

City of Alexandria, Virginia


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2-13-07

MEMORANDUM

REVISED

DATE: FEBRUARY 13, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: RECOMMENDED INTERIM LOCATION AND LICENSE REVISIONS FOR THE WATER SHUTTLE SERVICE TO NATIONAL HARBOR

ISSUE: Recommended interim location and license revisions for a water shuttle service between National Harbor and Alexandria.

RECOMMENDATION: That City Council:

- (1) Receive this revised report concerning approving a revised license agreement (Attachment I) between the Potomac Riverboat Company (PRBC) and the City, and schedule it for public hearing and consideration on Saturday, February 24, 2007; and
- (2) After the public hearing on February 24:
 - (a) approve the berth "Commercial 1 Berth 7, Torpedo Factory North Pier" as the interim location for the water shuttle service,
 - (b) authorize the City Manager to sign the proposed license agreement between the City and the PRBC in substantially the form as attached, and
 - (c) authorize the City Manager, if he determines it feasible, to file a grant application for potential federal grant funding to finance a portion of the acquisition cost of the water shuttle vessels.

BACKGROUND: At the time of the issuance of the first docket item on this matter, negotiations between the PRBC and the City had not been completed, and as a result proposed terms and conditions were not included in the docket item. Negotiations have now been completed and an outline of the terms and conditions are on page 4 of this document. Also the proposed amended license agreement is attached.

National Harbor, the new 300 acre, 7 million square foot mixed-use community located on the Maryland side of the Potomac River across from Alexandria, is planned to be a major, new urban-waterfront community. It is currently under construction with an opening date of April 1, 2008 planned. This development combines 1 million square feet of retail, dining, entertainment space, office space, residential units, 4,000 hotel rooms, including what is stated to be the largest combined hotel and convention center on the Eastern seaboard.

With the majority of development anticipated to be open beginning on April 1, 2008, the City has an unprecedented opportunity to tap into the tourism and visitor potential for Alexandria through a water shuttle service from the National Harbor pier to the Alexandria Marina. In addition, we expect that the City will experience unprecedented competition in the hotel, retail and restaurant business sectors, as National Harbor will likely become a major new regional destination, different, but in many ways similar to the commercial areas of Old Town Alexandria in providing varied dining experiences, retail shopping, as well as entertainment venues designed to draw in residents of the Washington Metropolitan area. As a result, the City needs to be prepared to meet this challenge, and at the same time take advantage of this opportunity by offering, among many initiatives, a water shuttle.

The City leases slips at the City Marina to commercial vessels including the Potomac Riverboat Company (PRBC), the Seaport Foundation, private companies who operate watercraft, as well as privately-owned pleasure boats. PRBC's commercial vessels currently provide Potomac River service from Alexandria to Georgetown, and to Mt. Vernon, as well as charter service for special events, such as corporate and association parties, weddings and other similar events. When dock space for the water shuttle was analyzed over the last few months, it was determined that the current limited capacity of the City Marina, combined with the strong demand and existing berthing contracts resulted in no unused berth within close distance to the King Street corridor that could be used for a water shuttle service berth. In the future, after the Waterfront Plan is undertaken, completed and implemented, there likely will be dedicated berthing space for a water shuttle to dock and load and unload its passengers. However, in the intervening years prior to the creation of additional berths, an interim location will be needed to accommodate the water shuttle.

The interim location identified for the proposed water shuttle is recommended to be at the northern end of the pier bulkhead in the berth (Commercial 1 Berth 7, Torpedo Factory North Pier) currently designated and licensed for the PRBC's Miss Mallory sightseeing and charter boat. This berth (see Attachment II) is near the northeast corner of the Chart House. PRBC intends on acquiring two 99 passenger vessels which would provide service every thirty minutes between National Harbor and Old Town. The regular hours of operation are currently planned for 12 hours per day, and likely to be between the hours of 11:00 a.m. and 11:00 p.m. However, those hours are not finalized. The proposed license agreement allows service from 8:00 a.m. to midnight unless different hours are approved in writing by the City Manager. While the shuttle service could potentially run year-round, cold weather and ice in the National Harbor cove is likely to limit the operations to about 270 days per year.

