

BOARD OF COUNTY COMMISSIONERS  
BROWARD COUNTY, FLORIDA

**PORT EVERGLADES TUGBOAT AND TOWING SERVICES FRANCHISE**

THIS NONEXCLUSIVE TUGBOAT AND TOWING FRANCHISE AGREEMENT (hereinafter referred to as "Franchise Agreement"), made and entered into by and between:

BROWARD COUNTY,  
a political subdivision of the state of Florida,  
acting by and through its Board of County Commissioners  
(hereinafter called the "County")

and

TUGZ COMPANY LLC,  
a Delaware corporation,  
d/b/a McALLISTER TOWING OF PORT EVERGLADES  
authorized to transact business in the state of Florida,  
(hereinafter referred to as "Franchisee")

**WITNESSETH:**

WHEREAS, County owns and operates Port Everglades and has jurisdiction over the franchising of tugboat and towing services at Port Everglades; and

WHEREAS, Tugz Company LLC d/b/a McAllister Towing of Port Everglades has the expertise in providing tugboat and towing services; and

WHEREAS, Franchisee has met the requirements for a Tugboat and Towing Franchise at Port Everglades, Florida,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, and the receipt and sufficiency of which is hereby acknowledged, County and Franchisee agree as follows:

1. Franchisee is hereby granted a nonexclusive tugboat and towing franchise to provide tugboat and towing services at Port Everglades. By accepting and executing this Franchise Agreement, Franchisee agrees that it will comply with the terms and conditions of this Franchise Agreement and with all federal, state and local laws, codes, ordinances, rules, directives, and regulations including, but not limited to, Port Everglades Tariff No. 12, amendments thereto and reissues thereof in performing its franchise services, duties, responsibilities, reporting requirements, and obligations related to this Franchise Agreement, provided, however, that the imposition and enforcement of such laws, codes, ordinances,

rules, directives, and regulations shall operate uniformly with respect to all persons, firms, or corporations holding similar franchises within Port Everglades.

2. The term of this Franchise Agreement shall be for a period of ten (10) years, commencing on October 29, 2017, and ending on October 28, 2027, unless sooner terminated in accordance with Section 32.29 of the Broward County Administrative Code, as may be amended.
3. Franchisee understands that it is bound by any and all statements, representations, and conditions made during the issuance or renewal process, and the information filed with the County as fully as if these statements, representations, and conditions were set forth herein.
4. Franchisee shall operate and maintain a minimum of two (2) modern harbor tugboats as specified by name and characteristics set forth and described in Exhibit "A," attached hereto and made a part hereof. All tugboats shall be equipped with firefighting apparatus that will provide efficient and satisfactory tugboat and towing services, and firefighting capabilities at Port Everglades, Florida, as more particularly set forth in Exhibit "A." Franchisee shall provide all tugboats and related equipment, labor, materials, and supplies including, but not limited to, maintenance, support facilities, and office space required for the performance of tugboat and towing operations. A written description detailing a) the vessel characteristics of all tugboats and related equipment to be utilized at Port Everglades, Florida; b) dates on which tugboats are to be deployed and positioned within Port Everglades; c) operational standards for towing services; d) tug crew requirements; and e) firefighting training exercises to be performed at Port Everglades is set forth in Exhibit "A" and shall be placed and remain on file with the Port Everglades Chief Executive/Port Director during the term of this Franchise Agreement. Such written description shall be the minimum binding obligations of the Franchisee.

In order to meet the projected needs of vessels at Port Everglades for increased ship lengths, beams, and drafts during the term of this franchise, the Franchisee agrees to work cooperatively with the County through its Port Everglades Department and with the Port Everglades Pilots' Association to upgrade its fleet with tugboats of greater horsepower, bollard pull, and maneuvering capabilities to meet those projected needs. To that end, Franchisee agrees to meet not less than once every two years and more often if necessary with the Port Everglades Chief Executive/Port Director, or designee, and the Pilots' Association to determine future tugboat requirements. Any required changes to the tugboat fleet and related equipment shall be effectuated by an amendment to Exhibit "A" executed by County, through its Port Everglades Chief Executive/Port Director and Franchisee.

5. Franchisee agrees that it will operate tugboat and towing services at Port Everglades, Florida, continuously on a twenty-four (24) hour, seven (7) day, three hundred sixty-five (365) day a year, basis.

