



# McALLISTER TOWING OF BALTIMORE, INC.

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## BALTIMORE TOWING CONTRACT

Date .....

Messrs. ....

We hereby agree as agents for and on behalf of McALLISTER TOWING OF BALTIMORE, INC., (hereinafter "McAllister") to perform all the tugboat assistance required by all vessels owned or operated by you on time charter or otherwise, in the Port of Baltimore and vicinity, at the rates and upon the terms and conditions as stated herein.

The owner, operator, charterer, agent, representative, or any other person ordering tug services to assist a vessel in accordance with this Contract shall be collectively referred to herein below as "Owner." By signing this Contract, any person or company who orders tug services represents and warrants that they are authorized to do so on behalf of the owner of the vessel to be assisted. Such person and/or company further agrees to indemnify and hold McAllister harmless from all damages and expenses that may be sustained or incurred by McAllister in the event and in consequence of such person or company not having such authority.

Owner agrees that during the term of this contract, McAllister may issue written notice of an adjustment to the rates, terms and conditions applicable to services provided hereunder to reflect changes in the cost of operations, working hours, conditions or in consequence of any change in law or regulations. It is understood and agreed that said notice of adjustment shall be an agreed amendment to this Contract, without need for additional signatures, unless McAllister receives written notice of rejection of said adjustment at least thirty (30) days before said adjustment is to become effective.

This mutual agreement to remain in effect from ..... and from year to year commencing this date and thereafter until notice of cancellation by either party, by giving thirty (30) days notice prior to the annual expiration date.

**McALLISTER TOWING OF BALTIMORE, INC.**

By .....

ACCEPTED

.....  
Signature of Owners, Charterers or Agents

**EFFECTIVE JUNE 15, 2009**

**TERMS:** Net 30 days. In the event Owner fails to make payment when due or fails to pay entire balance due under this contract or invoice, Owner will be considered in default and will be responsible for all cost of collection including reasonable attorney's fees and court cost. In addition, Owner agrees to pay 1 1/2 % interest per month on outstanding balance. McAllister hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

SCHEDULE OF RATES, TERMS AND CONDITIONS UNDER WHICH McALLISTER TOWING OF BALTIMORE, INC. FURNISHES TUGBOAT ASSISTANCE TO ALL VESSELS AT THE PORT OF BALTIMORE, BASED ON GROSS TONNAGE IN CLEAR WATER AND CLEAR BERTH, DURING REGULAR WORKING DAY (Monday to Friday inclusive) 8:00 A.M. to 4:00 P.M.

Highest Gross Tonnage as published in Lloyd's Register of Ships	Docking or undocking at: Fairfield, Lower Canton, Port Covington, South Locust Point or Inside Lazaretto.	Docking or undocking at: Curtis Bay, Hawkins Point, Dundalk or Seagirt. Between any two of the following points: Anchorages # 1-4, Fairfield, Lower Canton, Inside Lazaretto.	Docking or undocking at Sparrows Point. Between Dundalk and Seagirt.	From any Anchorage, or Francis Scott Key Bridge, or Fairfield, or Lower Canton to: Curtis Bay, Port Covington, South Locust Point, Hawkins Point, Dundalk, Seagirt or vice versa.	Between any two of the following points: South Locust Point (Port Covington), Curtis Bay, Dundalk, Seagirt, Hawkins Point and Inside Lazaretto. (Except between Dundalk and Seagirt - See Column 3).	Sparrows Point to: Any Anchorage, or Berth Inside Francis Scott Key Bridge, or vice versa. One Pier and High Pier, Sparrows Point to Marine Dept. Sparrows Point or vice versa. New Ore Pier to Old Ore Wharf.
	PER TUG ZONE 1	PER TUG ZONE 2	PER TUG ZONE 3	PER TUG ZONE 4	PER TUG ZONE 5	PER TUG ZONE 6
Up to 12,000	\$1,800	\$1,914	\$2,060	\$2,688	\$3,300	\$3,561
12,001 — 14,000	1,837	1,948	2,101	2,743	3,362	3,629
14,001 — 16,000	1,874	1,987	2,138	2,789	3,427	3,705
16,001 — 18,000	1,907	2,023	2,183	2,848	3,490	3,776
18,001 — 20,000	1,944	2,060	2,228	2,902	3,555	3,843
20,001 — 22,000	1,981	2,101	2,265	2,951	3,620	3,911
22,001 — 24,000	2,012	2,137	2,306	3,003	3,681	3,984
24,001 — 26,000	2,051	2,176	2,345	3,055	3,751	4,054
26,001 — 28,000	2,083	2,216	2,388	3,104	3,815	4,122
28,001 — 30,000	2,122	2,248	2,424	3,162	3,879	4,189
30,001 — 32,000	2,158	2,290	2,465	3,214	3,944	4,260
32,001 — 34,000	2,190	2,327	2,507	3,270	4,010	4,330
34,001 — 36,000	2,228	2,363	2,548	3,317	4,075	4,399
36,001 — 38,000	2,262	2,403	2,590	3,371	4,136	4,473
38,001 — 40,000	2,297	2,443	2,630	3,424	4,200	4,543
40,001 — 42,000	2,331	2,475	2,670	3,476	4,266	4,608
42,001 — 46,000	2,363	2,507	2,712	3,530	4,330	4,676
46,001 — 50,000	2,394	2,541	2,759	3,585	4,394	4,740
50,001 — 54,000	2,426	2,569	2,801	3,638	4,462	4,802
Over 54,001	2,458	2,603	2,844	3,692	4,526	4,868

**ADDITIONAL CHARGES NOT COVERED IN THE ABOVE SCHEDULE OF RATES**

**TRACTOR TUG:** If a tractor tug is requested or required, the rate applicable to that tug shall be 150% of all applicable rates herein.

