



**McALLISTER TOWING AND TRANSPORTATION CO., INC.
PUERTO RICO BRANCH**

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SAN JUAN TOWING CONTRACT

It is hereby agreed between Messrs: _____ (hereinafter, called "Owner") and McALLISTER TOWING AND TRANSPORTATION CO., INC. PUERTO RICO BRANCH. (and its successors) (hereinafter called "McAllister") that McAllister will furnish Tugs for and attend to all the towage requirements at the Port of San Juan and other agreed locations of Vessels owned, managed or controlled by Owner, and Owner agrees to place all of its towage requirements at the Port of San Juan and other agreed locations with McAllister in accordance with McAllister's then current "Schedule of Rates, Terms and Conditions" as may be amended from time to time.

Owner agrees that McAllister shall have the right at any time, upon thirty (30) days advance notice to Owner, to increase its rates or modify terms or conditions, but if Owner does not consent to such changes, they may cancel this Contract upon thirty (30) days written notice to McAllister.

This Contract shall remain in force from and shall continue thereafter from year to year until cancelled by either party giving to the other thirty (30) days' notice in writing prior to the annual expiration date.

**McALLISTER TOWING AND TRANSPORTATION CO., INC.
PUERTO RICO BRANCH**

EFFECTIVE DECEMBER 1, 2019

By

ACCEPTED

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

PAYMENT TERMS: Net 30 days. In the event Owner fails to make full payment when due, McAllister shall be entitled to recover all costs of collection, including reasonable attorney's fees and court costs, and interest of 1½% per month on all outstanding balances. Payment received by or on behalf of Owner shall be applied as follows: FIRST to satisfy all fees, costs (including attorney's fees) and interest due and owing on any invoice rendered to Owner commencing with the oldest such invoice and then to each subsequent such invoice and SECOND to satisfy all Tug Service charges arising hereunder commencing with the oldest open invoice and then to each subsequent invoice. Notwithstanding anything contained herein, in providing Tug Services to the assisted Vessel, McAllister is relying upon the credit of the Vessel, and maintains its right to assert a lien against said Vessel for any amounts due for the Tug Services rendered, including those referenced herein.

SCHEDULE OF RATES TERMS AND CONDITIONS

Effective December 1, 2019

UNLESS A VESSEL IS SUBJECT TO A TOWAGE AGREEMENT WITH MCALLISTER, ALL TUG SERVICES REQUESTED BY OR ON BEHALF OF A VESSEL ARE PERFORMED BY MCALLISTER SUBJECT TO ALL THE RATES, TERMS AND CONDITIONS SET FORTH IN THE THEN CURRENT "SCHEDULE OF RATES, TERMS AND CONDITIONS" IN EFFECT ON THE DATE AND PORT FROM WHICH TUG SERVICES ARE PROVIDED (WHICH SCHEDULE INCLUDES LIMITATIONS AND DISCLAIMERS WITH RESPECT TO PERFORMANCE OF SAID SERVICES AND OBLIGATIONS AND OPTIONS FOR OWNER). MCALLISTER REJECTS INCORPORATION BY REFERENCE OF OTHER PARTIES' ONLINE TERMS AND CONDITIONS. IF A VESSEL IS SUBJECT TO A TOWAGE AGREEMENT WITH MCALLISTER, THE PERTINENT SCHEDULE OF RATES, TERMS AND CONDITIONS SHALL APPLY WHERE THE AGREEMENT IS SILENT UNLESS OTHERWISE STATED IN THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO TERM OR CONDITION OF THE SCHEDULE MAY BE DELETED OR AMENDED UNLESS AGREED TO IN A WRITING SIGNED BY AN OFFICER OF MCALLISTER AND BY OWNER. THE CURRENT SCHEDULE OF RATES, TERMS AND CONDITIONS IS PUBLISHED ON MCALLISTER'S WEBSITE AT WWW.MCALLISTERTOWING.COM AND IS AVAILABLE UPON REQUEST.

DEFINITIONS: As used herein, the following terms shall mean:

"Docking/Undocking": Tug Services rendered to assist a Vessel using its own propelling power from the stream to a dock, bow in, or from a dock to the stream.

