

Park Service Lease

Attachment #10 – Town of Beaufort Use and
Occupancy Agreement

USE AND OCCUPANCY AGREEMENT

This USE AND OCCUPANCY AGREEMENT ("Agreement") is made by and between the TOWN of BEAUFORT, a North Carolina municipal corporation ("Town") and Cape Lookout National Seashore (Seashore), a unit of the National Park Service ("NPS"), for the purposes set forth herein.

RECITALS

WHEREAS, the Town owns certain real estate located in Carteret County, North Carolina, known as the Town Hall, located at 701 Front Street, Beaufort, North Carolina ("Town Hall") and Grayden Paul Park, which has access to Taylor's Creek and is located directly across Front Street from the Town Hall. Collectively, the Town Hall and Grayden Paul Park are referred to herein as the "Town Facilities;" and

WHEREAS, the Seashore intends to offer its visitors the opportunity to enjoy the unique natural and cultural resources situated on Shackelford and Core Banks *via* passenger ferry transportation service from a launch point in Beaufort, North Carolina; and

WHEREAS, this passenger ferry service will be provided by the Seashore through NPS concession contract CC-CALO001-14 ("Concession Contract") between the National Park Service ("NPS") and a Concessioner pursuant to Public Law 105-391, a copy of which shall be attached hereto and incorporated herein as if set forth verbatim in this Agreement. The passenger ferry transportation service referenced in this Agreement, and more fully described in the Concession Contract, shall hereinafter be referred to herein as the "Concession Operation;" and

WHEREAS, the Seashore also desires to provide visitor orientation and other related services to the public from a suitable location in the Town of Beaufort; and

WHEREAS, the Seashore desires space for providing these visitor services in a recognizable, centrally-located place within the Town of Beaufort; and

WHEREAS, the Town Hall has adequate interior space to accommodate the Seashore's visitor orientation and other related services, and Grayden Paul Park has a public dock suitable for accommodating the Concession Operation; and

WHEREAS, the Town and Seashore believe that working together to ensure the success of the Concession Operation and visitor outreach activities is of mutual benefit; and

WHEREAS, the Town and Seashore believe that utilizing the Town Facilities in furtherance of accomplishing those objectives is a worthy and valuable cooperative strategy which will increase tourism and visitor appreciation of the area's unique natural and cultural resources; and

WHEREAS, the Seashore has legal authority to enter into this Agreement under the NPS Organic Act, 16 U.S.C. §§1-4.

NOW, THEREFORE, in exchange for the benefits to the Town as a result of the Seashore providing the Concession Operation and conducting visitor outreach activities in the Town of Beaufort, the parties agree to the following terms and conditions.

TERMS AND CONDITIONS

1. The Town hereby grants to the Seashore the non-revocable right to use and occupy certain areas and structures within the Town Facilities for the purpose of enabling and facilitating the Concession Operation, visitor outreach activities, and for such other purposes described herein (collectively hereinafter the "Permitted Use").
2. The Town's grant herein is more specifically described as the non-revocable right for the Seashore and Concessioner to use and occupy the following areas and structures within the Town Facilities (hereinafter "Permitted Use Facilities") for engaging in the Permitted Use:
 - (i) Exclusive use and occupancy of approximately 800 square feet of space within the Town Hall for, among other things, Seashore orientation, visitor education, and Concession Operation ticket sales; and
 - (ii) Exclusive use of three (3) boat slips at the Grayden Paul Park dock on Taylor's Creek sufficient to accommodate the mooring and refueling of the vessels required or authorized in the Concession Contract for use in the Concession Operation; and
 - (iii) Exclusive use of 85 parking spaces within 1500 feet the Town Hall for Concession Operation passengers and Concessioner staff.
 - (iv) The non-exclusive use of the common areas and restroom facilities within the Town Hall, and at or upon the dock and boat slips described in subparagraph (ii) at Grayden Paul Park for use in connection with the Concession Operation.
3. In addition to the non-revocable right of use and occupancy granted herein, the Town agrees to carry out the commitments it made to the Seashore in the "Cape Lookout National Seashore Town of Beaufort Departure Site Response" dated January 6, 2011, a copy of which is attached hereto and incorporated herein as if set forth verbatim in this Agreement.
4. NPS shall cause the Concessioner to conduct the Concession Operation in such a way that the Permitted Use Facilities shall remain in the same or similar condition as they were on the effective date of this Agreement, reasonable wear and tear excepted.