6. Franchisee shall pay to County monthly over the term hereof, a sum equal to five percent (5%) of revenues net of its discounts derived from its franchised operations at Port Everglades, Florida, on a generally accepted accounting principles basis. Within five (5) business days after the end of each month Franchisee shall provide documentation to support its activities pursuant to Port Everglades Tariff No. 12, Item Number 915, and reissues thereof. Payment shall be made by Franchisee in accordance with the procedures established and promulgated by the County's Port Everglades Department, Finance Division. Franchisee acknowledges and agrees that it has informed itself of these payment procedures by its execution of this Franchise Agreement. Each calendar year over the term hereof, Franchisee shall furnish County with an annual special audit in accordance with Chapter 32, Part V, Section 32.58 of the Broward County Administrative Code, as may be amended. Franchisee shall pay County Two Hundred Dollars (\$200) for each calendar day that the annual audit report remains delinquent.
7. Franchisee shall provide, pay for, and maintain in full force and effect at all times during the term of this Franchise Agreement, all insurance policies in such amounts and under such terms and conditions as required by County's Port Everglades Department's Risk Management. Franchisee acknowledges and agrees that it has informed itself of the requisite insurance requirements by its execution of this Franchise Agreement.
8. Franchisee agrees that if a request for assistance is received from vessel(s) outside Port Everglades, Florida, it may provide the needed assistance so long as adequate tugboat(s) and related equipment necessary to provide tugboat, towing, and firefighting assistance remains at Port Everglades, Florida, in accordance with the terms and conditions of this Franchise Agreement. Notwithstanding, Franchisee agrees that none of the tugboats, or related equipment on file with the Port Everglades Chief Executive/Port Director as required hereunder, shall be diverted from Port Everglades without the prior authorization of the Port Everglades Chief Executive/Port Director, or designee.
9. Franchisee shall provide, pay for, and maintain in full force and effect at all times during the term of this Franchise Agreement, an irrevocable letter of credit from a United States bank in a form acceptable to County, and in the amount of One Hundred Fifty Thousand Dollars (\$150,000). The letter of credit shall guarantee to County the payment of all of Franchisee's financial obligations as provided hereunder. The financial institution shall be of recognized standing, and shall have at least a B+ minimum rating in the latest revision of Best's Insurance Report, and be authorized to transact business in the state of Florida with a resident agent therein. County shall have the right to drawdown on the letter of credit to reimburse County for all costs, expenses, and payments which County elects in its sole discretion to pay on Franchisee's behalf in the event Franchisee fails to make payments required to be made to County hereunder. All or any part of the letter of credit amount applied by County shall be repaid by Franchisee within fifteen (15) calendar days after written demand therefor is sent so that the letter

of credit amount is continuously maintained at its required monetary amount of One Hundred Fifty Thousand Dollars (\$150,000).

10. County shall provide Franchisee with docking space for its tugboats at Port Everglades, Florida. The Franchisee expressly acknowledges and agrees that County shall have the right over the term of this Franchise Agreement to assign Franchisee docking space at Port Everglades for its tugboats as County deems necessary to support and facilitate navigation and commerce at Port Everglades, and to meet the growth and development plans and programs of the County.
11. Pursuant to Chapter 32, Section 32.29 of the Broward County Administrative Code, as may be amended, County may, after reasonable written notice to Franchisee and opportunity for Franchisee to be heard at a duly noticed public hearing conducted by County, suspend, revoke, or place this Franchise Agreement on probationary status.
12. Franchisee and County agree and acknowledge that the viability and full, continued, and uninterrupted operation of the Franchise are essential to the functions of Port Everglades not only as a commercial facility, but also as an international transport and transportation facility. Franchisee and County further agree and acknowledge that failure to fully, continuously, and uninterruptedly operate the Franchise will result in irreparable harm to Port Everglades which cannot be redressed, or remedied by financial compensation or other means. Therefore, the following rights are established and shall be fully enforceable as an essential term of the Franchise: Upon the occurrence of one or more of the following events:
  - i. the taking of the estate created by the Franchise by execution or other process of law; or
  - ii. the taking by a court of competent jurisdiction of the Franchisee or any of its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act; or
  - iii. the entry of a final order by any court of competent jurisdiction providing for modifications or alterations of the rights of Franchisee's creditors.

County shall provide Franchisee with written notice of its intention to review and inspect the financial books and records of Franchisee to determine the financial capability of Franchisee to continue to perform its obligations to County under the terms and conditions herein. Franchisee shall, within three (3) days after its receipt of such notice, produce copies of its financial books and records to County's Port Everglades Department staff for purposes of review and inspection. If County's Port Everglades Department staff (following said review and inspection) determines that Franchisee is unable, due to its current financial condition, to perform its franchised obligations, County, as determined by action of the Board of County Commissioners, may, to the extent allowed by law, place the Franchise on probation, or suspend or revoke the Franchise pursuant to the requirements set

forth in Section 32.29 of the Broward County Administrative Code, as may be amended. If this Franchise Agreement is terminated for any reason in the event of the rejection or disaffirmance pursuant to the United States Bankruptcy Code, as same may be amended, or any other federal or state statute or law affecting creditors' rights, County shall, to the extent allowed by law, require Franchisee to reapply for a Franchise and execute a new franchise agreement.