While passenger demand for the water shuttle is difficult to project, it is projected that as many as 500 (roundtrip) passengers per day would use the service. This equates to about a 20-25 passenger average per trip. It is likely that peak demand will be experienced late in the day (dinner traffic) and on weekends. This is due to the fact that the Gaylord is a convention hotel where those attending will have day meetings, with free time available later in the day and on weekends. It is

likely that the vast majority of passenger trips would originate at National Harbor, with far fewer trips originating from Alexandria. Over time the 500 passenger per day total is likely to increase.

The proposed license agreement, while continuing PRBC's current exclusive rights to use the specific berth where the Miss Mallory is now docked, does not grant exclusive water shuttle rights to the PRBC. In the event that another operator, such as Gaylord, wishes to provide a water shuttle, or other water related service, then the City would see if there was a way to accommodate such services in the short term. In the long term, the City could decide to build additional piers and docks to accommodate increased boat traffic. The Waterfront Plan will address that possibility.

The proposed berth, when outfitted with a ramp and floating dock, benches on the adjacent pier and some type of protective canopy can provide adequate loading and unloading facilities. The area is close to the King Street corridor, and with wayfinding signing, is where disembarking shuttle passengers will be directed.

This water shuttle service will be managed and operated by the PRBC. As part of the service, PRBC will be responsible for paying for the construction of an accessible ramp to facilitate ADA accessibility via a floating dock onto the vessel, as well as the expansion of the existing PRBC ticket booth. At this time, the shuttle service will be permitted between National Harbor and Alexandria. Future expansion of the District of Columbia baseball stadium shuttle, and/or additional shuttles from other sources will not be permitted in the proposed license unless subsequently authorized by the City. This will ensure that in case such service is proposed that adequate transportation and parking requirements can be planned, and put in place, before such service is provided.

The plans for the proposed water shuttle were presented to the Old Town Civic Association, the Waterfront Committee, the Park and Recreation Commission, the Founders Park Civic Association, the Chamber of Commerce, and the Old Town Business and Professional Association. In general all of these groups were supportive of the water shuttle operation. Key comments or suggestions included the need for ground transportation to move shuttle passengers up and down King Street (Waterfront to the King Street Metrorail station), wayfinding signing, additional restrooms, and the consideration over the long term of a better water shuttle docking operation location at the foot of King Street. Also the need to improve the appearance (better cleaning, window displays, flowers, etc.) of the King Street retail area, as well as common retail store opening and closing hours were also mentioned as desirable.

All of these needs and ideas are being reviewed at this time, and proposals and plans will be developed and put in place prior to April 1, 2008. In addition to the work undertaken by City staff, as these types of efforts are best addressed through public private partnerships, the Alexandria Chamber of Commerce has convened a task force of business and civic groups, as well as the City's various economic development organizations to begin to develop plans. A March 13, 2007, community meeting of businesses is planned. Finally, public funding to undertake some of these initiatives will need to be addressed as part of Council's FY 2008 budget deliberations.

The key terms of the proposed amended Miss Mallory license agreement in order to provide for the water shuttle are:

- 5-year initial term with “first right to negotiate” two three year extensions. This 10-year length, from when service begins on April 1, 2008, parallels the term of the PRBC National Harbor lease, and is equivalent to the likely length of the debt service on the two new shuttle boats,
- the existing Base Rate fixed fee for the berth would continue to be paid,
- the Base Rate would be adjusted annually,
- there would be revenue sharing so after the water shuttle service passed a defined breakeven point then, the City would be paid the higher of (a) 10% of net annual revenues, or (b) the Base Rate,
- PRBC would be responsible for financial losses (if any),
- PRBC would be responsible for constructing the floating dock, ramp and ticket booth,
- the floating dock and ramp would become the property of the City in three years,
- the costs of improvements of the floating dock, ramp and ticket booth expansion would be deducted from the Base Rate,
- PRBC would be required to display tourism materials on the boats,
- the berth would be an interim location until the waterfront study identified, and the City constructed, a permanent berth for water shuttles to National Harbor, and
- the water shuttle service would be limited to service between National Harbor and Alexandria, unless the City Manager agreed to expansion of the service to alternate locations.