"Escort/Tethered Tugs": Services in which a Tug is requested or required to attend upon a Vessel during transit and provide services beyond those traditionally associated with Docking/Undocking of Vessels in the port. Tethering shall mean a Tug's line is attached to the Vessel during this service.

"McAllister": McAllister Towing of Puerto Rico Branch, and its successors.

"Owner": Collectively, the owner, charterer, operator and manager of the Vessel receiving Tug Services from McAllister.

"Schedule": The Schedule of Rates, Terms and Conditions for the applicable port that is in effect on the date that Tug Services are rendered to a Vessel. A current copy of the Schedule may be found on McAllister's webpage at www.mcallistertowing.com and is available upon request.

"Tug or Tugs": The tugboats provided or arranged by McAllister to perform the requested Tug Services.

"Tug Interests": McAllister, the Tugs, their respective owners, officers, directors, employees, affiliates, operators, charterers, managers, underwriters, masters and crews.

"Tug Station": The Tug's customary berth at the McAllister facility.

"Tug Service" or "Tug Services": Any activities or services which a Tug provides to the Vessel, including but not limited to, Docking, Undocking, Escorting, Tethered Escorting, hourly or standby services, line handling or any of the other such actions a Tug may be requested to provide.

"Vessel": Shall mean a Vessel that receives Tug Services.

HOURLY RATES FOR NON PASSENGER VESSELS: The following services will be billed at an hourly rate per Tug of \$3,000.00. This rate applies for a base period of one hour or fraction thereof. Time in excess of the one (1) hour base period, will be prorated to the next half (1/2) hour. Running time at the hourly rate is applicable based on the Schedule of Running Time below.

- a) **Attendance** to a Vessel, including service at anchorage, or similar Tug Service in the approaches to the Bar Channel.
- b) **Assistance in transporting** is Tug Service performed in connection with the movement of a Vessel from stream to berth, berth to stream, berth to berth, berth to anchor, anchor to berth and anchor to anchor, and escorting, whether or not the Tug is made fast to the Vessel.

HOURLY RATE FOR PASSENGER VESSELS: The following schedule of rates applies for each Docking or each Undocking of a Passenger Vessel in the Port of San Juan in clear weather and safe berths. THE HOURLY RATE IS IN U.S. DOLLARS AND IS CALCULATED BY REFERRING TO THE VESSEL'S HIGHEST NET REGISTERED TONNAGE ("NRT") AS PUBLISHED IN THE THEN CURRENT EDITION OF "LLOYD'S REGISTER OF SHIPPING" AND TO THE HOURLY RATE FOR THE GEOGRAPHICAL ZONE OR HARBOR CHANNEL WHERE THE WORK IS PERFORMED. TIME USED IN EXCESS OF ONE

HOUR WILL BE PRO-RATED TO THE NEXT HALF (1/2) HOUR. RUNNING TIME AT THE HOURLY RATE IS APPLICABLE AS STATED IN THE SCHEDULE OF RUNNING TIME BELOW. SHOULD THE VESSEL TYPE NOT HAVE AN ASSIGNED NRT, RATES WILL BE PROVIDED UPON REQUEST.

The charges specified in the Schedule of Rates for Passenger Vessels apply for services up to one (1) hour. Thereafter, the hourly rate per Tug will apply, prorated to next half (1/2) hour, time is chargeable based on the Schedule of Running Time below.

SCHEDULE OF RATES FOR PASSENGER VESSELS PER SERVICE (BASE PERIOD – ONE HOUR):

<u>NET REGISTERED TONS</u>	<u>ZONE 1</u>	<u>ZONE 2</u>
Up to 20,000 NRT	\$4,400.00	\$5,500.00
For each additional 2,500 NRT up to 60,000 NRT	\$285.00	\$345.00
For each additional 2,500 NRT or portion thereof over 60,000 NRT, add:	\$170.00	\$185.00

ESCORT/TETHERED ESCORT: If a tug is specifically requested or required to escort a vessel, the rate applicable to that tug shall be \$3,000.00 per hour per tug. Time in excess of the one hour base period, will be prorated to the next quarter-hour, time is chargeable based on the Schedule of Running Time below.