13. If, during the term of this Franchise Agreement, County subsequently enters into a new or amended franchise agreement with an existing or additional tugboat or towing service provider at Port Everglades, Florida, and such new or amended franchise agreement provides for terms and conditions that are more favorable to such existing or additional tugboat or towing service provider as compared to Franchisee operating under the terms and conditions of this Franchise Agreement, then County and Franchisee agree to open and renegotiate the terms and conditions of this Franchise Agreement to negotiate equality of franchise terms and conditions, vis à vis County's tugboat and towing franchise agreements. The terms and conditions of this Franchise Agreement shall remain in place until any change, modification, or amended agreement is executed by both parties hereto, and as set forth in Section 14 herein.
14. It is understood that this Franchise Agreement (together with Exhibit "A" attached hereto) contains the entire agreement between County and Franchisee. Except for approved changes to Exhibit "A" approved by the Port Everglades Chief Executive/Port Director, this Franchise Agreement may not be changed, modified, or amended except by written instrument duly executed by County and Franchisee with the same formality and of equal dignity herewith.
15. By accepting this Franchise Agreement, Franchisee shall affirmatively comply with all applicable provisions of the Americans With Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. Franchisee shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Franchise Agreement. In addition, Franchisee shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Franchisee shall not engage in or commit any discriminatory practice in violation of Broward County Human Rights Act (Chapter 16½, Broward County Code of Ordinances) in performing any services pursuant to this Franchise Agreement.

By execution of this Franchise Agreement, Franchisee represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Franchise Agreement in accordance with Section 32.29 of the Broward County Administrative Code, as may be amended.

16. This Franchise Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance, where not preempted by applicable federal laws, rules, regulations, and any controversies, legal problems, or litigation arising hereunder, and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs. The Franchisee irrevocably subjects itself to the jurisdiction of said Court. This provision shall not apply to matters that fall within the exclusive subject matter jurisdiction of the federal courts or those to which jurisdiction is confirmed by law upon the Federal Maritime Commission (FMC). In the latter case, either County or Franchisee may choose to bring any such matter upon the FMC. Any action or proceeding commenced in federal court shall be submitted to the jurisdiction of the United States District Court for the Southern District of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereto waives any rights it may have to a trial by jury of any such litigation.
17. This Franchise Agreement shall not be assigned by Franchisee without the prior written consent of County, by and through its Board of County Commissioners. For the purposes of this section, "Assignment" shall mean any transfer, pledge, or encumbrance of this Franchise Agreement. The factors upon which County may base its decision on whether to grant such consent shall include, but not be limited to, (i) an assessment of whether the proposed assignee meets County's standards of creditworthiness, and (ii) an assessment of the proposed assignee's ability to perform the Franchisee's obligations hereunder.

In the event of an Assignment, the assignee shall be required, at County's option, to execute a written assumption agreement, agreeing to abide by all terms and conditions of this Franchise Agreement. The assumption agreement must be in a form acceptable to County.

18. Any notices required by this Franchise Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until such change is made, notices to County shall be delivered as follows:

Broward County, Port Everglades Department  
Attn: Chief Executive/Port Director  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

With a copy to:

Broward County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, Florida 33301

Until any such change is made, notices to Franchisee shall be delivered as follows:

Tugz Company LLC d/b/a McAllister Towing of Port Everglades  
Attn: Michael Ring, Vice President, Southeast Operations  
2110 Eller Drive, Pier 28D  
Fort Lauderdale, Florida 33316

19. In the event a portion of this Franchise Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Franchisee elects to terminate this Franchise Agreement. An election to terminate this Franchise Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
20. Over the term of this Franchise Agreement, County shall have the right to inspect and audit the books, records, and accounts of Franchisee that are related to the franchised activities and services at Port Everglades. Franchisee shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the franchise. Franchisee shall preserve and make available in Broward County, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Franchise Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Franchise Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Franchisee's records, Franchisee shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Franchisee.

21. NO WAIVER

No waiver by County of any default on the part of Franchisee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Franchisee shall be, or be construed to be, a waiver by County of any other or subsequent default in performance of any of the said terms, covenants, and conditions.

22. PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Franchise Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing.

