

**AGREEMENT BETWEEN THE
CITY OF PORTSMOUTH AND THE GUNDALOW COMPANY**

Draft
4-7-2017

This Agreement is entered into between the Trustees of Trust Funds (hereinafter "Trustees") for the City of Portsmouth (hereinafter "City"), with a principal place of business at Water Street, Portsmouth, NH and a mailing address at P.O. Box 1103, Portsmouth, NH 03802-1103 and The Gundalow Company, a non-profit IRS Section 501(c)(3) corporation (hereinafter "Company") with a principal place of business at 60 Marcy Street, Portsmouth NH 03801 under the terms and conditions described below.

WHEREAS, the City owns and operations Prescott Park (hereinafter "the Park") located on Marcy Street in the City of Portsmouth; and

WHEREAS, the Company exists to protect the maritime heritage and environment of the Piscataqua River region through education and programming, which includes the ownership and operation of one (1) so-called non-commercial gundalow boat identified as the Piscataqua; and

WHEREAS, the Company desires to operate the Piscataqua for educational and programming purposes, as a non-commercial vessel, from Prescott Park and the Trustees desire to facilitate that purpose.

NOW THEN, the City and the the Company agree as follows:

DOCKAGE

1. During the term of this Agreement Company may dock the Piscataqua at designated facilities in Prescott Park. The Piscataqua shall be docked at the existing so-called Sheafe dock owned by the City of Portsmouth and located adjacent to the Sheafe Warehouse.
2. Company uses a small work boat and may continue to keep it tied up at the docking float. No other docking of vessels of any kind is authorized by this agreement.

ANNUAL LICENSE FEE

3. The Company shall pay an annual license fee to the City on or before July 15, 2017 in the single lump sum amount of \$5,500.00.

USE OF DOCK AND QUAY

4. The use of the Sheafe dock and the quay area as described above shall be for the docking of the Piscataqua for the purposes described in this Agreement and for no other purpose. The permitted purposes are as follows:
 - a. To tie up the Piscataqua.

- b. To conduct educational programs onboard the Piscataqua as approved in advance in writing by the City. In furtherance of this provision the Company shall make a single written request of the City prior to April 1, 2017. To the extent that the Company thereafter desires to add additional educational programs, the Company shall secure written approval in advance from the City.
- c. The following activities are specifically not permitted in Prescott Park, on the ramp or float of the so-called Sheafe dock, in the quay area or onboard the Piscataqua.
 - i. The staging of theatrical or other events involving amplified sound or music.
 - ii. The handling of motor vehicle fuel or the refueling of any boat.
 - iii. The sale of any goods or services or except tickets for public sails.
- d. The sale, transport, use, and possession of alcoholic beverages by the Company and its passengers shall be as follows:
 - i. Alcoholic beverages may be kept onboard the Piscataqua at any time for consumption at times when the Piscataqua is not docked at the Park.
 - ii. Beer and wine may be consumed but not sold onboard the Piscataqua, but not on the dock, for a period of twenty (20) minutes before and twenty (20) minutes after the commencement or the conclusion of scheduled cruises.
 - iii. Other than as provided above, there shall be no sale, transport, use, possession or consumption of alcoholic beverages in the Park or on the dock.

USE OF PROPERTY OTHER THAN DOCK AND QUAY

- 5. With prior written approval of the City Manager, from May 1, 2017 to June 15, 2017 and from September 1, 2017 to October 31, 2017 the Company may utilize the ground floor area of the Sheafe Warehouse otherwise used by the New Hampshire Art Association for following purposes:
 - i. Education programs for school groups in conjunction with school group sailing trips;
 - ii. Mission-related educational programs for adults and families;
 - iii. Annual meeting for Gundalow Company members;
 - iv. Gundalow Company monthly board meetings;

- v. Volunteer training;
 - vi. Educational exhibit with watershed model, touch tanks and interpretive panels, staffed by trained volunteers and opened to the public on a regular schedule
 - vii. Orientation space for passengers before, after, or in place of a sail on the Piscataqua;
6. The Company may on a day-to-day basis utilize a small portable table and umbrella located adjacent to the Sheafe Dock for the purpose of selling tickets for scheduled sails and no other purpose. The table shall be attended at all times and shall not obstruct the passage of pedestrians. The table and umbrella are to be removed when not in use.