**RATES FOR TUGS WORKING BY THE HOUR:** When the services of a tug or tugs are ordered for attendance to a vessel or if tugs are ordered to render service to a vessel which performs the movement without tug assistance or for any reason does not require the services of a tug, a rate of \$990.00 per hour per tug is to be charged prorated to the nearest half (1/2) hour from the time tug or tugs leave tie-up station until their return to tie-up station between the hours of 8:00 A.M. and 4:00 P.M. on weekdays (Monday to Friday inclusive).

For all services or assistance not specifically covered by stated rates in this Schedule, such special rates or compensation shall be charged for as may be mutually agreed upon by McAllister and the Parties at interest.

**ORDERING OF TUGS:** Four (4) hours of definite notice is required.

**OVERTIME:** When services require tugs to be operated between the hours of 1600 hrs to 0800 hrs, the tugs shall be paid a surcharge of \$249.00 per hour per tug in addition to the regular rates in this schedule applying to the particular service or assistance. Overtime is to be apportioned if two or more vessels of the same ownership are handled during the same overtime period.

**SATURDAY, SUNDAYS AND HOLIDAYS:** An additional rate of \$990.00 per tug in addition to the charge outlined in the above Schedule of Rates.

**SHIFTING:** The rates for shifting barges, scows, lighters or clearing berths whether or not including shifting in connection with a docking or a sailing at steamship piers will be \$990.00 per hour per tug two (2) hour minimum, prorated to the nearest half (1/2) hour plus applicable running time.

**CANCELLED ORDERS:** There is no charge for orders cancelled before any tug gets underway to report to the location ordered by Owner. The charge for orders cancelled prior to arrival of the tug at the location ordered will be two-thirds (2/3) of the applicable rate. When an order is cancelled after any tug reports to the location ordered, the charge will be three-quarters (3/4) of the applicable rate.

**DETENTION:** For detention of a tug caused by the vessel not being ready or other conditions beyond our control, the time of detention will be charged at the rate of \$990.00 per hour per tug prorated to the nearest half (1/2) hour. Detention shall also be charged for any undue delay after movement of a vessel has commenced, in proceeding toward berth or in berthing when such delay is caused by circumstances beyond the control of the tugs.

**ESCORTING:** If a tug is requested or required to escort a vessel the rate applicable to that tug shall be 150% of the above hourly rate from time tug leaves station and return to station with a four (4) hour minimum per tug.

**STANDBY CHARGES:** When a tug is ordered or requested to standby without assisting the vessel an hourly rate of \$792.00 per hour per tug plus applicable running time will be charged pro rated to the nearest half (1/2) hour.

**SERVICES AT PINEY POINT, MARYLAND:** Services performed under special Schedule of Rates available upon request.

**ICE CHARGES:** When a tug is operating in ice conditions, whether it be docking, undocking, shifting or transporting a vessel or shifting of barges, scows or lighters, the charges will be an additional 50 percent above the applicable rate shown on this Schedule.

When it is necessary for a tug to break ice prior to docking or sailing a vessel or to clear an ice bound slip, for any reasons, the charge will be at an hourly rate per tug of \$2,500.00 prorated to the nearest half (1/2) hour. No running time will be charged if the tug is used in the docking or sailing operation.

**LINE HANDLING:** Should the services of tugboats be requested to perform linehandling services by the Master, Pilot, Agent, Vessel Owner/Operator, Linehandling firm or Terminal, an additional rate of \$990.00 per hour per tug shall be assessed in addition to any other charges to the party requesting the service. In addition, McAllister shall not assume any liability and shall be held harmless for conducting such operations.

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

**TUG INTERESTS:** McAllister, its owners, officers, directors, insurers, employees, any tugs providing services pursuant to this Contract, their respective owners, affiliates, operators, charterers, managers, underwriters, masters and crews shall be collectively referred to herein below as "Tug Interests."

**FORCE MAJEURE:** Tug Interests shall not be responsible for any expense, loss, damage or claim whatsoever caused by or resulting from delay, failure, act or omission hereunder due to strikes, lockouts, labor disturbances, riots, fire, earthquakes, storm, lightning, epidemics, war, disorders, acts of God, acts of the public enemy, terrorists, port congestion, shortage of tugs, mechanical breakdowns, priorities in service, or any other cause whatever beyond their control.

