



# McALLISTER TOWING OF WILMINGTON, INC.

EAGLE ISLAND  
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## SCHEDULE OF RATES, TERMS AND CONDITIONS Wilmington, N.C.

Date .....

Messrs.....

It is hereby agreed between Messrs: \_\_\_\_\_ (hereinafter, called "Owner") and McALLISTER TOWING OF WILMINGTON, N.C. (and its successors) (hereinafter called "McAllister") that McAllister will furnish Tugs for and attend to all the towage requirements at the Port of Wilmington, N.C. and vicinity of vessels owned, managed or controlled by Owner, and Owner agrees to place all of its towage requirements at the Port of Wilmington, N.C. and vicinity with McAllister in accordance with the current "Schedule of Rates, Terms and Conditions" below, as may be amended from time to time.

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 WILMINGTON, LLC

By.....

**EFFECTIVE JUNE 15, 2019**

ACCEPTED

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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 "SCHEDULE OF RATES, TERMS AND CONDITIONS" IN EFFECT ON THE DATE AND PORT FROM WHICH THE 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 SCHEDULE OF RATES, TERMS AND CONDITIONS SHALL APPLY WHERE THE AGREEMENT IS SILENT UNLESS OTHERWISE STATED IN THE AGREEMENT. EXCEPT FOR ANY ADJUSTMENT BY MCALLISTER TO THE RATES, TERMS AND CONDITIONS REFLECTING CHANGES IN THE COST OF OPERATIONS, WORKING HOURS, CONDITIONS OR IN CONSEQUENCE OF ANY CHANGE IN LAW OR REGULATIONS, 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 SCHEDULE OF RATES, TERMS AND CONDITIONS CURRENTLY IN EFFECT FOR EACH PORT SERVICED BY MCALLISTER IS PUBLISHED ON MCALLISTER'S WEBSITE AT WWW.MCALLISTERTOWING.COM

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

**“Docking/Undocking”:** A service rendered to assist a Vessel using its own propelling power from the stream to a dock 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 Wilmington, N.C., 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](http://www.mcallistertowing.com).

**“Tug or Tugs”:** The Tugboats provided or arranged by McAllister to perform the requested Tug Services.

**“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.

**“Tug Station”:** The Tug’s customary berth at the McAllister facility or, if applicable, the berth or other place from which the Tug departed to perform the Tug Services and/or to which it proceeded following the provision of such Tug Services.

**“Tug Services”:** Any activities or services which a Tug provides to the Vessel, including but not limited to, docking, undocking, shifting, 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.

**DOCKING AND UNDOCKING CHARGES:** The following schedule of rates gives the single charge per Tug for each docking or each undocking of a Vessel. This rate is obtained by referring to the Vessel’s appropriate NRT and the zone where the work is performed (Monday to Friday 0800 to 1600).

RATES ARE IN U.S. DOLLARS, BASED ON THE HIGHEST NET REGISTERED TONNAGE (NRT) AS PUBLISHED IN THE THEN CURRENT EDITION OF “LLOYD’S REGISTER OF SHIPS” AT TIME OF SERVICE. SHOULD THE VESSEL TYPE NOT HAVE AN ASSIGNED GRT, RATES WILL BE PROVIDED UPON REQUEST.

**DOCKING AND UNDOCKING CHARGES – MINIMUM TONNAGE CHARGE 9,400 NRT.**

**NOTIFICATION FOR TUG SERVICE:** Four (4) hours of definite notice is required. Orders for Tugboat Services for Saturdays, Sundays, or Holidays must be received by 1600 on the preceding regular business day.