SCHEDULE OF RUNNING TIME:

<u>ZONE</u>	<u>RUNNING TIME CHARGES</u>
1	0.25 HOUR
2	0.50 HOUR
3	1.00 HOUR

TRACTOR TUG: If a tractor Tug is specifically requested or required, the rate applicable to that Tug shall be \$4,500.00 per hour per Tug, prorated to the next quarter-hour, plus running time.

TAXES: All taxes properly assessable are in addition to the rates and charges shown herein.

HOLIDAY SERVICES: There will be an additional fifty (50%) percent increase of applicable rates shown plus running time.

HOLIDAYS OBSERVED: New Year's Day, Martin Luther King Jr., Independence Day, Constitution Day, Election Day, Thanksgiving Day, Three Kings Day, President's Day, Good Friday, Labor Day, Veteran's Day, Christmas Day, Abolition Day, Memorial Day, Columbus Day, Discovery of Puerto Rico Day.

NOTIFICATION FOR TUG SERVICE: Four (4) hours of definite notice is required.

CANCELLED ORDERS: When a Tug is ordered and then cancelled or modified, a charge of two-thirds (2/3) of the applicable rate will be made. When an order is cancelled or modified after any Tug reports to the location ordered, the charge will be three-quarters (3/4) of the applicable rate plus running time. There will be no charge if the orders are cancelled at least four (4) hours prior to the ordered time.

DETENTION: For detention of a Tug caused by the Vessel not being ready or other conditions beyond our control, the time of the detention will be charged at three fourths (3/4) of the applicable rate, prorated to the next quarter-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.

LINE HANDLING: When a Tug is required to handle lines in connection with a Docking, an Undocking, or other Tug Services, an additional charge of \$1,660.00 per hour per Tug will apply. There is a one hour minimum, thereafter billing will be in half (1/2) hour increments.

OTHER SERVICES: Prices for Tug Services rendered in connection with deadship tow, salvage, ocean towing, Vessels aground or in distress, and when services are performed during heightened Coast Guard port conditions, will be separately quoted upon request. These Tug Services, or Tug 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 shall apply to all matters and issues where any such 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 as "Tug Interests".

FORCE MAJEURE: Tug Interests shall not be responsible or liable 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, acts of government or public authority, terrorists, port congestion, shortage of Tugs, mechanical breakdowns, priorities in service, or any other cause whatever beyond their control.

EMPLOYMENT OF OTHER TUGS: All or part of any service performed hereunder may be subcontracted without notice to Owners. Any such subcontractor shall be considered an independent contractor and not an agent, servant or employee of McAllister. If at any time McAllister Tugs are not conveniently available for the required services, McAllister will endeavor to designate or engage other Tugs from other sources to provide Tug Service, but Tug Interests shall not be responsible or liable for damages if McAllister is unable, at any time, for any reason, to arrange such services. Any non-McAllister Tug designated or engaged by McAllister to perform services under this Contract, and its owners, master and crews shall, while performing such services, have the benefit of all contract provisions herein or otherwise agreed between McAllister and Owners, 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 McAllister 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.

CLAIM TIME LIMITS AND FORUM:

- a. Owner shall notify McAllister of any claim, including damage to the Vessel assisted, that allegedly occurred during performance of the requested Tug Services hereunder. Such notice shall be in writing and shall be delivered as soon as practicable, but not later than 48 hours following the alleged occurrence. McAllister shall be afforded an opportunity to inspect or survey any alleged damage before commencement of any repairs. Notwithstanding any statute or rule of law providing for a longer period within which to file suit, any action in any forum to recover damages or any other forms of redress from Tug Interests, or any of them, shall be commenced within one (1) year after the occurrence giving rise to the claim, failing which said claim shall be deemed waived.
- b. This Contract shall be governed by and construed in accordance with the Maritime Law of the United States and, to the extent not in conflict therewith, by the laws of the state of New York, excluding its conflict of laws rules. The parties agree that any proceeding involving this Contract or the Tug Services performed hereunder shall be brought in the United States District Court for the Southern District of New York or, if said court shall not have jurisdiction thereof, then in a state court of competent jurisdiction sitting in New York County, New York.
- c. Tug Interests and Owner irrevocably waive their right to trial by jury with respect to any claim or dispute arising in whole or in part out of the terms and conditions of this Contract or the provision of Tug Services to a Vessel.