5. The Town shall pay the costs of utilities incurred for use of the Permitted Use Facilities in furtherance of the Permitted Use, to include but not be limited to electricity, water, sewer, and such other utilities to enable such Permitted Use of the premises by the Seashore and the Concessioner.
6. No ad valorem, property or other use or occupancy taxes will be assessed by the Town to the Seashore, NPS, or the Concessioner during the term of this Agreement.
7. NPS and/or the Concessioner shall be responsible for the installation and maintenance costs for any telephone, computer or other communication services or devices utilized by NPS or the Concessioner in furtherance of the Permitted Use at or within the Permitted Use Facilities.
8. NPS and the Seashore are self-insured and are not required to obtain liability insurance for the activities associated with the Permitted Use. NPS and the Seashore's liability is and shall be limited to any claims allowed by the Federal Tort Claims Act, 28 U.S.C. §§2671-2676.
9. The Town acknowledges that the NPS expects to enter into a 10-year Concession Contract with a Concessioner to assist in or implement some of the activities associated with the Permitted Use, most notably the Concession Operation. As required in the Concession Contract, the Concessioner will procure and continuously maintain insurance policies of the types and in the minimum amounts detailed in the Concession Contract during its 10-year term and any subsequent renewal periods.
10. The Town shall maintain a general property insurance policy during the term of this Agreement with sufficient coverage to enable repair or replacement of the Permitted Use Facilities. In this regard, the Town represents that said insurance policy shall cover the Permitted Use Facilities against damage caused by natural disaster, vandalism, fire and other casualties.
11. NPS shall cause its Concessioner to indemnify, save, hold harmless and defend the Town, its respective boards, officers, employees, representatives and agents against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including but not by way of limitation, attorneys' fees and court costs) arising out of injury to persons or damage to property caused by Concessioner's acts or omissions arising out of or incidental to the Permitted Use. This indemnification provision is separate and apart from, and in no way limited by, any insurance policy or coverage provided by Concessioner pursuant to the Concession Contract.
12. The initial term of this Agreement shall be for a period of ten (10) years from the effective date of the Concession Contract, which is expected to be January 1, 2014. In any event, the initial term of this Agreement shall commence not later than the effective date of the Concession Contract. This Agreement may be extended for an additional

period up to three (3) years beyond the initial term, and such renewal shall be automatic unless NPS gives the Town notice of its intent not to renew within a reasonable time before expiration of the initial term. Any renewal beyond the initial term shall be executed by written instrument signed by authorized representatives of the parties. The non-revocable right to use and occupy the Permitted Use Facilities granted in this Agreement shall be in effect continuously and without interruption for the initial ten (10) year term and any renewal term thereafter.

13. The Town acknowledges that the intent of this Agreement is to provide for the use of the Permitted Use Facilities, in part, by a Concessioner who shall be authorized to conduct the Concession Operation for a period of ten (10) years under the Concession Contract. The non-revocable right to use and occupy the Permitted Use Facilities as set forth in this Agreement is a necessary and essential element in support of the Concessioner successfully performing the Concession Contract and of the parties thereto avoiding a breach of contract. Accordingly, the Town specifically agrees that this Agreement may be terminated only upon the express written consent of the NPS with reasonable advance notice to the Town, and that the Town shall not have the unilateral right to terminate this Agreement, or any of its rights or obligations hereunder, except and unless the NPS consents to such termination.
14. This Agreement shall not be assigned. In the event of an assignment, this Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, it is understood and agreed that nothing precludes NPS from contracting with others to conduct the Concession Operation, or to operate, manage, assist in, or implement the duties and responsibilities associated with the Permitted Use.
15. Pursuant to 31 U.S.C. § 1341, nothing herein contained shall be construed as binding the Seashore or NPS to expend in any one fiscal year any sum in excess of, or in advance of, appropriations made by Congress for the purpose of this Agreement for that fiscal year, or to involve the Seashore or NPS in any contract or other obligation for the expenditure of money in excess of such appropriations.
16. This Agreement is the sole and exclusive agreement between the Town and the Seashore, and this Agreement supersedes and replaces any prior agreements previously entered into by and between the Seashore and any of the Town's predecessors in interest relating to the Permitted Use Facilities, if any. No consideration, except as is expressly contained in this Agreement, shall be due, payable or owing from either party to the other.
17. This Agreement shall be duly filed and recorded in the public records of Carteret County, North Carolina.
18. This Agreement shall not be construed for or against any party on the basis that such party drafted any portion of this Agreement.

