

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 9, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: APPROVAL OF TWO LICENSE AGREEMENTS WITH THE POTOMAC RIVERBOAT COMPANY TO BERTH THE *MATTHEW HAYES* AND THE *ADMIRAL TILP* IN COMMERCIAL DOCK SPACE AT THE CITY MARINA

ISSUE: Approval of two four-year license agreements with the Potomac Riverboat Company for the *Matthew Hayes* and the *Admiral Tilp* for commercial dock space at the City Marina.

RECOMMENDATION: That City Council approve and authorize the City Manager to execute the attached four-year license agreements (November 1, 2004 through December 31, 2008) with the Potomac Riverboat Company, allowing it to berth the *Matthew Hayes* (Attachment 1) and the *Admiral Tilp* (Attachment 2) in commercial dock space at the City Marina.

DISCUSSION: The *Matthew Hayes* and the *Admiral Tilp* are used by the Potomac Riverboat Company to provide sightseeing tour boat service. The existing five-year license agreements for the *Matthew Hayes* and the *Admiral Tilp* contain the expiration date of June 30, 2004. However, the City and the Potomac Riverboat Company negotiated an extension of those license agreements until October 31, 2004, to allow both parties time to negotiate and finalize new license agreements. Because negotiations were narrowed to a few issues, but not concluded as of October 31, a further short-term extension of the licenses was orally agreed upon, rather than formalized with a second written license extension.

The City and the Potomac Riverboat Company agree on all but two terms of the proposed license agreements: (1) the continuation of the "right-of-first-refusal" provision, and (2) whether the new license agreements should be for a four rather than a five-year period. The proposed license agreements, which staff recommend, do not provide a right-of-first-refusal and are for a four-year license period.

Right-of-First-Refusal. The existing agreements include a "right-of-first-refusal" provision which requires the City to negotiate in good faith with the Potomac Riverboat Company for license renewals before the City may solicit bids from other interested parties. If this provision were continually placed in every renewal license, the Potomac Riverboat Company would in effect enjoy a nearly perpetual private right to use public property (i.e., the Marina dock space) to the exclusion of all others. The private use of public property is often best determined on an arms-length competitive basis to protect the public's interest. By interjecting a level of competition into the license determination process, the public's interest is best served. This is why the new license

agreements, as proposed by staff, do not contain a right-of-first-refusal provision, thereby allowing new license agreements to be competitively bid for the period starting on January 1, 2008.

The Potomac Riverboat Company has had the right to berth the *Matthew Hayes* at the City Marina since June 1994 (approximately 10½ years) and has had the right to berth the *Admiral Tilp* since June 1989 (approximately 15 years). The Potomac Riverboat Company also currently holds licenses for three of the other four commercial berths at the Marina. The Potomac Riverboat Company has provided a quality service to its customers, and has been a good, active corporate citizen of the City during this time period. While the *Admiral Tilp* and *Matthew Hayes* licenses are now expiring, the other three licenses held by the Potomac Riverboat Company expire in 2007.

In view of the proposed new development along the waterfront in Washington, D.C. (a professional baseball stadium and a renewed Anacostia waterfront) and Maryland (National Harbor with its large conference center hotel), City staff recommend that, at the end of the renewed *Matthew Hayes* and *Admiral Tilp* licenses, at the end of 2008, the City request proposals from all interested parties without being required to first negotiate the renewal of any license with the Potomac Riverboat Company. This strategy would also require that the remaining three licenses with the Company, which expire in 2007 (two of which currently have right-of-first-refusal clauses), be renewed but without a right-of-first-refusal clause with an ending date of December 31, 2008, in order to match the end date of the proposed *Admiral Tilp* and *Matthew Hayes* licenses.

The Potomac Riverboat Company does not agree with the staff position, and prefers that the new license agreements continue to include a requirement that the City first negotiate with the Company prior to requesting proposals from other parties.

License Term. Staff recommend that, the term of the new license agreements for the *Matthew Hayes* and the *Admiral Tilp*, be four, rather than five, years. A four-year term until the end of 2008 will result in the end date of these agreements approximating the planned December 31, 2008 end date for the to-be-renewed license agreements of other vessels at the Marina. This will then allow a comprehensive, competitive bidding process to occur. Terminating the license in this manner will also mean that, at the end of 2008, the *Admiral Tilp* will have enjoyed over 19 years at the City Marina without having competed for their space in a public process and the *Matthew Hayes* will have enjoyed over 14 years at the Marina, without having competed for their space in a public process.