LIMITATION OF LIABILITY:

- a. 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 of Liability Statutes of the United States.
- b. McALLISTER WARRANTS THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF WORKMANLIKE SERVICE.
- c. Unless entitled to immunity or to defenses to, exemptions from, and/or limitations of liability provided under this Contract or under any applicable law, rule or regulation that would reduce their 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 any and all third-party claims) arising out of or in connection with any occurrence or series of occurrences related to the provision of Tug Services or line handling 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 McAllister 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 the requested 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 apply. Nothing stated herein shall be construed to waive or limit the right of Tug Interests to assert any defenses to liability available to them or to avail themselves of any rights of limitation or exemption from liability under any applicable law, rule or regulation.
- d. Owner and any Vessel assisted hereunder assume all risk of, and shall defend and indemnify Tug Interests from and against, any and all loss or damage sustained by Owner, the Vessel assisted, Tug Interests or by any other vessel, property or person that results from the parting, heaving, pulling on as directed, or sudden movement of any hawser or other line, by whomsoever furnished or howsoever caused.

- e. 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.
- f. 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, penalties, fines and third-party claims of whatever nature) in excess of the applicable limitation amounts set forth above that are attributable to the acts or omissions, whether or not negligent, of Tug Interests, or any of them, 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. The parties intend for this indemnity to apply in all instances including, without limitation, allisions, collisions, personal injury, fire, explosion, grounding, oil spills 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 requested, 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.
- g. 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 Tug Services hereunder.

PILOTAGE:

- a. 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 service 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 Tug Interests 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.
- b. With respect to Vessels that are not owned by the person or company ordering the Tug service, it is understood and agreed that such person or company warrants that it has authority to bind the Vessel owners to all the provisions of the preceding paragraph, and agrees to indemnify and hold Tug Interests harmless from all damages and expenses that may be sustained or incurred in the event and in consequence of such person or company not having such authority..
- c. In consideration of McAllister transporting a docking and/or state pilot without charge to and/or from the Vessel being assisted hereunder, Owner agrees that it shall indemnify, defend and hold harmless Tug Interests from and against and all claims, demands, causes of action, liabilities and costs (including attorney's fees) incurred in connection with or arising out of any claim by or on behalf of a pilot for personal injury or death sustained while being transported by McAllister to or from the Vessel being assisted, excepting only any injury sustained by said pilot to the extent attributable to the gross or willful negligence of McAllister. As used herein, the term "being transported by McAllister" shall include, without limitation, all time when the pilot is (i) present on McAllister shoreside premises enroute to or from the Vessel being assisted, and (ii) boarding or disembarking from a Tug or other vessel supplied by or on behalf of Tug Interests. As used herein the term "pilot" shall also include any assistant pilot, trainee or other person who may accompany the pilot in any capacity.

FUEL SURCHARGE: All rates published in this Schedule are subject to the prevailing fuel surcharge, which is available upon request and may change without prior notice.

CONTRACT TERMINATION: If at any time during the term hereof, McAllister reasonably concludes that the solvency or financial condition of Owners is threatened it may, in its sole discretion, cancel this Contract, such cancellation to take effect immediately upon receipt by Owners of email or other written notification thereof. If, subsequent to cancelation, Owners provide to McAllister evidence concerning their ability to meet their current and future financial obligations, McAllister may, in its sole discretion, elect to reinstate the Contract effective upon receipt by Owners of email or other written notification thereof.

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

EFFECTIVE DATE: The above rates, terms and conditions supersede all previously published Schedules and are effective from December 1, 2019.

ZONES FOR RATE SCHEDULE USE

Zone 1 – Anegado Channel, San Antonio Approach Channel and San Antonio Channel

Zone 2 – Bar Channel (including Seabuoy), Army Terminal Channel, Army Terminal Turning Basin, Graving Dock Channel, Graving Dock Turning Basin, Puerto Nuevo Channel

Zone 3 – Approaches to Bar Channel (including Pilot Station)