**EMPLOYMENT OF OTHER TUGS:** If at any time McAllister tugs are not conveniently available for the desired services, McAllister will use its best efforts to designate or engage other tugs from other sources to provide tug service, but Tug Interests shall not be liable for damages if McAllister is unable, at any time, for any reason, to furnish such services, either through its own tugs or by engaging tugs from any other source. Tug Interests shall, while performing any service pursuant to this contract, have the benefit of all contract provisions herein and shall be considered third party beneficiaries of this Contract and all limitations of liability herein. Further, Tug Interests do not expressly or implicitly warrant the seaworthiness, power, equipment, performance or competency of the Master, crew or any tugs used or engaged by Tug Interests in the performance of this Contract, but which are otherwise not owned, operated or controlled by Tug Interests.

If for any reason, at any time, McAllister is unable or otherwise unwilling, in its sole discretion, to provide tugs to serve Owner's vessel, Owner is at liberty to engage tugs from any other owner or operator. In such circumstance, McAllister shall have no obligation to reimburse Owner for any price differential or any other cost incurred by Owner.

**LIMITATION OF LIABILITY:** The furnishing of any service or anything done in connection therewith shall not be construed to be or give rise to a personal contract, and it is understood that Tug Interests shall have the benefit of all exemptions from and limitations of liability to which an owner of a vessel is entitled under the Limitation Statutes of the United States. TUG INTERESTS WARRANT THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED.

Unless entitled to defenses or limitations of liability provided under this Contract or under any applicable law, rule or regulation that would reduce its liability to an amount less than that hereinafter set forth, Tug Interests shall be liable only to the extent of their negligence, which negligence shall not be assumed but must be affirmatively proven, for claims, demands, causes of action, liabilities and costs (including third party claims) arising out of or in connection with any occurrence or series of occurrences related to the provision of tug services pursuant to this Contract up to a maximum aggregate amount of two hundred fifty thousand dollars (U.S. \$250,000.00). Owner understands and agrees that tug services provided hereunder are rendered at all times under the supervision and command of Owner's servants (including the Master of the vessel being assisted and docking pilots) or of state pilots, none of whose actions or inactions may be imputed to Tug Interests. Owner further understands and agrees that the rates charged by or on behalf of Tug Interests for tug services are predicated upon the limitations of liability and the indemnities set forth in this Contract. Should Owner desire that Tug Interests retain liability in excess of \$250,000.00 it will notify McAllister in writing, whereupon McAllister will quote rates for tug services hereunder predicated on higher liability limits. Any such quote must be accepted by Owner in writing at least twenty-four (24) hours prior to commencement of tug services to the vessel being assisted, failing which the rates and liability limitations otherwise provided herein shall prevail. Nothing herein shall be construed to waive or limit the right of Tug Interests to assert any defenses to liability available to it or to avail itself of any rights of limitation or exemption from liability under any applicable law, rule or regulation.

Notwithstanding anything to the contrary in this Contract or elsewhere, Owner understands and agrees that the rates charged hereunder are also predicated on Owner's agreement that Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.

Owner agrees to indemnify, defend and hold Tug Interests harmless from and against any and all claims, demands, causes of action, liabilities and costs (including attorney's fees and third party claims of whatever nature) in excess of the applicable amounts set forth above that are attributable to the acts or omissions, whether

or not negligent, of Tug Interests, or to unseaworthiness of any tug and which arise out of or in connection with any occurrence or series of occurrences related to the provision of tug services pursuant to this Contract. Except as set forth below, the parties intend for this indemnity to apply in all instances including, without limitation, allisions, collisions and third party claims. Owner warrants that Owner possesses sufficient and adequate insurance on the vessels assisted pursuant to this Contract, including hull and machinery, P&I, cargo and pollution coverage, to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the tug services provided hereunder, with all rights of subrogation for losses under said insurances waived as to Tug Interests and with Tug Interests entitled to all benefits under said insurances of additional or coassureds, as applicable.

Nothing herein shall preclude Tug Interests from recovering from any responsible party for any damages sustained by any tugs, or their Masters or crews, providing services hereunder.

**PILOTAGE:** Tug Interests do not furnish pilots or pilotage to vessels making use of or having available their own propelling power, so that whenever any licensed pilot, or a captain of any tug which is furnished to or is engaged in the services of assisting a vessel making use of or having available her own propelling power at the commencement of such service, participates in directing the navigation of such vessel, or in directing the assisting tugs, from onboard such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner, operator and charterer and being subject to the exclusive supervision and control of the vessel's personnel. Any such service performed by any such person is beyond the scope of his employment, if any, for Tug Interests and neither those furnishing the tugs or lending any such person, nor McAllister shall be liable for any act or omission of any such person. For the purposes of this paragraph, vessels making use of or having available their own propelling power shall be deemed to include tug/barge units and vessels of any description having, at any time the service is commenced, another tug in assistance. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of McAllister.

**MISCELLANEOUS:** If any provision of this Contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect.

**FUEL SURCHARGE:** All rates published in this Contract are subject to prevailing fuel surcharge.

**EFFECTIVE DATE:** The above rates, terms and conditions supersede all previously published Contracts and are effective from June 15, 2009.

