
From: Mike Martin [REDACTED]
Sent: Fri 2/3/2023 9:02:26 AM (UTC-05:00)
To: Mann, Melissa [REDACTED]
Subject: [External] FW: Draft SOW for Contract for Sailing Services
Attachment: Draft SOW for Contract for Sailing Services (WRS).docx

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Sent from [Mail](#) for Windows

From: [William Sabatini](#)
Sent: Tuesday, January 31, 2023 5:22 PM
To: [Mike Martin](#)
Cc: [Pat Federici](#); [Jim Scheider](#); [Joe Zimmerman](#); [Martinucci, Arthur](#)
Subject: Re: Draft SOW for Contract for Sailing Services

Gentlemen,

Please see the attached.

William Sabatini
Executive Director
Fleet Captain
Flagship Niagara League

[REDACTED]
www.sailfnl.org

2015 Tall Ships® America Sail Training Program of the Year

On Tue, Jan 31, 2023 at 7:35 AM Mike Martin <[REDACTED]> wrote:
Good morning, I wanted to touch base and ask Billy and Skip if they have any comments on the initial draft contract sent by Melissa?
I will be speaking to Melissa yet this week and I will want to have our questions for discussion as it relates to this document.
Mike

Sent from [Mail](#) for Windows

From: [Pat Federici](#)
Sent: Monday, January 30, 2023 2:40 PM

To: [Mike Martin](#); [Billy Sabatini](#); [Jim Scheider](#); [Joe Zimmerman](#); [Martinucci, Arthur](#)
Subject: RE: Draft SOW for Contract for Sailing Services

EC Members,

Here are my comments/observations:

1. Not bad for an initial draft. A lot of this is not too different from what we do now.
2. 2.2 - The Restricted Fund – How will this be administered? We will need to keep track of the revenue to know what is available and make sure we are not short-changed.
3. 2.3 - This is a little confusing. Exhibit C gives the crew access to the locker rooms from 7:00 AM to 8:00 PM. Berthing gives them access to the heads. I assume that they will be able to use the facilities. This may mean that any necessary off site facilities (between 8:00 PM and 7:00 AM) will be FNL's responsibility.
4. 2.5 – The good news here is that berthing will be permitted.
5. 3.4 – My only comment here is: “Does the Commission know better than the USCG?”
6. 5 – Invoicing – I think we should include terms. Net 30 is pretty standard. I could live with Net 45 and/or 2% past terms.
7. 6.1 – The 5% fee does not make me happy. I suppose that is why sail training is licensing and day sails are programs. They should both be programs because sail training fulfills the mandate for the Niagara to travel as an ambassador of the State. Also, they expect fees to be remitted promptly. I think they should invoice us just like they want us to invoice them. The terms should be the same.
8. Up-Rig & Down-Rig - There is nothing about up-rig or down-rig in the agreement. I assume that means we have to provide lodging for the professionals. This is a prime example of a PHMC decision that costs FLN money.
9. The document has some comments from Melissa Mann. There are some comments that say “See Comments”. The 5% fee was one of them. Did she include some comments outside the document that we have not seen.

I think this is a good start and I think we can make it work if we have to. My biggest issue is the 5% fee.

PF

From: Mike Martin <[REDACTED]>
Sent: Sunday, January 29, 2023 14:45
To: Billy Sabatini <billysab@phmc.org>; Jim Scheider <[REDACTED]>; Pat Federici <patfederici@phmc.org>; Joe Zimmerman <[REDACTED]>; Martinucci, Arthur <[REDACTED]>
Subject: Fwd: Draft SOW for Contract for Sailing Services

Please be in receipt of this initial draft document to provide sailing services as a contractor to phmc.

Please provide feedback. Would appreciate comments by end of day Tuesday Jan. 31st
Mike

----- Forwarded message -----

From: **Mann, Melissa** <[REDACTED]>
Date: Fri, Jan 27, 2023, 5:38 PM
Subject: Draft SOW for Contract for Sailing Services
To: Mike Martin ([REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>

Hi Mike,

Attached you will find the draft scope of work for a contract for sailing services. This document outlines the discussions we've had and pulls from the interim agreement as well as the most recent repairs agreement. While I've done a good deal of background work on my side of things, this is by no means a finished document. I imagine both PHMC and FNL will have comments to make before we are done, and we still have exhibits to add. However, now we have a place for those discussions to begin. I look forward to hearing your thoughts and questions. If you would like to touch base prior to your Executive Committee meeting, my schedule is pretty meeting free on Monday and Tuesday. Just let me know.