Other License Terms. In regard to all other license terms, the City and the Potomac Riverboat Company are in agreement. The proposed license agreements obligate the Potomac Riverboat Company to pay the City license fees totaling \$100,898 over the four-year term of the agreements, of which \$51,360 are fees for the *Matthew Hayes* and \$49,538 for the *Admiral Tilp*. Fees will remain at this existing level for the first year of the agreements, and will subsequently increase 2.5 percent annually for the remaining three years of the agreements. (Fees before

inflation adjustments are \$1,320 per month for the *Matthew Hayes* and \$1,273 per month for the *Admiral Tilp*.)

In years when the Potomac Riverboat Company is liable for personal property taxes on the *Matthew Hayes* and the *Admiral Tilp*, because they are moored within the City, the tax amount paid will be credited towards the license fee. This credit is now approximately \$4,000 per year for both vessels. Furthermore, the terms of both proposed license agreements include a prorated reduction in the amount that the company must pay in the event that a vessel, during its operating season, is unable to operate as a sightseeing tour boat for more than seven consecutive days. These two conditions have been included in prior agreements.

Another condition of the license agreements is that the City and the company negotiate the terms of the agreements as they pertain to specific water taxi/commuter services from the City to the proposed Washington, D.C. stadium for soccer and baseball, in the event that the stadium is confirmed and construction is underway. Along these same lines, the City reserves the right to negotiate specific terms and conditions with respect to the National Harbor for taxi and/or commuter service prior to National Harbor opening.

The proposed license agreements additionally state that the Potomac Riverboat Company must provide property and liability insurance for each vessel, and that the company agrees to indemnify and hold harmless the City. Use of the berth for each vessel shall be dependent upon the scheduling of other vessels or waterfront activities, dredging, pier construction and other waterfront and harbor improvements by the City. Finally, the Company will regularly remove at its own expense all litter, refuse, and debris generated by the operation of each vessel.

FISCAL IMPACT: The total expected revenue to the City over the term of the four-year license agreements is \$100,898, including \$51,360 for the *Matthew Hayes* and \$49,538 for the *Admiral Tilp* prior to the application of any tax credit.

ATTACHMENTS:

- Attachment 1. Proposed license agreement between the City of Alexandria and the Potomac Riverboat Company for the operation of the *Matthew Hayes*.
- Attachment 2. Proposed license agreement between the City of Alexandria and the Potomac Riverboat Company for the operation of the *Admiral Tilp*.

STAFF:

Mark Jinks, Assistant City Manager
Kirk Kincannon, Director, Recreation, Parks and Cultural Activities
Julie Rasmussen, Division Chief, Recreation, Parks and Cultural Activities

LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____ 2004, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Potomac RiverBoat Co. (the "Licensee").

WHEREAS, Licensee is the owner of the "Matthew Hayes" and desires to operate a sightseeing tour boat service ("Service"), using the "Matthew Hayes," from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking boats; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes in accordance with the terms and conditions set forth below;

NOW, THEREFORE, it is mutually agreed as follows:

1. Representations. By executing this Agreement, the Licensee warrants that it is the legal owner of the vessel described in paragraph 16 below (the "Vessel") and is authorized to enter into this Agreement.
2. Applicability of City, State and Federal Law. This Agreement is subject to title 6, chapter 3 of the Alexandria city code and all applicable provisions of federal, state and local law. In particular, this agreement is subject to, and Licensee shall comply with, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with the Rules and Regulations of the Alexandria Marina, including any amendments which may be adopted during the term of this Agreement. The current Rules and Regulations are set forth in Attachment A to this Agreement and are incorporated by reference into this Agreement as if fully set forth herein.

4. Insurance. Licensee shall provide a certificate of insurance to the Licensor that shows that Licensee, the Vessel and the float (as defined in paragraph 17), are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee (i) against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees, and (ii) against claims of personal injury and property damage arising from use of the float, as defined below in paragraph 17;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's sightseeing tour boat service, the Vessel, the floating access platform (as discussed below in paragraph 17), or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licensor shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this agreement, and to furnish evidence to the Licensor of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licensor shall be named on the liability insurance policy required by subparagraph (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subparagraph (b)(ii) that names Licensor as an additional insured, or the insurance required by subparagraph (c), or both, Licensee agrees to indemnify and hold Licensor harmless against all of the claims identified in said subparagraph (b)(ii) or against all losses incurred by Licensor that are identified in said subparagraph (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in paragraph 4(b), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses incurred by Licensor, resulting from or arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina or in the course of using the float.