19. This Agreement may be executed in counterparts, the counterparts of which, when taken together, shall be deemed to constitute an entire and original Agreement. Signed faxed, duplicate, or scanned copies of this Agreement may serve as originals.
20. The Town represents that it has authority to enter into this Agreement and that there are no deed restrictions, covenants, or other property interests or potential or actual third party claims that will adversely affect the non-revocable right of use and occupancy granted by the Town to the Seashore in this Agreement.
21. The effective date of this Agreement shall be the date on which the signatory for the Seashore has affixed his/her signature to this Agreement, which shall occur after the Town's duly authorized signatory has signed this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed the day and year written below.

TOWN OF BEAUFORT:

By: *Charles W. Burgess, Jr.*
 Charles W. Burgess, Jr., Town Manager

Date: 2/22/13

STATE OF North Carolina
 COUNTY OF Carteret

The foregoing instrument was acknowledged before me this 22nd day of February, 2013, by Richard Stanley and Charles Burgess., the Mayor and Town Manager, respectively, of the Town of Beaufort, a municipal corporation, on behalf of the corporation. Such persons are personally known to me.

Deborah L. Graham

Deborah L. Graham

[Print or type name]
 Notary Public,
 State of North Carolina at Large

DEBORAH L. GRAHAM
 NOTARY PUBLIC
 CARTERET COUNTY, NC
 MY COMMISSION EXPIRES
9-15-14

NATIONAL PARK SERVICE:

By: *Patrick M. Kenney*
Patrick M. Kenney, Superintendent
Cape Lookout National Seashore

Date: 2-22-13

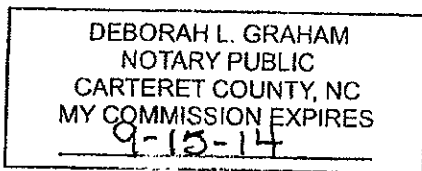
FORM APPROVED:

By: *Peter Fondry*
Peter Fondry, Attorney-Advisor
Office of the Solicitor
Southeast Region

Date: 2/19/13

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

The foregoing instrument was acknowledged before me this 22nd day of February, 2013, by PATRICK M. KENNEY, who is personally known to me or produced a NC driver's license as identification.



Deborah L. Graham

Deborah L. Graham
[Print or type name]
Notary Public,
State of North Carolina at Large

From: Charles Burgess
To: russet_wilson@nps.gov
Cc: wouter_ketel@nps.gov
Subject: Town of Beaufort response to ferry departure study
Date: 01/06/2011 01:47 PM

Cape Lookout National Seashore
Town of Beaufort Departure Site Response

The following represents the Town of Beaufort's response to the considerations, requirements and questions put forth by the National Park Service (NPS) in a document presented to the Town manager in late November, 2010.

PARTNERSHIP CONSIDERATIONS

- The Town is in general agreement with the development program outlined in the NPS proposal. The Town is prepared to provide the logistical and facility support for the landside and waterside elements of the program. The NPS should be made aware that the Town dock was replaced this past summer due to the deterioration of the pilings. The engineered dock is wider and substantially sturdier than the previous facility. Although we understand it is not the choice of the NPS to utilize what is referred to as the BB&T dock in the presented development plan, please be aware that ownership/usage issues have been resolved and this facility is also available without ownership/control issues. The Town does understand the NPS' primary interest at this time is to utilize the public dock at Grayden Paul Park. The Town concurs with this choice but would also concur with the usage of the BB&T dock should the NPS decide at a future date to switch.
- If selected, the Town has no hesitation in entering into a 25 year commitment with the NPS for the use of the landside and waterside elements addressed in the development program. This commitment would be in the form of a letter of intent or other document specified by the NPS.

CRITICAL QUESTIONS

Parking Availability

- The Town will provide as much parking as is practically available for the use of the NPS ferry operator's passengers in the immediate vicinity of the ferry departure site. The Town can commit to 70 existing parking spaces located on Front Street. These spaces are currently located between the intersection of Front Street with Queen and Live Oak Streets. In addition, 15 spaces will also be available on Pollock Street near its intersection with Front Street. These "primary" parking spaces for NPS visitors will be signed accordingly and will be monitored for compliance. Some type of ticket placed on the dashboard or hanging from the rearview mirror will need to be utilized to identify the proper usage of these designated spaces for the Town enforcement personnel. Additional public parking (300 spaces +) within a 3 to 4 block walking distance is also available.

Wayfinding Considerations

- The Town will work with the NPS and the ferry operator to ensure that needed wayfinding signage is placed both at the departure site as well as along access routes

- The Town would insure the facilities in Grayden Paul Park are covered under the Town's general property insurance policy to enable replacement/repair of the facilities should said facilities be damaged by natural disaster, vandalism, fire, etc.
- The Town will provide for routine maintenance of all buildings and facilities during the term of the agreement with the NPS.