Have a great weekend!

Melissa

Melissa L. Mann | Director | she/her/hers
Bureau of Historic Sites & Museums | Pennsylvania Historical & Museum Commission
400 North Street E-107 | Harrisburg, PA 17120

[REDACTED]
www.phmc.state.pa.us

Contract for Sailing Services on the U.S. Brig Niagara

Term – Upon signatures - December 31, 2023

As consideration for the work contemplated under this agreement, PHMC will reimburse FNL \$350,000.

Scope of Work

1. General

Overview

- 1.1 The Pennsylvania Historical and Museum Commission (PHMC) owns and administers the *U.S. Brig Niagara* and is authorized to sail the ship within the means at its command. Opportunities to sail aboard the *U.S. Brig Niagara* provide the public with impactful and engaging interpretive experiences relating to the maritime and military history of Pennsylvania and specifically the Erie region.
- 1.2 PHMC will contract with the Flagship Niagara League to facilitate the operation of an educational day sail program aboard the *U.S. Brig Niagara*.

2. Sailing Program

2.1 Sailing Program Activities

Under the oversight of the Commission's Site Administrator, the FNL will coordinate and operate a day-sail program aboard the *U.S. Brig Niagara* for PHMC from May 13 – September 30, 2023, as attached at Exhibit B. Any changes to the Day Sail Schedule as outlined in Exhibit B must be approved in writing by PHMC 20 business days in advance of the proposed schedule change. The 2023 Sailing Program will include at least 30 public day-sails and 16 school sails.

When in home port, the *U.S. Brig Niagara* will be open to public visitation and the FNL's ship crew will assist in providing deck tours as part of daily museum operations.

2.2 Sailing Program Logistics

FNL will be responsible for all participant scheduling and ticketing.

All day sail ticket sales will be processed through the PHMC's point of sale system. Proceeds from the day sail program will be placed in a restricted fund and utilized to support the *U.S. Brig Niagara*.

Day sails on the *U.S. Brig Niagara* will occur between 2 P.M. and 6 P.M., Eastern Time. Aside from the above, no sailing of any vessel may take place from the Museum on days or hours that the Museum is closed to the public.

FNL shall provide marketing for the *U.S. Brig Niagara* day sail program. FNL shall submit all marketing plans and pieces to the EMM Site Administrator for written approval prior to distribution. The Site Administrator shall review such requests in a reasonable and timely fashion.

PHMC and FNL will hold bi-weekly meetings to review the progress of contracted services. Meetings will include the Site Administrator for the Erie Maritime Museum, the FNL Executive Director, and other representatives as required.

2.3 Site Access

FNL's full time *U.S. Brig Niagara* crew and apprentices shall have access to the designated areas (see Exhibit C) within the Erie Maritime Museum between 7 A.M. and 8 P.M., Eastern Time, each day.

The FNL will at its sole cost and expense provide restroom and shower facilities for crew off of Erie Maritime Museum property.

PHMC will assign at no charge office space at the Erie Maritime Museum to FNL crew serving in the positions of Captain, Chief Mate, Shipwright, 2nd Mate, 3rd Mate, Boatswain and Cook on the *U.S. Brig Niagara*. PHMC will provide FNL with a written description of, among other features, the location of the area, its specific use, and the hours that the Associates may utilize the space. FNL will provide PHMC in writing the names, titles and job descriptions of crew assigned to the office space.

PHMC will provide at no charge use of the galley at the Erie Maritime Museum for daily meals during the sailing season. Use of the galley is governed by the 7 A.M. to 8 P.M. access parameters.

The FNL will at its sole cost and expense provide a cleaning service for areas within the Museum where crew are permitted access. The PHMC will outline all cleaning standards that govern this section.