FISCAL IMPACT: In recent weeks the federal Department of Transportation has announced a competitive passenger or vehicle water boat capital grant process for federal Fiscal Year 2007. Previously, federal earmarks used all the appropriated funds, but with Congress not using the earmark process for FY 2007 appropriations, this has allowed a competitive grant process to be established. It is likely that the grant process will be very competitive, and it is not clear at this time if federal grant regulations would allow a grant for this type of water shuttle. Such a grant would cover only a portion of the cost of the boats. However, the grant process is worth exploring as it would write down the cost of the shuttles.

After the initial docket item on the license agreement for shuttle service was issued and made public, City staff received some inquiries and concerns from the public related to the financial structure of the shuttle service as described in the initial docket item. Given the discussion about the federal grant, it appeared to some that the City might be a partner in the operations and the finances of the shuttle. In order to make it clear, the shuttle service will be a private sector operation and the City will not be the operator, nor will the City own the shuttle boats. The City would be a co-applicant for the federal funds only because that is what the federal regulations require. The financial risks of the shuttle are on the PRBC and not the City. PRBC will proceed with buying the shuttles and pay the entire cost of acquiring the shuttles, even if the federal funds are not obtained. The federal funds, if provided, would lower the financial break-even point.

ATTACHMENTS:

Attachment I. Proposed License Agreement

Attachment II. Photograph of proposed Berth

STAFF:

Mark Jinks, Deputy City Manager

Kirk Kincannon, Director, RPCA

Roger Blakeley, Deputy Director, RPCA

Aimee Vosper, Landscape Architect Supervisor

LICENSE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2007, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Potomac Riverboat Company, LLC, a Virginia limited liability company (the "Licensee").

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

WHEREAS, Licensee will become the owner of two boats to be named (the "New Vessels") and desires using the New Vessels to initiate and to operate a water shuttle service ("Water Shuttle Service") between National Harbor in Prince Georges County, Maryland and the Alexandria Marina in the City of Alexandria, Virginia; and

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

WHEREAS, with a April 1, 2008 planned start of the Water Shuttle Service to and from National Harbor, the Licensor and Licensee desire to establish an interim location for the shuttles at the Alexandria Marina until such time a more permanent location for the shuttles to berth is identified and constructed,

WHEREAS, Licensor and Licensee have an existing license agreement the terms of which are from July 1, 2005 through and including December 31, 2009;

WHEREAS, Licensor is willing to permit Licensee to continue to use the Alexandria Marina for docking purposes in accordance with the amended 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 or will be the legal owner of the vessels described in paragraph 14 below (the "Vessel" or "Vessels") 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, among other things, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessels. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessels 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 and the Vessels are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessels in case of the total destruction of any one or more of them;

(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 against claims of personal injury and property damage arising from the negligent operation of the Vessels by the Licensee or Licensee's agents and employees;

(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 Vessels by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's sightseeing tour boat service, the Vessels, the floating access platform (as discussed below in paragraph 15), or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing any 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 subparagraphs (b) and (c) as an additional insured. In the event Licensee is unable to obtain the insurance required by subparagraph (b) 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) 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. 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 Vessels.

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 Vessels or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessels, 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 service using the Vessels from the Alexandria Marina for the term of this Agreement.

(b) Licensee shall be permitted to berth at Commercial 1 Berth 7, Torpedo Factory North Pier ("Berth"). The Berth may be used for vessel mooring and ancillary purposes only and may not be used for embarkation or disembarkation of passengers.

(c) The term of this Agreement shall be from March 1, 2007 through and including February 29, 2012 and this Agreement shall at March 1, 2007, replace the existing agreement between Licensor and Licensee regarding the Vessels.

(d) Provided that Licensor is not in default hereunder at the termination of the License on February 29, 2012, Licensee, shall have upon expiration of the Agreement, the first right to negotiate a new license agreement for a term of three (3) years, (i.e. March 1, 2012 terminating on February 28, 2015), as well as a subsequent first right to negotiate a new license from March 1, 2015 to February 28, 2018.