6. Waiver of Licensor's Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is

in or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

7. Grant and Term of License.

(a) This Agreement grants non-exclusive permission for the Licensee to operate, on a regular basis, a sightseeing tour boat service using the Vessel from the berth (described below) at the Alexandria Marina for the term of the Agreement.

(b) Licensee shall be permitted to use the berth at the Alexandria Marina's North Pier that is shown in the drawing attached hereto as Attachment B ("Berth"). Licensee may employ the Berth for embarking and disembarking passengers of the Vessel and no more than one other vessel used in the Service; provided, that at no given time may more than one vessel utilize the Berth for embarking and/or disembarking passengers.

(c) In exchange for the Licensor's grant of permission to operate a sightseeing tour boat service and to berth the Vessel at the Alexandria Marina, Licensee agrees that, throughout the term of this Agreement, it will operate a sightseeing tour boat service, using the Vessel, (1) six days per week during the period from May 1 through Labor Day of each year; and (2) on weekends only during April, September and October of each year; provided, that it may take, on a reservation basis, groups of 25 persons or more on sightseeing tour boat excursions on weekdays during these months. The parties will negotiate in the future a commuter taxi service and/or other service between the Alexandria Marina and destinations in the District of Columbia, Maryland and Virginia, subject to approval by the City Manager.

The term of this license shall be from November 1, 2004, to and including December 31, 2008.

8. Special Conditions of License.

(a) Commuting Restriction. No voyage commencing before 9:30 a.m. on Monday through Friday of any week shall discharge passengers at any place other than the North Pier. The parties expressly agree that this condition is intended to prevent use of the Service or the Vessel for commuting purposes except as provided in paragraph 7(c), above.

(b) Trash Removal and Disposal. Licensee shall provide convenient on-board trash receptacles for use by clients of the Service and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of the Service. No trash or debris shall be deposited on any part of the Alexandria Marina by Licensee. If Licensee should fail to fulfill its obligations under this section, as determined by Licensor and in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(c) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessel presents a navigational hazard if berthed at the Berth, the Vessel shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Service also presents a navigational hazard, Licensor shall be permitted to embark and disembark passengers at the Berth. If Licensor makes such further determination, Licensor shall use its best efforts to make reasonable arrangements for the Service to continue from another location at the Marina.

(d) Refueling. Refueling operations are prohibited from taking place at the North Pier.

(e) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Service unless the sign complies with applicable provisions of the Alexandria Zoning Ordinance, and approval for such sign has been obtained from Licensor and, if applicable, the Alexandria Board of Architectural Review.

9. Renewal of License. This license may not be renewed.

10. Annual Fee.

(a) Licensee shall pay to Licensor an annual fee for the License. The fee shall be \$18,480.00 for the period November 1, 2004 through December 31, 2005, at the rate of \$1,320.00 per month; \$16,236.00 for the period January 1, 2006 through December 31, 2006, payable at the rate of \$1,353.00 per month; and \$16,644.00 for the period January 1, 2007 through December 31, 2007, payable at the rate of \$1,387.00 per month. All monthly payments of license fees shall be rendered in advance, on the first business day of the month for which such fees are due.

(b) In the event the Vessel, between May 1 and Labor Day, is, for mechanical reasons that are beyond the capacity of Licensee to repair, unable to operate as a sightseeing tour boat for more than seven consecutive days, then Licensee shall be entitled to a reduction in the installment payment next due following the end of said period in an amount equal to $(X/183) \times (Y)$, where X represents the total number of days during which the Vessel is out of service in the consecutive-day period and Y represents one-half of the annual personal property taxes on the Vessel that has most recently been paid by Licensee.

(c) If Licensee fails to pay any installment in full within ten calendar days of the installment's due date, Licensee shall be liable for a penalty, equal to 10 percent of said

installment, plus interest, based upon the amount unpaid and a rate of 10 percent per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

11. Application of Annual Fee Payments. License fee payments shall be applied as follows:

(a) At the commencement of each calendar year, Licensor shall estimate the amount of the personal property tax to be assessed against the Vessel for that calendar year. License fee installment payments up to the amount of the estimated tax shall be segregated by the City and applied in satisfaction of the tax liability once the Vessel has been assessed for that calendar year.