2.4 Interpretation

The Museum's day sail and other interpretive programs related to the *U.S. Brig Niagara* will be developed under the direction of the Commission's designee.

PHMC staff will develop, with FNL input, interpretive programming to be delivered as part of the *U.S. Brig Niagara* day sail program. FNL crew will deliver interpretive programming as part of the *U.S. Brig Niagara* day sail program.

PHMC and FNL staff will work together to train Erie Maritime Museum volunteers and necessary staff in the delivery of interpretive programming aboard the *U.S. Brig Niagara*.

2.5 Personnel

FNL will hire professional crew and apprentices as necessary to fulfill the day sail program set forth in section 2.1 above. FNL shall hire only persons who have proof of requisite training, certifications and experience to fulfill the position descriptions within the sailing program and any Coast Guard requirements related to the safety and the Niagara's ability to maintain Coast Guard certification as an approved sailing school vessel.

FNL will provide PHMC copies of all required background checks for all paid staff affiliated with the work outlined in this contract.

The FNL shall have at maximum twenty-one seasonal crew and apprentices permitted to berth aboard the *U.S. Brig Niagara* from April 1 through October 7, 2023. FNL full time crew and apprentices will each execute an agreement with PHMC for the period of time they will berth aboard the *U.S. Brig Niagara*. No person will be permitted to berth or otherwise reside on the *U.S. Brig Niagara* at any time without a fully-executed agreement in hand by PHMC on the first day of any such access. PHMC retains discretion to terminate such agreements and deny any FNL crew or apprentice access to Erie Maritime Museum and the *U.S. Brig Niagara*.

The PHMC Site Administrator will orient all FNL employees with regard to on site operations, security, access, cleaning standards and standards of behavior at the Museum complex.

2.6 Volunteers

All volunteers working to develop and implement the *U.S. Brig Niagara* day sail program will be volunteers registered with PHMC and supervised by PHMC staff.

FNL staff and *U.S. Brig Niagara* crew will work with PHMC staff to provide volunteers with the training necessary to assist in sailing the *U.S. Brig Niagara* during day sails.

The PHMC Site Administrator will supervise the volunteer program at the Museum, including the *U.S. Brig Niagara*. All volunteers will be registered with PHMC and provide their services in accordance with all Commission policies and procedures. All volunteers shall be deemed employees of the Commonwealth within the meaning of the terms "employee" as defined in section 104 of the act of June 2, 1915 (P.L. 736, No.338), known as the "Workers Compensation Act." This paragraph pertains to registration and worker's compensation treatment and not to paid employees of the FNL.

2.7 Site Management

The PHMC Site Administrator serves as the day-to-day manager of the Site and provides operational oversight for all Site-associated programming and contracts, including activities of the *U.S. Brig Niagara*.

The Commission shall delegate day-to-day coordination and operation of the *U.S. Brig Niagara* day sail program and maintenance to the FNL for the purposes of this Agreement. The FNL shall operate the *U.S. Brig Niagara* in consultation with PHMC.

Supervision of FNL personnel will be conducted in accordance with mutual agreement between the Site Administrator and the FNL with the understanding that the Site Administrator, as the designee of the PHMC's Executive Director, retains final supervisory authority. The Captain of the *U.S. Brig Niagara* shall have command of that vessel and its crew during sailing activities.

2.8 Other

FNL shall not engage in any fundraising or revenue raising activities for the benefit of the *U.S. Brig Niagara* without the express prior written approval of the Commission.

This agreement does not contemplate, and is not intended to effect, the transfer of ownership of the *U.S. Brig Niagara* from the PHMC to the FNL and does not contemplate and is not intended to operate as a lease of the *U.S. Brig Niagara* between the PHMC to the FNL.

FNL understands and agrees that all rights, including, without limitation trademarks, logos, and copyrights, in and to the Site and the *U.S. Brig Niagara* as well as images of Commonwealth and Commission employees in uniform or in taglines are and shall remain the intellectual property of the Commonwealth (Commonwealth Intellectual Property). Nothing contained in this Agreement shall be deemed to grant the FNL any right, title, or interest in the Commonwealth Intellectual Property, in whole or in part.