(e) The parties may negotiate in the future a commuter taxi service, a shuttle service, and/or other service between the Alexandria Marina and destinations in the District of Columbia, Virginia or locations in Maryland in addition to National Harbor, subject to approval by the City Manager.

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 Vessels for commuting purposes.

(b) Hours of Use of Berth. From June through August, the Berth may only be used (i) for 14-hour maximum docking from 10:00 p.m. until 12:00 noon on the following day, starting on Monday at 10:00 p.m. and ending on Sunday at 12:00 noon, and (ii) for 38-hour maximum docking starting on Sunday at 10:00 p.m. and ending on Tuesday at 12:00 noon.

Licensee may, with the approval of the dockmaster, vary the days of the week during which the Berth may be used for a continuous 38-hour period, as provided in subsection (ii) above, provided that unless otherwise approved by the dockmaster for an appropriate license fee there shall only be one such 38-hour period during each week. From September through May, the Berth may be used 24 hours per day, seven (7) days per week. This paragraph shall not apply to any Vessel Being actively engaged in the Water Shuttle Service

(c) Embarkation and Disembarkation. Passenger embarkation and disembarkation shall be permitted at the Berth and at such locations at the Alexandria Marina, other than the Berth, as are determined to be available, and are approved via a general written operational plan by the City's dockmaster. Nothing contained in this Agreement shall be deemed to require Licensor to furnish to Licensee any location at the Alexandria Marina other than locations under control of the Licensee for embarkation or disembarkation of passengers. Notwithstanding the provisions of any other agreement for the use of a commercial berth at the Alexandria Marina, upon the agreement of the dockmaster, on behalf of Licensor, and the other party to such agreement, Licensee may use the commercial berth which is the subject of such other agreements for embarkation or disembarkation of passengers, subject to the restrictions contained in this paragraph. In no event shall Licensee permit passengers to embark between the hours of midnight and 8:00 a.m. on the following day, unless different hours are approved in writing by the City Manager. The final disembarkation of passengers on each day of operation shall be no later than midnight.

(d) 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.

(e) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessels present a navigational hazard if berthed at the Berth, the Vessels shall be berthed at another location, with the approval of the City's dockmaster. 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.

(f) Refueling. Refueling operations are prohibited from taking place at the North Pier, unless approved by the City Manager in writing to the Licensee. If granted, such approval may be revoked at any time by the City Manager for reasonable cause.

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

(h) Licensee shall construct and maintain at its sole expense a ramp, floating dock, and related structure known as the floating access platform (the "Facilities") at the Berth. Such facilities shall meet all applicable federal, state and city laws and regulations. Construction of such facilities shall not commence until Licensor and any other applicable regulatory entity has approved such construction.

(i) Licensee shall be permitted to install an expansion, at its sole expense, of its current ticket booth (the "Ticket Booth") located at the foot of the North Pier. Such expansion shall meet all applicable federal, state and city laws and regulations. Installation of such expanded ticket booth shall not commence until Licensor and any other applicable regulatory entity has approved such installation. Licensee shall use the ticket booth only for the purpose of vending tickets for sightseeing and shuttle tour boat services, whether provided by the Vessels, the Admiral Tilp, Matthew Hayes, the Miss Christin or the Cherry Blossom while any of these vessels are berthed at, or utilize, 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.

(j) Licensee agrees to display, in good faith but to the degree feasible, City of Alexandria Convention and Visitors Association (ACVA) provided materials including, but not limited to, ACVA's visitors guide, maps, information on museums and attractions, as well as other related information. Licensee agrees to work with the Licensor and ACVA to determine if providing electronic media on the new vessels, to orient passengers to the City of Alexandria, is feasible, and to install and operate such electronic media at the Licensor's or ACVA's cost, if such electronic media is mutually determined feasible by the Licensee and Licensor.

(k) The Licensee and Licensor acknowledge that the Berth is an interim location selected for use by the New Vessels so that Water Shuttle Service between National Harbor and the Alexandria Marina could commence on April 1, 2008, and that when a more permanent new location for the shuttles is constructed at the Alexandria Marina or reasonably adjacent thereto that the Licensee and Licensor shall cooperate and move the berthing location of the New Vessels to a new location contingent upon the Licensee and Licensor jointing executing a mutually agreeable new license agreement for the new shuttle berthing location, as well as for the Berth.