(b) License fee installment payments in excess of the taxes estimated by the City shall be retained by the City and applied in its sole discretion.

(c) If the tax actually assessed on the Vessel is less than the amount estimated by Licensor at the beginning of the calendar year, any excess funds segregated for payment of the tax shall be retained by Licensor as payment of the annual license fee. In no event shall such excess funds be refunded to Licensee.

(d) If the tax actually assessed on the Vessel is more than the amount estimated by Licensor at the beginning of the calendar year, Licensor shall credit toward the tax actually assessed such additional portions of subsequent license fee installment payments as are necessary to fully satisfy Licensee's tax liability for the Vessel; provided, if the license fee installment payments made on or before the date that the tax is due are insufficient to fully satisfy

Licensee's tax liability for the Vessel, Licensee shall separately pay to the City the balance of the assessed tax on or before the date that it is due.

(e) In the event that Licensee is entitled to a refund of taxes assessed on the Vessel, license fee payments made by Licensee and applied to such taxes in accordance with this agreement shall be retained by Licensor as payment of the applicable license fee. In no event shall such payments be refunded to Licensee.

12. Waterfront Events. Use of the Berth shall be dependent upon the scheduling by Licensor of waterfront upkeep and maintenance activities, dredging activities, pier construction, repair and renovation activities, any other waterfront construction and harbor improvement activities, and any emergency repairs or events that restrict access of the Vessel to the Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessel, Licensor will attempt to locate another docking location for Licensee but if Licensor fails to do so, then Licensee shall be responsible for finding an alternate docking location. If a Waterfront Event renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, Licensor will use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. For each day in excess of two (2) per calendar month between May 1 and Labor Day of any year of the term of this Agreement that Licensee is unable to tie up to the Berth during normal hours of operation because of a Waterfront Event, Licensee shall be entitled to reduce its monthly payment of the license fee for such month by three percent (3%). No Waterfront Event which renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, except events required to protect the safety of persons

using the Marina, shall be scheduled by Licensor between March 31 and November 1 of any year.

13. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council.

14. Termination. In the event that Licensee violates any of the terms of this Agreement, Licensee shall be considered in default. If such default continues for 30 days after Licensee has received written notice of the default, then this license may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this license, effective immediately, in the event Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel.

15. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

16. Vessel. The Vessel subject to this agreement is the "Matthew Hayes," or any similar vessel having an overall length not to exceed sixty-five (65) feet and a width not to

exceed twenty-five (25) feet; provided, that, for the purposes of this paragraph, "width" shall mean the sum of (i) the width at its widest point of the floating access platform that Licensee has constructed at the Berth, (ii) the width of the open water that lies between the Vessel and the southern edge of said floating access platform when the Vessel is at the Berth, and (iii) the width of the Vessel at its widest point. Any vessel other than the Matthew Hayes must be approved by the City for use in the Service prior to being docked at the Berth or used in the Service. In the event Licensee wishes to replace the "Matthew Hayes" with another vessel during the term of this Agreement, it may do so, provided the following conditions are met: (i) the replacement vessel is no larger in size than the "Matthew Hayes"; (ii) Licensor consents to the replacement; and (iii) Licensor and Licensee agree upon an annual fee, to replace the fee defined in subparagraph 11(a), solely to reflect any increase or decrease in the value of the replacement vessel over the value of the Matthew Hayes. If these conditions are met, the replacement vessel shall, for purposes of this agreement, be considered the Vessel.

17. Float and Ticket Booth.

(a) Licensor has permitted the Licensee to install a floating dock and gangway (collectively, the "float") and a ticket booth at the western end of the Torpedo Factory North Pier, which float is the property of the Licensor. It shall be the sole responsibility of the Licensee, throughout the term of this Agreement, and at its sole cost and expense, to maintain and repair, and if necessary to replace, the float; provided, however, that Licensor shall repair or, if necessary, replace the float where the need for such repair or replacement has been caused by any vessel other than the Vessel, or by normal wear and tear.