3. Maintenance

3.1 FNL shall conduct the annual cyclical maintenance of the *U.S. Brig Niagara*, maintaining the ship in a satisfactory state of maintenance and repair as to allow for its utilization for the sailing program as set forth in 2.1, determined by the Commission and FNL in accordance to applicable maritime standards.

3.2 FNL shall make repairs as are necessary to maintain the Niagara in good order and repair in order to facilitate the sailing program as set forth in 2.1. The Commission, to the best of its ability, will continue to provide and maintain the workshops and the tools which are to be used for the benefit of the facility and the *U.S. Brig Niagara*, in accordance with this Agreement. The Commission may require FNL employees to possess related certifications or credentials in order to access and use or operate maintenance equipment, workshops and tools. FNL employees may not operate Commission vehicles, however, the Commission may assist FNL with transportation needs as it deems necessary.

- 3.3 FNL shall notify the Commission as soon as FNL determines that any such repair, maintenance, or improvement is necessary in order to facilitate the sailing program as set forth in 2.1, advising the Commission of the nature and extent of such repair or maintenance and obtaining prior written approval except to the extent that immediate repairs are necessary.
- 3.4 The Commission shall at all times have the right to inspect the Niagara, and the ultimate determination as to the safety and seaworthiness of the *U.S. Brig Niagara* and the fitness and qualifications of any member of the crew to accomplish the sailing program as set forth in 2.1 shall rest with the Commission, in consultation with the duly appointed Captain of the *U.S. Brig Niagara* (“Captain”) or the Captain’s qualified designee.
- 3.5 All improvements made to the Niagara by FNL shall become the property of the Commonwealth, free and clear of all encumbrances.

4. Insurance

- 4.1 FNL, is required to obtain and maintain during the term of this Agreement and any subsequent Agreement reached between the parties, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under laws of the Commonwealth of Pennsylvania:
- 4.1.1 Worker’s Compensation Insurance for all of its employees not covered under the Jones Act or under Longshoreman/Harbor Worker insurance and shall require proof of such for any contractor engaged in work on the vessel as required by law.
- 4.1.2 Public Liability and Property Damage Insurance to protect the Commonwealth, FNL, and any and all contractors from claims for damages for personal injury(including bodily injury), sickness or disease, accidental death and damage to property, including the loss of use resulting from any property damage, which may arise from the activities involving the vessel or performed at the site, whether the activities or performance be by the Commonwealth, by FNL, by any contractor, or by anyone directly or indirectly employed by either. The minimum amount of liability coverage shall be \$1,000,000 and the minimum of excess liability insurance coverage shall be \$5,000,000 for a total of \$6,000,000. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an insured, against the insurance coverage in regard to work performed for the Commonwealth.
- 4.1.3 Property Insurance to cover damage to, or loss of, the vessel and/or the hull caused by weather or other Acts of God, vandalism, theft, and any other peril which causes damage to, or loss of, the vessel. The minimum amount of

coverage shall be the assessed value of the vessel determined by the insurance underwriter.

- 4.1.4 *Pollution Insurance* to cover liability to the United States or any other claimant for discharge of oil or hazardous substances. The minimum amount of coverage shall be \$1,000,000.

At each insurance renewal during the term of the Agreement, FNL shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth of Pennsylvania and the Pennsylvania Historical Museum Commission as additional insureds along with FNL and shall contain a provision that the coverage afforded under these policies will not be canceled or changed until at least (30) days written notice has been given to the Commonwealth of Pennsylvania.

The Commonwealth shall be under no obligation to obtain such certificates from FNL or the insurers. Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of FNL's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