9. License Fee.

(a) The Licensee shall annually pay the Licensor a License Fee equal to the higher of either the Base Amount or the Revenue Sharing Amount. The Base Amount shall be paid monthly as described below in (b). Within 60 days after the calendar year is completed if the Revenue Sharing Amount as described below in (c) is higher than the Base Amount, then the Licensor shall pay the Licensee the balance of any License Fee due under this agreement.

(b) Base Amount: Licensee shall pay to Licensor an annual base fee ("Base Amount") for the license granted under this agreement. Licensee shall pay to Licensor an annual license fee Base Amount of \$9,225.00, payable at the rate of \$769.00 per month for the periods, March 1, 2007 through and including December 31, 2007. On January 1, 2008, the annual license fee Base Amount shall be \$9,456.00, payable at the rate of \$788.00 per month. On January 1, 2009, the annual license fee Base Amount shall be \$9,692.00, payable at the rate of \$808.00 per month. On January 1, 2010, and each year thereafter the annual license fee Base Amount shall be adjusted by the October to October change in the Consumer Price Index for Urban Wage earners (CPI-U), or an equivalent measure. All monthly payments shall be rendered in advance, on the first business day of the month on which such fee is due.

(c) Revenue Sharing Amount: The Revenue Sharing Amount shall be calculated based upon the Licensee paying to the Licensor a 10% share of net revenues as defined by the equation below:

$$((\text{Total Net Annual Revenues} - (\text{Total Operating Expenses} + \text{Debt Service on the New Vessel s})) \times 10\% = \text{Revenue Sharing Amount}$$

For the purposes of the above equation:

- (a) Total Net Annual Revenues is defined to include all revenues less credit card fees, commissions and other costs of ticket sales received by the Licensee, or agent of the Licensee, for the payment of passage between the Alexandria Marina and National Harbor.
- (b) Total Operating Expenses is defined as \$950,000 for 2008. In 2009 and each subsequent year the Total Operating Expenses will be adjusted by the October-to-October change in the Consumer Price Index for Urban Wage earners (CPI-U), or an equivalent measure, for the prior calendar year.
- (c) In the event that Total Annual Net Revenues less Operating Expenses and Debt Service produces a negative remainder when the annual calculation is undertaken, then that negative remainder may be added to the Total Operating Expenses in the subsequent year's calculation of Revenue Sharing Amount.
- (d) The calculation shall be done on a calendar year basis, with the results of the calculation and any payment due to the Licensor, paid to the Licensor 60 days after the close of the

calendar year. If there is no amount due the Licensee shall provide the Licensor a copy of the calculations.

- (e) The Licensee shall make available to the Licensor for the Water Shuttle Service on a reasonable basis the records and accounting for Total Net Annual Revenues and for Debt Service.
- (f) In the event that the Licensor is successful in obtaining federal or state grant, or grants, to assist in funding operations or capital costs of purchasing the Vessels, then the Total Operating Expenses and Debt Service shall be adjusted accordingly.
- (g) Debt Service is defined as the payment of principal and interest related to the purchase , the equipping, the furnishing of the New Vessels. If the vessels are leased, then the lease payments shall be considered Debt Service for the purposes of this License Fee calculation.
- (h) Notwithstanding any provision of this section, the Licensee will receive credit against any License Fee due under this agreement for reasonable capital expenditures related to constructing the Floating Access Platform, any related ramps, as well as the costs of expanding the Ticket Booth, as provided in paragraphs 8(i) and 15. Such credits may be taken against the monthly Base Amount due and/or any Revenue Sharing Amount due until such time the credits equal the capital expenditures. An estimate of these planned construction costs, shall be provided to the Licensor prior to commencement of construction, as well as a final accounting shall be provided to the Licensor after the construction is completed. The Licensee shall be responsible for obtaining any and all City permits needed to undertake this construction.

(d) Licensee shall not be entitled to any reduction in the license fee in the event the Berth is not occupied by the Vessels or Licensee does not conduct Service from the Alexandria Marina.