**ZONE**

(1) ADM Southport .....	\$0.805 Per NRT Minimum Charge \$7,567.00
(2) Military Ocean Terminal .....	\$0.655 Per NRT Minimum Charge \$6,157.00
(3) Buoy 58 Wilmington Harbor to the Cape Fear Memorial Bridge .....	\$0.405 Per NRT Minimum Charge \$3,807.00
(4) Above Memorial Bridge to the Northeast Cape Fear River Bridge.....	\$0.425 Per NRT Minimum Charge \$3,995.00
(5) Above Northeast Cape Fear River Bridge to Hilton Railroad .....	\$0.505 Per NRT Minimum Charge \$4,747.00
(6) Above Hilton Railroad to End of Project.....	\$0.645 Per NRT Minimum Charge \$6,063.00

Contract discounts, if any, only apply to docking/sailing rates as above.

Should a Vessel lose her ability to maneuver (power or steering) during the Docking or Undocking evolution, said vessel will be charged double the applicable rates.

**ADDITIONAL TUGS REQUIRED:** When 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).

**SHIFTING:** When Vessel shifts alongside dock only, one and one half (1 1/2) the docking rate will be charged. Vessels shifting without power anywhere alongside dock only, will be double (two times) the docking charge.

**RATE 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 attendance a rate of \$1,080.00 per hour per Tug, portal to portal, prorated to the nearest half (½) hour between the hours of 0800 to 1600 on weekdays (Monday through 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.

**OVERTIME:** When services require Tugs to be operated between the hours of 1600 hours and 0800 hours, Saturday, Sunday or Holidays, the Tugs shall be paid an additional surcharge of \$309.00 per hour per Tug with a two (2) hour minimum. Time starts when Tug is ordered out from her Tug Station and ends when Tug returns to her Tug Station prorated to the nearest half (1/2) hour.

**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.

**TRACTOR TUG:** If a tractor Tug is requested or required, the rate applicable to that Tug shall be increased an additional 50% of the above schedule of rates and/or any applicable hourly rates herein.

**ESCORTING:** If a Tug is requested or required to escort a Vessel, the rate applicable to that Tug shall be \$1,080.00 per hour per Tug with a minimum charge of three (3) hours per Tug, calculated from the time Tug leaves station until it returns to station, prorated to the nearest half (1/2) hour, after the first three (3) hours.

**LINE HANDLING:** Should a Tug 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.

**TETHERED ESCORT:** If a ship requires a tethered escort, the applicable rate to that Tug will be \$1,620.00 per hour per Tug, with three (3) hour minimum prorated to the nearest half (1/2) hour, after the first three (3) hours.

**CANCELLED ORDERS:** When a Tug is ordered and then cancelled, a charge of two-thirds (2/3) of the applicable rate will be made. 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, plus any detention incurred. 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 detention will be charged at the rate of \$1,080.00 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.

**OTHER SERVICES:** Prices for services rendered in connection with dead ship 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 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 the 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 below 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 (including terminal delays), 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 Owner. 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 Owner, 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 Owner 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 law 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 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 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.

- 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 Contract are subject to the prevailing fuel surcharge, which is available upon request and may change without prior notice.

**CHANGE IN CONDITIONS:** Should the U.S Coast Guard or any other U.S., state or government agency, port authority, terminal or association (including any pilot or pilot association), or any designee of any of the foregoing, issue any regulation or requirement that obligates McAllister to make capital improvements to the Tugs, to provide Tugs with higher horsepower or different operational capabilities or that obligates McAllister to operate the Tugs in a different manner or with a different crew complement that increases its operating costs, McAllister shall have the right to propose amendments to the Rates, Terms and Conditions set forth in this Schedule in order to reflect the new requirements and, as applicable, mitigate the costs thereof. If Owner or those acting on behalf of the Vessel object to any said amendments the implementation thereof shall be stayed for a period of thirty (30) days and the parties shall negotiate in good faith to achieve a mutually satisfactory outcome. If the parties are unable to reach agreement within said thirty (30) day period, the amendments, as proposed by McAllister, shall come into effect and the objecting party may terminate its obligations to McAllister with respect to future Tug Services.

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

**PAYMENT 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 costs. In addition, Owner agrees to pay 1.5 % interest per month on all outstanding balances. Payments received from 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 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 services rendered, including those referenced herein. McAllister hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

**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 Contracts and are effective from June 15, 2019.