Beaufort Front Street

- The Town owns Grayden Paul Park, the docks and the grass area across from the post office property (north of the fence).
- There are no restrictive covenants or deed restrictions that will affect the NPS usage of this area as outlined in the NPS program elements.
- Any existing public uses of the Grayden Paul Park docks will be relocated to another public facility.
- The Town previously addressed the status of the post office property acquisition under "Phasing Considerations".
- The Town is prepared to discuss in detail the spatial needs of the NPS in the post office building. In the past, the Town has heard somewhere between 700 and 1000 square feet being needed. We anticipate being in a scenario in the spring of 2011 to be "programming" the building and will need NPS input. The Town will provide conditioned space for use by the NPS and the ferry operator. The area to be provided will be located on the south east portion of the structure. All aspects (access, restrooms, etc.) of the renovated structure will meet ADA standards.
- The Town will evaluate the possible future purchase of adjacent riparian and waterfront properties to Grayden Paul Park as such properties become available.
- The Town would fund the capital improvements as stated in the current program elements to ensure this will be a functioning site by the spring of 2013. The Town would also entertain consideration of providing for other future needed capital improvements.

STARTUP IMPROVEMENTS – SPRING OF 2013

The Town has reviewed the startup capital improvements delineated in the program element for the ferry departure site. We have no reservations in ensuring the NPS that the required improvements can be in place in advance of the spring of the 2013 startup of operation. The Town assumes the financial responsibility for these improvements. We are committed to the rehabilitation/reconstruction of the dock facilities (including utilities), the dedication of parking for ferry patrons, providing for passenger loading/unloading (including buses), construction of orientation and queuing area at Grayden Paul Park, rehabilitation of post office space, providing ADA accessible restroom facilities and the installation of wayfinding signs.

The Town of Beaufort appreciates the opportunity to be considered as the Cape Lookout National Seashore Departure Site. Should there be questions, concerns or the need for additional information, please contact the Beaufort Town Manager, Charlie Burgess, at 252 269-4809 or by e-mail bftmgr@beaufortnc.org.

to the area. Some of the wayfinding signs (dependent on actual location) may fall within the Historic District of the Town. When and if that is the case, the Town will work with the NPS and the sign vendor in obtaining the proper permits and approvals. This is an activity the Town has participated in previously with entities such as the North Carolina Maritime Museum and the Rachael Carson Reserve. The Town recognizes that wayfinding signage is needed and necessary in order to direct the NPS visitors to the departure site.

Phasing Considerations

- The Town and the United States Postal Service (USPS) have concluded our negotiations and we believe we are soon to be in a position to move forward with finalizing the purchase. The Town is currently awaiting an appraisal report to validate the purchase price for loan purposes. This report is scheduled to be completed by the end of January, 2011. Assuming all is in order, the Town would own the property within 90 days. Should there be a problem in comparing the appraisal value and purchase price, a third party is prepared to step in and finalize the sale. Under this scenario, the third party will renovate the building to the Town's specifications and lease the entire structure to the Town under a 30 year agreement. The Town will have the right to sublet space in the building as it desires. Under a ownership or lease scenario, the Town is positioned to provide space to the NPS for ticket sales and orientation
- New public restrooms will be provided with direct access being from the lobby area.
- The primary use of the Post Office property is to relocate the Beaufort Town Hall into the structure. Under the aforementioned acquisition scenarios, should the Town purchase the property, we anticipate being "in" the structure within 12-15 months. Should the 3rd party acquire the property and renovate the structure per the Town's requirements, we anticipate being "in" the structure in 12 months or less. Under either scenario, the Town does not envision the facility not being available for the NPS and ferry operator in 2013. Therefore, no contingency plan for facility space is offered in this presentation.
- If selected, the Town will work diligently with the NPS in providing that all facilities and needs of the program are in place for the 2013 startup. Meaning that parking, dredging, rehabilitation of docks, accessory structures and signage will be addressed by the Town in 2012 and during the winter of 2013 (if necessary) to have this project ready to go when the ferry operator commences.

Setback Requirements

- There are no setback requirements from the street and side lot lines. Setbacks from the water are determined by the North Carolina Department of Environmental and Natural Resources under the Division of Coastal Management. Development. Plans will need to be submitted through this State Agency for approval of structures within 75 feet of the mean high waterline.

Operation and Maintenance

- The Town will assume responsibility for the cleaning/maintenance of the public restrooms and lobby area of the post office building.
- The Town will assume primary responsibility for ongoing routine maintenance of the buildings and grounds.
- The Town will participate in the removal/cleanup of any storm related debris in the area of Grayden Paul Park.