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PORT EVERGLADES TUGBOAT AND TOWING SERVICES FRANCHISE  
AGREEMENT BETWEEN BROWARD COUNTY AND TUGZ COMPANY LLC D/B/A  
McALLISTER TOWING OF PORT EVERGLADES

COUNTY

ATTEST:

BROWARD COUNTY, through its  
Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2017.

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Facsimile: (954) 468-3690

By Tom Kelly 7/26/17  
Signature (Date)

By M 7/26/17  
Russell J. Morrison (Date)  
Senior Assistant County Attorney

Tom Kelly Property Specialist  
Print Name and Title above

FRANCHISEE:

WITNESSES:

TUGZ COMPANY LLC d/b/a McALLISTER  
TOWING OF PORT EVERGLADES, a  
Delaware corporation authorized to transact  
business in the state of Florida

Joe Fotos  
Signature

By: Michael Ring  
(Signature)

Joe Fotos  
Print Name

Michael Ring  
(Print Name and Title)

Wally Briner  
Signature

24<sup>th</sup> day of July, 2017.

Print Name

RJM:dh  
Tugz\_McAllister\_FA  
06/20/17  
#17-3025.03

**TUG AND TOWING FRANCHISE  
EXHIBIT "A"**

**(1) Characteristics of Tugboats and Related Equipment Domiciled and Utilized at Port Everglades**

A minimum of two (2) U.S. Flag harbor tugs will be permanently domiciled at Port Everglades to perform all manner of harbor towing and docking/undocking assistance to ships and barges.

The two (2) tugs and their respective characteristics are identified as follows:

- "Tate McAllister" - Z-drive, tractor tug with escort capabilities; 93 feet LOA; 6000 horsepower; 160,000 pounds bollard pull.
- "Vicki M. McAllister" - Z-drive reverse tractor tug; 96 feet LOA; 4,650 horsepower; 120,000 pounds bollard pull.

All tugs and equipment will be maintained by Tugz in optimum working condition at all times.

Should Tugz determine that a named tug is to be temporarily taken out of service for repairs, dry docking, temporary reassignment, or the like, or permanently relocated from Port Everglades, a substitute tug of equal or greater capabilities must be positioned at Port Everglades prior to the removal of the tug being replaced. In all cases, Tugz must, in a timely manner prior to taking such action, notify the Port Director or designee in writing of the planned change(s). Only after receiving concurrence from the Port Director or designee, may the change(s) be made. Said concurrence will not be unreasonably denied.

All tugs will have firefighting capability including foam. Each tug will have the capability to deliver not less than 3,000 gallons of sea water per minute at not less than 150 pounds of pressure for firefighting. Each tug will be able to supply Broward County firefighting land based units with sea water. All tugs will be equipped with a sufficient number of five (5) inch Stortz fittings so as to deliver the full rated capacity of sea water.

Each tug will be equipped so as to be capable of making up alongside the bow and stern of each type and class of ship and barge calling at Port Everglades without interference with or damage to the hull of the ship or barge being assisted. Each tug shall have adequate fenders to sufficiently and safely perform all berthing assistance and maneuvers with each class of ship and barge.

Each tug will be equipped with not less than two (2) radios, each with VHF-FM multiple frequency bridge-to-bridge transceivers for communicating among ships and barges, tug, Port Everglades Harbormaster, and harbor pilots. Each radio shall include Channels 12, 13, 16, and the current and future dedicated frequencies as determined by the County's Port Everglades Department.

Each tug will be equipped with not less than the following equipment:

- Sufficient working lines and other equipment to enable the tug to be made up to either side of the bow or stern of each ship or barge to pull, push, and otherwise assist in maneuvering.
- Sufficient lighting to perform during all hours of darkness.

**(2) Operational Standards for Tug and Towing Services**

All tug and towing services performed by Tugz shall be in accordance with the applicable requirements for Towing Vessels in 46 CFR Chapter I, Subchapter M. All services performed in Port Everglades shall be consistent with all current standards employed throughout the U.S. maritime industry applicable to harbor towing services, including, but not limited to, all applicable U.S. Coast Guard regulations and inspection standards.

**(3) Tug Crew Requirements**

Tugs shall be crewed with competent, qualified mariners with the required merchant mariner credentials in accordance with applicable U.S. Coast Guard regulations.

**(4) Firefighting Training Exercises to be Performed at Port Everglades**

As a condition of employment, all crew members of tugs providing services at Port Everglades are required to participate in Tugz's safety training programs, including on-board orientation and training programs and familiarity with and operation of firefighting equipment. Participation in annual training exercises with the Port, BSO Fire/Rescue and/or the U.S. Coast Guard is also required as determined by the Port Director.