ADDITIONAL SERVICES TO BE PROVIDED BY CITY

7. The City shall allow the Company the reasonable use of electricity on an intermittent basis. The City shall bear the cost of the electricity provided to the pedestal located at the entrance to the Sheafe Dock.
8. The City shall allow the Company the reasonable use of non-potable water on an intermittent basis to be provided by means of a water connection to the Park sprinkler system. The City shall bear the cost of the water provided.

TERM

9. This Agreement becomes effective on its completed execution by the parties and shall remain in full force and effect unless otherwise terminated until November 1, 2017.

INSURANCE AND FINANCES

10. Company shall maintain at all times during the term of this Agreement general liability insurance in a coverage amount of at least \$2,000,000.00 per occurrence naming the City of Portsmouth as additional insured, a certificate indicating the existence of such insurance shall be kept on file at all times in the office of the City Attorney of the City of Portsmouth.
11. Financial Books and records of the Company shall be open for review at all times by the City upon reasonable notice to the Company.
12. At any time during the term of this Agreement on request of the City the Company shall provide the City with a full accounting of all income and expense, including donations, sponsorships, and income of any form received by the Company for the prior calendar year.

13. On or before October 1, 2017 the Company shall provide the City with complete annual financial statements reflecting all financial activities of the Company.

PROPERTY DAMAGE INSURANCE

14. The City, shall provide property damage insurance for the Sheafe dock. The purpose of this insurance will be to protect the City from any property damage which may be occasioned to the dock. The Company may, at its option, secure such other and further insurance as the Company deems necessary beyond those insurances required by this Agreement.

MISCELLANEOUS

15. The Company shall only conduct private parties onboard the Piscataqua in accordance with a written private party or charter policy approved in advance in writing by the City.
16. Neither this Agreement nor any of the authority granted under it shall be transferrable or assignable in any way by the Company.
17. In the event of a breach of this Agreement by the Company in any manner which does not create a risk to health or safety, as determined in the sole discretion of the City the City shall provide a thirty (30) day opportunity to cure the breach by the Company. Subsequent to such a cure period or at any time following a breach of the Agreement which does create a risk to health or safety, as determined in the sole discretion of the City the City may suspend or terminate this agreement under such terms and conditions as may be established by the City.
18. This Agreement describes the entire relationship between the City and the Company.
19. The Company shall have no authority to conduct any activity in Prescott Park not specifically authorized herein.
20. The Company understands that the Park Supervisor represents the City in all matters connected with the Park and the administration of this Agreement and that he/she speaks with the authority of the City on these matters. As such, the Company shall comply with all reasonable instructions of the Park Supervisor.
21. The Company agrees to comply at all times with federal, state and local law, including any ordinances adopted by the Portsmouth City Council, reference the existing Park ordinance, Chapter 8, Article II.

- 22. The Company shall be responsible for all necessary maintenance and repair of the Sheafe dock.
- 23. The Company agrees to indemnify and hold harmless the City of Portsmouth and all its respective agents and employees from any and all liability arising in any way out of the exercise of rights granted to the Company under this Agreement.
- 24. On the termination of this Agreement at any time for any reason, the Company shall be solely responsible for relocating the Piscataqua elsewhere from Prescott Park.
- 25. The Company shall provide the City with an annual inspection report detailing the seaworthiness of the Piscataqua for the purpose of assuring that the gundalow is safe for maritime use and shall not become a burden on the City by its inability to be removed from the Park.

SIGNAGE

- 26. A signage plan shall be submitted to the City Manager within two weeks of execution of this agreement. The following signs are approvable by the City Manager in accordance with the following terms; signage not expressly listed below is not permitted:
 - a. Signage described in this section is intended to allow the same sign number, type, and location as permitted in 2016.
 - b. Two signs to be erected on the gangway related to the 2017 Gundalow programming and schedule.
 - c. No logos or donor information shall be displayed on the signs; the one exception may be the Gundalow Company logo.

GUNDALOW COMPANY

Dated: _____

Molly Bolster, Executive Director

Dated: _____

_____, President
As authorized by the Gundalow Company
Board of Directors on _____, 2017.

CITY OF PORTSMOUTH

Dated: _____

John P. Bohenko
City Manager

Approved by vote of the City Council on
_____, 2017.

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