(e) 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.

10. 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 Vessels to the Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessels, 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 another Berth at the City Marina which the Licensee has licensed from the Licensor 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 March 1 and

November 30 that Licensee is unable to use a docking location at the Alexandria Marina during normal hours of operation because of a Waterfront Event, License shall be entitled to the pro rata reduction of its monthly payment of the License Fee.

11. 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.

12. 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 Vessels.

13. Removal. If this license is terminated, any remaining Vessels 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 Vessels 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 Vessels, and such liability shall be joint and several.

14. Vessels. The Vessels subject to this agreement are (a) the "Miss Mallory," or any similar vessel, in lieu of the "Miss Mallory", having an overall length not to exceed eighty (80) feet and a width not to exceed twenty-five (25) feet and (b) the "New Vessels", or any similar vessels, in lieu of the "New Vessels", having an overall length not to exceed eighty (80) feet and a width not to exceed twenty-five (25) feet. 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 a Vessel and the southern edge of said floating access platform when a Vessel is at the Berth, and (iii) the width of the Vessels at its widest point.

15. Floating Access Platform.

Licensor will permit the Licensee to install a floating access platform ("float") at the Berth, which float is the property of the Licensor on April 11, 2011. 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 Vessels, or by normal wear and tear.

16. Parking. Licensee shall take all reasonable efforts to advise passengers of the Service and employees of the Licensee 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.

17. Utility and Service Costs. Licensee shall pay the cost of bringing or otherwise making available any utility service to the Vessels or the float, the cost of submetering any service providing utilities to the Vessels or the float, and the cost of all utilities, with the exception of water, consumed or utilized by the Vessels 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.

18. Cooperation and Noninterference. Licensee acknowledges that the Berth is located immediately adjacent to Commercial Berth 5, Torpedo Factory North Pier (the "Adjacent Berth"). To facilitate simultaneous use of the Berth and the Adjacent Berth, Licensee agrees that it shall use the Berth, and operate the Service from the Alexandria Marina, in a manner which will not unreasonably interfere with the use of the Adjacent Berth by any party granted a license or other permission by Licensor to use such Adjacent Berth. Licensee further agrees to cooperate directly with any such party in Licensee's use of the Berth, and operation of the Service from the Alexandria Marina, consistently with the provisions of this paragraph 18. Such cooperation may include, but need not be limited to, coordination of schedules and prior notice of any extended period during with the Berth or Adjacent Berth, as applicable, will not be used. Licensor agrees to include in any agreement which permits the use of the Adjacent Berth provisions similar to those contained in this paragraph 18 in order to ensure that the Adjacent Berth will be used in a manner which will not unreasonably interfere with the use of the Berth, and the operation of the Service from the Alexandria Marina, by Licensee.

19. Notices. All notices, demands, or other communications that may be necessary or proper hereunder shall be deemed duly given if personally delivered upon delivery (or at such times as delivery is not accepted by the intended recipient), when deposited with Federal Express or other reputable overnight delivery service, when deposited in the United States mail, postage prepaid, first class, registered or certified, return receipt requested, or when sent by facsimile with a confirmation or receipt, addressed respectively as follows:

Licensor:

City of Alexandria
Department of Recreation, Parks and
Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314
Attention: Kirk Kincannon, or his successor

with a copy to:

The City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 222314

Licensee:

Potomac Riverboat Company, LLC
205 The Strand
Alexandria, Virginia 22314
Attn: Willem L. Polak, President

Any party hereto may change its address for notice purposes hereunder by delivering written notice thereof to the parties in accordance with the foregoing provisions.

22. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and any claims under this agreement shall be brought only in the federal or state courts of the Commonwealth of Virginia.

23. Entire Agreement. This agreement constitutes the entire agreement of the parties and supersedes any prior understandings and, except as specifically provided herein, any amendment to this agreement is valid only if made in a writing signed by the parties to this agreement.

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

CITY OF ALEXANDRIA, a municipal
corporation of Virginia

Date: _____

By: _____
James K. Hartmann, City Manager

POTOMAC RIVERBOAT COMPANY, LLC

Date: _____

By: _____
Willem Polak, President

Proposed Berth Location