(b) With respect to the ticket booth:

(i) Licensee shall use the ticket booth only for the purpose of vending tickets for sightseeing tour boat services, whether provided by the Vessel, the Matthew Hayes, the Miss Christin or Miss Mallory while any of these vessels are berthed at the Alexandria Marina pursuant to a current license Agreement with Licensor, and for distributing information on such sightseeing tour boat services and on other sightseeing and related services that are available to visitors. Any other use of the booth may conflict with an existing Agreement between Licensor and Alexandria Waterfront Associates and, therefore, may not be maintained without the express consent of Licensor;

(ii) Licensee shall not place any signs, advertisements or notices of any nature, other than those shown on Attachment B, on any part of the exterior portion or on any wall, window or door of the ticket booth, or on any part of the dock of the Alexandria Marina, without Licensor's consent and without such sign, advertisement or notice complying with all applicable law, including the City of Alexandria Zoning Ordinance; and

(iii) Licensee shall remove the ticket booth at the termination of this Agreement, unless the parties determine and agree otherwise.

(c) The Licensor's dockmaster may allow other vessels to use the float; provided, that such use shall not interfere with Licensee's use of the float. The dockmaster shall use his best efforts not to permit any vessel greater than 15,000 pounds to use the float.

18. Parking. Licensee shall take all reasonable efforts to advise passengers of the Service to avoid on-street parking in the City, including, without limitation, providing passengers and their agents with maps and directions to off-street parking facilities in the City and making such maps and directions available at Licensee's office and on any vessels used under this

license. Licensee shall also consider in good faith Licensee's participation in programs that call for retailers in Old Town Alexandria to provide financial incentives to their customers to use off-street parking facilities.

19. Utility and Service Costs. Licensee shall pay the cost of bringing or otherwise making available any utility service to the Vessel or the float, the cost of submetering any service providing utilities to the Vessel or the float, and the cost of all utilities, with the exception of water, consumed or utilized by the Vessel or the float. Licensor shall provide Licensee with invoices for monthly utility usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

20. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal corporation of Virginia

Date: _____

By: _____
Philip Sunderland, City Manager

Approved as to form:

Karen S. Snow
Assistant City Attorney

POTOMAC RIVERBOAT CO.

Date: _____

By: _____
Willem Polak, President

LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ___ day, of _____, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Potomac Riverboat Co., (the "Licensee").

WHEREAS, Licensee is the owner of the "Admiral Tilp" and desires to operate a sightseeing tour boat service ("Service"), using the "Admiral Tilp," from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking boats; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes in accordance with the terms and conditions set forth below;

NOW, THEREFORE, it is mutually agreed as follows:

1. Representations. By executing this Agreement, the Licensee warrants that it is the legal owner of the vessel described in paragraph 16 below (the "Vessel") and is authorized to enter into this Agreement.

2. Applicability of City, State and Federal Law. This Agreement is subject to title 6, chapter 3 of the Alexandria city code and all applicable provisions of federal, state and local law. In particular, this Agreement is subject to, and Licensee shall comply with, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with the Rules and Regulations of the Alexandria Marina, including any amendments which may be adopted during the term of this Agreement. The current Rules and Regulations are set forth in Attachment A to this Agreement and are incorporated by reference into this Agreement as if fully set forth herein.

4. Insurance. Licensee shall provide a certificate of insurance to the Licensor that shows that Licensee, the Vessel and the float (as defined in paragraph 17), are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee (i) against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees, and (ii) against claims of personal injury and property damage arising from use of the float, as defined below in paragraph 17;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's sightseeing tour boat service, the Vessel, the float (as discussed below in paragraph 17), or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licensor shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this Agreement, and

to furnish evidence to the Licensor of such coverage prior to the effective date, and throughout the term, of this Agreement. In addition, Licensor shall be named on the liability insurance policy required by subparagraph (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subparagraph (b)(ii) that names Licensor as an additional insured, or the insurance required by subparagraph (c), or both, Licensee agrees to indemnify and hold Licensor harmless against all of the claims identified in said subparagraph (b)(ii) or against all losses incurred by Licensor that are identified in said subparagraph (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in paragraph 4(b), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses incurred by Licensor, resulting from or arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina or in the course of using the float.

6. Waiver of Licensor's Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is

in or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

7. Grant and Term of License.

(a) This Agreement grants non-exclusive permission for the Licensee to operate, on a regular basis, a sightseeing tour boat service using the Vessel from the berth (described below) at the Alexandria Marina for the term of the Agreement.

(b) Licensee shall be permitted to berth at the float, as defined below in paragraph 17, located at the western end of the Torpedo Factory North Pier ("Berth"); provided, however, that whenever Licensor shall determine that the Vessel presents a navigational hazard if berthed at that location, the Vessel shall be docked at slip 13B at the Torpedo Factory South Pier.

