.00 per container

- C. After-hours service provided by the Port at the request of the shipper, receiver, transporter or owner of the goods will be at the charges and under the conditions shown below: \$150.00 per hour

from 5:01 p.m. to 7:59 a.m. Monday thru Friday and all hours on Saturday, Sunday and holidays.

Note: minimum of 2 hours per call-out for after-hours labor.

- D. General labor not otherwise specified - during regular hours of operation. \$100.00 per hour

General labor not otherwise specified - after hours (from 5:01 p.m. to 7:59 a.m. Monday thru Friday and all hours on Saturday, Sunday and holidays). \$150.00 per hour

Note: minimum of 2 hours per call-out for after-hours labor.

- E. Subcontracted labor, materials and services Cost plus 10%

- F. Administrative fee for photographic documentation \$30.00 per container

Section 14. Storage, Warehouse and Handling Charges

- 14.1 **Containers and Chassis Storage** – per unit, per day \$15.00

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Storage charges will commence 30 days after receipt or delivery of the container or chassis in to the Port facility. All containers and chassis storage is open yard. Covered or warehouse storage of containers or chassis will be charged as warehouse storage by special arrangement only.

14.2 **Warehouse Storage** – Due to the varied product, volume, and equipment needs, all outside storage (except containers and chasis) and all covered or warehouse storage is by request only and will be rated by separate service agreement for warehouse or yard storage.

14.3 **Cargo and Merchandise Handling** – Due to the varied product, volume, and equipment needs, all container stuffing and un-stuffing, and all breakbulk cargo or merchandise handling is by request only and will be rated by separate service agreement.

Section 15. Crane Services and Charges

Use of the Port of Lewiston’s crane will be as follows:

*Crane w/operator and 1 (one) spotter	\$750.00 per hour
**Pre-set up	\$1500.00
**Post set up	\$1500.00

Notes: Rates above do not include special rigging.
*2 hr. minimum applies
**Charges apply when deemed necessary by pick requirements and weights.

Per the above provisions in this Tariff, the Port assumes no liability or responsibility for loss or damage to cargo, merchandise or other property of Facility User that occurs or results in way from the use of any Port Cranes, excepting damages caused solely by the Port’s negligence, subject always to the limitations of and exemptions from liability stated in this Tariff and otherwise provided by applicable law

Section 16. Wharfage Charges

16.1 **Cargo Not Loaded to Vessel** – When cargo in transit is received on wharf from railcar, truck or dray and is not delivered to vessel but is loaded out again to railcar, truck or dray, full wharfage charges will be assessed.

16.2 **Wharfage Rates** – Rates per ton or cubic yard, whichever provides the higher revenue, unless otherwise specified:

<u>Commodity</u>	<u>Rate</u>
Cargo, in bulk or breakbulk, N.O.S.	\$4.00

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- 16.3 **Passenger Rates** – Rates (including minimum charge per vessel and per passenger rates) are reflected in separate agreements with the vessel owners, operators and/or agents.

Section 17. Tie off Rates

- 17.1 **Mooring Dolphins Rates** –

<u>Length Overall</u> (in feet)		
Vessel Over	Not Over	Minimum Charge
0	100	\$100.00
100	200	\$125.00
200	-	\$150.00

Rate is in dollars and cents and applies per 4 hrs. occupancy per item.

- 17.2 **No Unauthorized Moorage** – No person shall make fast, or cause or permit any vessel to remain fastened to any wharf or pier structure, or to bring a vessel, or cause or permit a vessel to remain, in a slip or waterway controlled by the Port, without prior consent of the Port of Lewiston.

Section 18. Dockage Charges

- 18.1 **Basis for Computing Dockage Charges** – Dockage charges will be assessed on the length over all of the vessel. Length-over-all shall be construed to mean the linear distance, expressed in feet, from the most forward point of the stem of the vessel to the aftermost part of the stern of the vessel.

- 18.2 **Dockage Rates** – In computing dockage, any 4-hr. period or portion thereof in which a vessel or craft is placed at a berth shall be assessed as follows:

Vessel or craft up to 200 feet in length: \$1000.00

Vessel or craft over 300 feet in length: \$1500.00

- 18.3 **Priority** – Vessels with weekly scheduled appointments will be given preference to dock access over vessels requesting dock appointments on a tramp or non-revolving schedule basis.

Section 19. General Services and Charges

- 19.1 **Electrical Service Optional** – The charge for electric service, where applicable and available will be based on the Port electrical service provider rates plus any special costs incurred by the Port to meet electrical requirements of the Facility User, all as agreed in writing by the Port. These

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charges are in addition to the charges for other services and equipment listed elsewhere in this Tariff.