5. Invoicing

I. Invoicing Procedures.

- A. FNL shall invoice PHMC biweekly after the initial invoice, and at the completion and PHMC's acceptance of the work.
- B. Each invoice to PHMC shall include reference to the fund commitment number, full documentation for all project expenses.
- C. PHMC shall designate a person who will inspect the work on a weekly basis. Other PHMC staff may also inspect the work at any time.
- D. During the project, if there is not a FNL invoice submittal to PHMC ready or needed for that biweekly invoice period, FNL will communicate such to PHMC.
- E. Invoices and accompanying receipts are to be submitted as a hard copy to: the Bureau of Historic Sites and Museums, 30HISTSITE, PO Box 69181, Harrisburg, PA, 17106. Concomitant with the foregoing, invoices and accompanying receipts should be submitted electronically to: Charles Fox, Western Division Chief, BHSM.
- F. FNL will invoice to PHMC for project charges and invoices that have been received and processed by FNL to date with the understanding that purchases, invoices, and receipts may not necessarily be processed in the same period in which they are made. FNL will properly validate and account for all expenses with source documentation and retain records for a clear audit trail. PHMC's designee must approve the reimbursement before invoices will be paid. FNL shall preserve, maintain, and make available for inspection its records for a period of five years from the date of final payment under this Agreement.

6. Licensed Activities

- 6.1 PHMC will permit FNL to operate, at its sole expense, 7 sail training programs aboard the *U.S. Brig Niagara* from May 14 – September 30, 2023, as outlined in Exhibit B. As part of those sail training programs, FNL will be permitted to sail the *U.S. Brig Niagara* to ports of call outside of Erie, PA. Any changes to the schedule of sail training dates and/or ports as outlined in Exhibit B must be approved in writing by PHMC 20 business days in advance of the proposed schedule change.

FNL agrees that it shall employ the *U.S. Brig Niagara* exclusively as a Sailing School Vessel for the sole and proper use of itself and students, during the term of the licensed activities permitted by this agreement. FNL further agrees not to transport merchandise for hire, or engage in any trade, or in any way violate any laws of the United States or of any other government within the jurisdiction of which the vessel may be at any time during this agreement.

FNL expressly agrees that the operation of the *U.S. Brig Niagara* will be limited to the areas and waters specified in the USCG Certificate of Inspection.

FNL will pay to PHMC a licensing fee of 5% per sail training registration fee received. FNL will retain all other proceeds from the sail training programs. Licensing fees will be remitted to PHMC 10 working days prior to the start of each sail training program.

Each sail training program class size will be capped at 28 people.

Trainees shall have access to the designated areas (see Exhibit C) within the Erie Maritime Museum between 7 A.M. and 8 P.M., Eastern Time, each day while under the supervision of an FNL *U.S. Brig Niagara* crew member or apprentice.

Trainees will be permitted to berth aboard the *U.S. Brig Niagara* during the sailing program for which they are registered. The FNL will at its sole cost and expense provide restroom and shower facilities for trainees off of Erie Maritime Museum property.

The PHMC Site Administrator will orient all trainees with regard to on site operations, security, access, cleaning standards and standards of behavior at the Museum complex.

Any volunteers providing service to a sail training program will be providing service to the FNL during the duration of that service and the FNL will be liable for said volunteer. The volunteer will not be covered by the Commonwealth's worker's compensation under these circumstances.

All regionally based volunteers will not berth on the *U.S. Brig Niagara* when the ship is in home port Erie.

FNL, at its sole expense, is required to obtain and maintain during the term of this Agreement all insurance necessary to conduct sail training programs. Insurance must be issued by companies acceptable to the Commonwealth and authorized to conduct such business under laws of the Commonwealth of Pennsylvania. The Commission and the Commonwealth shall be listed as additional insured party under the aforementioned required policies.

FNL shall maintain the *U.S. Brig Niagara* in good order and condition, during all sail training programs. The Commission shall have the right to inspect the *Niagara* at all times during FNL's sail training programs.

In all published announcements and fundraising materials regarding the sail training program, FNL shall include an acknowledgement of PHMC and Commonwealth in-kind funding. The acknowledgement must stand alone and not be combined with acknowledgements of funding from other public and private sources.

FNL will include language acknowledging PHMC and the Commonwealth as the owner and administrator of the *U.S. Brig Niagara* in all sail training program marketing and fundraising materials and in any displays exhibited at ports of call. Acknowledgement language will be approved by PHMC and must be prominently displayed.

FNL shall have no rights, power, or authority to create, incur, or permit to be imposed upon the *U.S. Brig Niagara* any liens or encumbrances of any nature.

Budget	
Day Sailing Program	
Insurance	
Maintenance	