(c) In exchange for the Licensor's grant of permission to operate a sightseeing tour boat service and to berth the Vessel at the Alexandria Marina, Licensee agrees that, throughout the term of this Agreement, it will operate a sightseeing tour boat service, using the Vessel, (1) six days per week during the period from May 1 through Labor Day of each year; and (2) on weekends only during April, September and October of each year; provided, that it may take, on a reservation basis, groups of 25 persons or more on sightseeing tour boat excursions on weekdays during these months. The parties will negotiate in the future a commuter taxi service and/or other service between the Alexandria Marina and destinations in the District of Columbia, Maryland and Virginia, subject to approval by the City Manager.

(d) The term of this license shall be from November 1, 2004 to and including December 31, 2008.

8. Special Conditions of License.

(a) Commuting Restriction. No voyage commencing before 9:30 a.m. on Monday through Friday of any week shall discharge passengers at any place other than the North Pier. The parties expressly agree that this condition is intended to prevent use of the Service or the Vessel for commuting purposes, except as provided in paragraph 7(c), above.

(b) Trash Removal and Disposal. Licensee shall provide convenient on-board trash receptacles for use by clients of the Service and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of the Service. No trash or debris shall be deposited on any part of the Alexandria Marina by Licensee. If Licensee should fail to fulfill its obligations under this section, as determined by Licensor and in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(c) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessel presents a navigational hazard if berthed at the Berth, the Vessel shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Service also presents a navigational hazard, Licensor shall be permitted to embark and disembark passengers at the Berth. If Licensor makes such further determination, Licensor shall use its best efforts to make reasonable arrangements for the Service to continue from another location at the Marina.

(d) Refueling. Refueling operations are prohibited from taking place at the North Pier.

(e) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Service unless the sign complies with applicable provisions of the Alexandria Zoning Ordinance, and approval for such sign has been obtained from Licensor and, if applicable, the Alexandria Board of Architectural Review.

9. Renewal of License. This license may not be renewed.

10. Annual Fee.

(a) Licensee shall pay to Licensor an annual fee for the License. The fee shall be \$17,822.00 for the period November 1, 2004 through December 31, 2005, payable at the rate of \$1,273.00 per month; \$15,660.00 for the period January 1, 2006 through December 31, 2006, payable at the rate of \$1,305.00 per month; and \$16,056.00 for the period of January 1, 2007 through December 31, 2007, payable at the rate of \$1,338.00 per month. All monthly payments of license fees shall be rendered in advance, on the first business day of the month for which such fees are due.

(b) In the event the Vessel, between May 1 and October 1, is, for mechanical reasons that are beyond the capacity of Licensee to repair, unable to operate as a sightseeing tour boat for more than seven consecutive days, then Licensee shall be entitled to a reduction in the installment payment next due following the end of said period in an amount equal to $(X/183) \times (Y)$, where X represents the total number of days during which the Vessel is out of service in the consecutive-day period and Y represents one-half of the annual personal property taxes on the Vessel that has most recently been paid by Licensee.

(c) If Licensee fails to pay any installment in full within ten calendar days of the installment's due date, Licensee shall be liable for a penalty, equal to 10 percent of said

installment, plus interest, based upon the amount unpaid and a rate of 10 percent per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

11. Application of Annual Fee Payments. License fee payments shall be applied as follows:

(a) At the commencement of each calendar year, Licensor shall estimate the amount of the personal property tax to be assessed against the Vessel for that calendar year. License fee installment payments up to the amount of the estimated tax shall be segregated by the City and applied in satisfaction of the tax liability once the Vessel has been assessed for that calendar year.

(b) License fee installment payments in excess of the taxes estimated by the City shall be retained by the City and applied in its sole discretion.

(c) If the tax actually assessed on the Vessel is less than the amount estimated by Licensor at the beginning of the calendar year, any excess funds segregated for payment of the tax shall be retained by Licensor as payment of the annual license fee. In no event shall such excess funds be refunded to Licensee.

(d) If the tax actually assessed on the Vessel is more than the amount estimated by Licensor at the beginning of the calendar year, Licensor shall credit toward the tax actually assessed such additional portions of subsequent license fee installment payments as are necessary to fully satisfy Licensee's tax liability for the Vessel; provided, if the license fee installment payments made on or before the date that the tax is due are insufficient to fully satisfy

Licensee's tax liability for the Vessel, Licensee shall separately pay to the City the balance of the assessed tax on or before the date that it is due.

