



# McALLISTER TOWING OF CHARLESTON, INC.

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## CHARLESTON TOWING CONTRACT

Date .....

Messrs. ....

(hereinafter "Owners")

We hereby agree as agents for and on behalf of McALLISTER TOWING OF CHARLESTON, 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 Charleston 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, operator, and/or charterer 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 CHARLESTON, INC.**

By .....

ACCEPTED

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

**EFFECTIVE AUGUST 1, 2011**

**TERMS:** Net 30 days. In the event customer fails to make payment when due or fails to pay entire balance due under this contract or invoice, customer 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 1½% 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.

BASED ON LARGEST NET REGISTERED TONNAGE AS FOUND IN THE CURRENT  
LLOYDS'S REGISTER OF SHIPPING AT TIME OF SERVICE

**DOCKING AND UNDOCKING CHARGES – MINIMUM TONNAGE CHARGE – 9,000 NRT**

Docking and undocking on Cooper River shall be defined as a service rendered to assist a vessel using her own propelling power from the stream to a dock, or from a dock to the stream during a regular work day. The charges for such services are found in the following schedule:

Zone 1 Below Cooper River Bridge .....	\$0.36 cents per ton	Minimum Charge \$3,240.00
Zone 2 Above Cooper River Bridge to Minecraft Base and Wando Terminal.....	\$0.35 cents per ton	Minimum Charge \$3,150.00
Zone 3 From Minecraft Base to Army Trans. Corp. Depot .....	\$0.31 cents per ton	Minimum Charge \$2,790.00
Zone 4 From Army Trans. Corp. Depot to AMOCO Dock and Above Wando Terminal to Cainhoy Bridge on Wando River.....	\$0.45 cents per ton	Minimum Charge \$4,050.00
Zone 5 Docking and Undocking on Cooper River Above AMOCO.....	\$0.54 cents per ton	Minimum Charge \$4,860.00

**STRAIGHT TIME:** Weekdays, Monday through Friday from 7:00 a.m. to 3:00 p.m.

**OVERTIME:** Before 7:00 a.m. and after 3:00 p.m. weekdays, and all day Saturdays, Sundays and Holidays.

**SHIFTING:** When a vessel shifts alongside dock only, one and one half (1½) times the docking rate will be charged. Vessels shifting without power anywhere alongside dock only will be double (two times) the docking charge.

**ADDITIONAL TUGS REQUIRED:** When more than two (2) tugs are required to handle a vessel in conditions such as weather, tidal conditions, congestion, difficult berths, congested berths, temporary mandated USCG regulations, request by Master, Pilot or Port Agent or any other factors required, there will be an additional charge of fifty (50%) percent of the normal docking or undocking charge per additional tug(s).

**OVERTIME AND HOLIDAYS:** \$475.00 per hour per tug. Services performed before 7:00 a.m. and after 3:00 p.m. or on Saturday, Sunday or Holidays shall be charged as overtime. One (1) hour minimum followed by half hour (1/2) increments.

**RATE FOR TUGS WORKING BY THE HOUR OR ESCORTING:** \$906.00 per hour per tug or fraction thereof. Time starts when tug is ordered out from her station and ends when tug returns to her station. Minimum charge three (3) hours followed by half hour (1/2) increments.

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

**NOTIFICATION:** Notice for tug service should be given at least four (4) hours prior to the time the tug is required. Orders for tugboat services for Saturdays, Sundays, or Holidays must be received by 4:00 p.m. on the preceding regular business day.

**HOLIDAYS OBSERVED:** New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day. Any national holiday hereafter proclaimed by the President of the United States. In the event any of the above holidays fall on Saturday or Sunday, the following Monday will be observed as such holiday.

**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:** If any tug is detained because the vessel is not ready, or for any other conditions beyond Tug Interests' control, the time of detention will be charged at the rate of \$585.00 per hour per tug pro-rated 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.

**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."

**VESSELS WITHOUT POWER, AGROUND OR IN DISTRESS:** Prices for services rendered in connection with salvage, ocean towing vessels aground or in distress will be separately quoted on request. These services, or services not otherwise covered by this Contract, shall 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.

**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 two hundred fifty thousand dollars (U.S. \$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 August 1, 2011.