- 19.2 **Electrical Service** – The Port will exercise reasonable care to provide adequate and continuous electric service but does not guarantee the same. The Port shall not be liable for injury, loss or damage resulting from any failure or curtailment of electric service not occasioned by its tortuous conduct or that of its agents or employees.
- 19.3 **Labor Services** – Labor Services not otherwise specified herein will be billed at regularly maintained rates for crane service or workers in Section 12.
- 19.4 **Disposal of Vessel's Oily Waste and Garbage** – Vessels requiring discharge at the Port of slops, grey or black water, oily waste or garbage, as defined in Annex V of MARPOL 73/78 or any applicable state or federal law or regulation, shall obtain the services of a liquid waste or garbage hauler that meets all Coast Guard and other government laws and regulations in effect at the time of the disposal. The liquid waste or garbage hauler is not an agent or employee of the Port, nor shall the Port be liable for any act, omission, or negligence of any such oily waste or garbage hauler. Vessels shall comply with all rules and regulations applicable to vessel management and disposal of ballast water. The Port assumes no responsibility or liability for the provision of facilities for the receipt or management of ballast water, slops, grey or black water, oily waste or garbage.
- 19.5 **Rates for Cleaning Dock or Yard Areas** – The service performed will be billed at the labor rates and equipment rates shown in Section 13. In addition, disposal costs will be assessed the Facility Users when they do not clear the dock or yard areas of dunnage, gear, equipment or material upon completion of operations by Facility User.
- 19.6 **Vessel Maintenance Work** – Limited vessel maintenance work may be allowed at any Port marine facility upon written permission from the Port. No spray painting or sandblasting of vessels will be permitted. Dockage rates for vessel maintenance will be subject to negotiation. Any vessel undergoing maintenance must possess a valid Certificate of Financial Responsibility and it must be on file with United States Coast Guard. Any entity performing vessel maintenance work must provide the Port with proof of insurance as required under Section 7, prior to the commencement of work.

Section 20. Information to be Supplied to the Port of Lewiston

Shippers, suppliers, masters, owners, agents or operators of vessels calling at Port terminals are required to provide the Port with the following documentation, which the supplying party warrants to be accurate:

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- 20.1 **Manifests** – Complete copies of vessels’ manifests showing cargo descriptions, names or consignees and/or consignors, and the weights or measurements of all cargo loaded or discharged at the terminal facilities must be furnished to the Port for each vessel loaded or discharged. Manifests must also designate the basis (weight or measurement) on which rates were assessed. In addition, manifests should identify billing party. In lieu of manifests, certified cargo lists, copies of ocean bills of lading, or “boat notes” or “mates’ receipts” containing all information as required above may be accepted. Such information must be received by the time of cargo’s arrival at the terminal.
- 20.2 **Vessel Stowage Plan** – Must be received prior to vessel arrival.
- 20.3 **Dangerous Cargo List** – Must be received and approved for receipt by the Port prior to vessel or shipment arrival.

Section 21. Rail Track Usage

- 21.1 **Premises --** The rail premises shall include the Port of Lewiston Northport Area.
- 21.2 **Control of Tracks** – The control of tracks within the Port Facility is the responsibility of the Port. As such, no railcars are to be delivered to the Port Premises without permission from the Port or its representative.
- 21.3 **Track Usage** – The Port’s rail tracks are intended to facilitate the use of its facilities for their intended purposes. Unless contractually allowed, or specifically approved by the Port Manager, storage of rail cars on tracks for longer than 4 days (96 hours) is prohibited.
- 21.4 **Wheelage Fee** – A wheelage fee shall be assessed each railcar that enters the Northport Area over the Port’s rail spur.

RAIL TRACK USAGE FEES

	<u>Measure</u>	<u>Rate</u>
Wheelage	per car	\$35.00
Storage Track Rental*	LF/mo.	\$2.00

*Note: Storage Track Rental --- one month minimum; invoiced monthly

Section 22. Miscellaneous Provisions

- 22.1 **Governing Law and Venue** – This Tariff and any services provided by the Port hereunder shall be governed by and construed in accordance with the laws of the State of Idaho without regard to any conflict or choice of law

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principles, excepting cases involving maritime liens which will be governed by the U.S Maritime law. Further, any suit, action or proceeding arising out or related to this Tariff or any services provided by the Port shall only be brought in the Nez Perce County Court, located in Lewiston, Idaho, with the court's jurisdiction exclusive. Notwithstanding the foregoing, with respect to disputes over payments and charges owed to the Port, the Port, at its option, may pursue suit in the above court or in the courts of any jurisdiction where either the Facility's User's vessel or an asset of the Facility User may be found. To the extent any suit, action or proceeding is initiated in any of the above courts and arises out of or is related to this Tariff or the services provided hereunder, each Facility User shall be deemed to have irrevocably waived any objections to personal jurisdiction or venue or based on forum non conveniens grounds and agrees to appear and submit to the jurisdiction of such courts.

- 22.2 **Sovereign Immunity** –To the extent any Facility User using the Port marine terminal facilities has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process, such Facility User hereby waives such immunity and agrees not to assert, by way of motion, as a defense or otherwise, in any suit, action or proceeding, the defense or claim of sovereign immunity, any claim that it is not personally subject to the jurisdiction of the above named courts by reason of sovereign immunity or otherwise, that it is immune from any legal process (whether through service of notice, attachment or arrest prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Tariff may not be enforced in or by such courts. To the greatest extent permitted by applicable law, each Facility User waives immunity from attachment or arrest of its vessels and property.
- 22.3 **Vessel Condition** – All vessels using the Port facilities shall be in a seaworthy condition and maintained in compliance with all applicable rules and regulations, including any issued or promulgated by the United States Coast Guard. If at any time while at berth, the vessel is found to be noncompliant or unseaworthy, the vessel, together with its owner(s), operator(s) or charterer(s) shall be liable for all consequential delays, damages and costs, and the Port shall have the right to order the vessel to vacate the berth.
- 22.4 **Severability** – If any section or part thereof contained in this Tariff is declared invalid by any court of competent jurisdiction, such decree shall not affect the remainder of the section or any other section of this Tariff, and each remaining section shall remain in full force and effect .