(e) In the event that Licensee is entitled to a refund of taxes assessed on the Vessel, license fee payments made by Licensee and applied to such taxes in accordance with this Agreement shall be retained by Licensor as payment of the applicable license fee. In no event shall such payments be refunded to Licensee.

12. Waterfront Events. Use of the Berth shall be dependent upon the scheduling by Licensor of waterfront upkeep and maintenance activities, dredging activities, pier construction, repair and renovation activities, any other waterfront construction and harbor improvement activities, and any emergency repairs or events that restrict access of the Vessel to the Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessel, Licensor will attempt to locate another docking location for Licensee but if Licensor fails to do so, then Licensee shall be responsible for finding an alternate docking location. If a Waterfront Event renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, Licensor will use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. For each day in excess of two (2) per calendar month between May 1 and October 1 of any year of the term of this Agreement that Licensee is unable to tie up to the Berth during normal hours of operation because of a Waterfront Event, Licensee shall be entitled to reduce its monthly payment of the license fee for such month by three percent (3%). No Waterfront Event which renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, except events required to protect the safety of persons using the marina, shall be scheduled by Licensor between March 31 and November 1 of any year.

13. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council.

14. Termination. In the event that Licensee violates any of the terms of this Agreement, Licensee shall be considered in default. If such default continues for 30 days after Licensee has received written notice of the default, then this license may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this license, effective immediately, in the event Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel.

15. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

16. Vessel. The Vessel subject to this Agreement is the "Admiral Tilp," a double deck vessel built in 1989, which is 36 feet long and 16 feet 3 inches wide, can carry a maximum of 80 passengers and is owned by Licensee. In the event Licensee wishes to replace the "Admiral Tilp" with another vessel during the term of this Agreement, it may do so, provided the following

conditions are met: (i) the replacement vessel is no larger in size than the "Admiral Tilp;" (ii) Licensor consents to the replacement; and (iii) Licensor and Licensee agree upon an annual fee, to replace the fee defined in subparagraph 10(a), solely to reflect any increase or decrease in the value of the replacement vessel over the value of the Admiral Tilp. If these conditions are met, the replacement vessel shall, for purposes of this Agreement, be considered the Vessel.

17. Float and Ticket Booth.

(a) Licensor has permitted the Licensee to install a floating dock and gangway (collectively, the "float") and a ticket booth at the western end of the Torpedo Factory North Pier, which float is the property of the Licensor. It shall be the sole responsibility of the Licensee, throughout the term of this Agreement, and at its sole cost and expense, to maintain and repair, and if necessary to replace, the float; provided, however, that Licensor shall repair or, if necessary, replace the float where the need for such repair or replacement has been caused by any vessel other than the Vessel, or by normal wear and tear.

(b) With respect to the ticket booth:

(i) Licensee shall use the ticket booth only for the purpose of vending tickets for sightseeing tour boat services, whether provided by the Vessel, the Matthew Hayes, the Miss Christin or Miss Mallory while any of these vessels are berthed at the Alexandria Marina pursuant to a current license Agreement with Licensor, and for distributing information on such sightseeing tour boat services and on other sightseeing and related services that are available to visitors. Any other use of the booth may conflict with an existing Agreement between Licensor and Alexandria Waterfront Associates and, therefore, may not be maintained without the express consent of Licensor;

(ii) Licensee shall not place any signs, advertisements or notices of any nature, other than those shown on Attachment B, on any part of the exterior portion or on any wall, window or door of the ticket booth, or on any part of the dock of the Alexandria Marina, without Licensor's consent and without such sign, advertisement or notice complying with all applicable law, including the City of Alexandria Zoning Ordinance; and

(iii) Licensee shall remove the ticket booth at the termination of this Agreement, unless the parties determine and agree otherwise.

(c) The Licensor's dockmaster may allow other vessels to use the float; provided, that such use shall not interfere with Licensee's use of the float. The dockmaster shall use his best efforts not to permit any vessel greater than 15,000 pounds to use the float.

18. Parking. Licensee shall take all reasonable efforts to advise passengers of the Service to avoid on-street parking in the City, including, without limitation, providing passengers and their agents with maps and directions to off-street parking facilities in the City and making such maps and directions available at Licensee's office and on any vessels used under this license. Licensee shall also consider in good faith Licensee's participation in programs that call for retailers in Old Town Alexandria to provide financial incentives to their customers to use off-street parking facilities.

19. Utility and Service Costs. Licensee shall pay the cost of bringing or otherwise making available any utility service to the Vessel, the float or the ticket booth, the cost of submetering any service providing utilities to the Vessel, the float or the ticket booth, and the cost of all utilities, with the exception of water, consumed or utilized by the Vessel, the float or the ticket booth. Licensor shall provide Licensee with invoices for monthly utility usage, and

Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

20. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal corporation of Virginia

Date: _____

By: _____
Philip Sunderland, City Manager

POTOMAC RIVERBOAT CO.

Date: _____

By: _____
Willem Polak, President

28
12-14-04



<mhobbs27@comcast.net>

12/13/2004 01:54 PM

Please respond to
<mhobbs27@comcast.net>

To <alexvamayor@aol.com>, <delpepper@aol.com>, <council@joycewoodson.net>, <councilmangaines@aol.com>, <rob@krupicka.com>, <macdonaldcouncil@msn.com>

cc

bcc

Subject City of Alexandria Website Contact Us - EMail for Mayor, Vice-Mayor and Council Members (alexvamayor@aol.com, delpepper@aol.com, council@joycewoodson.net, councilmangaines@aol.com, rob@krupicka.com, macdonaldcouncil@msn.com, paulcsmedberg@aol.com, rose.boyd@ci.alexandria.va.us, jackie.henderson@ci.alexandria.va.us, tom.raycroft@ci.alexandria.va.us)

City of Alexandria Website Contact Us - EMail for Mayor, Vice-Mayor and Council Members (alexvamayor@aol.com, delpepper@aol.com, council@joycewoodson.net, councilmangaines@aol.com, rob@krupicka.com, macdonaldcouncil@msn.com, paulcsmedberg@aol.com, rose.boyd@ci.alexandria.va.us, jackie.henderson@ci.alexandria.va.us, tom.raycroft@ci.alexandria.va.us)

Time: [Mon Dec 13, 2004 13:54:12] IP Address: [68.84.3.206]

Response requested:

First Name: Michael
Last Name: Hobbs
Street Address: 419 Cameron St.
City: Alexandria
State: Virginia
Zip: 22314
Phone: 703 548-5798
Email Address: mhobbs27@comcast.net

Old Town Civic Association
P.O. Box 21333
Alexandria, Virginia 22320

December 13, 2004

The Honorable Mayor and Members of Council

City of Alexandria
301 King Street
Alexandria, Virginia 22314

Dear Mayor Eulle, Vice-Mayor Pepper, and
Members of Council:

We understand that renewal of the licenses for the Potomac RiverBoat Company's Matthew Hayes and Admiral Tilp cruise boats is on the Council's docket for Tuesday, December 14. We understand that the city staff and the RiverBoat Company have not reached agreement on two elements of the license: (1) shortening the term to four years from the five-year term included in previous licenses, and (2) discontinuing a "right-of-first refusal" provision that has previously been included.

We are very concerned about the impact of the proposed terms on the Potomac RiverBoat Company, and urge you to adopt terms which will assure the continuation of this enterprise as a mainstay of our community.

Comments:

The excellent service rendered by this company to visitors and residents alike is beyond question. The RiverBoat Company's tours are a prime attraction for Alexandria residents, their guests, and other visitors, of a quality that has recently earned them recognition as "Best Local Trip" by the Washingtonian magazine.

In addition, Old Town Civic Association has first-hand knowledge of the RiverBoat Company's exemplary corporate citizenship. For many years, as you know, their Cherry Blossom has been the venue for OTCA's Annual Membership Party and Cruise, which is our principal annual fundraising and membership recruitment event. What may not be generally known is that without the extraordinary assistance that the RiverBoat Company, its owner and staff render to OTCA on every aspect of the project, the event quite literally would not be possible, and our ability to participate in the civic discourse of our city would be seriously hampered.

We would be greatly concerned if the terms of its licenses were to impair the ability of the RiverBoat Company to maintain the financial capability necessary to continue operating this first-rate service in Alexandria, not only in the immediate future, but for many years to come.

Please take extra care not to jeopardize this

singularly valuable corporate citizen of Alexandria. Please renew their licenses on terms which will recognize that the Potomac RiverBoat Company is not a newcomer or a stranger, but an enterprise which has made an invaluable contribution to Alexandria and its waterfront for many years.

Thank you for your consideration.

Yours truly,

Board of Directors
Old Town Civic Association