


City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 19, 2010

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: APPROVAL OF FOUR LICENSE AGREEMENTS WITH THE POTOMAC RIVERBOAT COMPANY TO BERTH THE *MATTHEW HAYES*, *ADMIRAL TILP*, *CHERRY BLOSSOM*, *MISS CHRISTIN* AND A *WORK BOAT* IN COMMERCIAL DOCK SPACE AT THE CITY MARINA.

ISSUE: Approval of a three-year license agreement with the Potomac Riverboat Company for the *Matthew Hayes*, *Admiral Tilp*, *Cherry Blossom*, *Miss Christin*, and a *work boat* for commercial dock space at the City Marina.

RECOMMENDATION: That City Council approve and authorize the City Manager to execute a three-year license agreement (Attachment 2) from January 1, 2010, through December 31, 2012, with the Potomac Riverboat Company, allowing it to berth the *Matthew Hayes*, *Admiral Tilp*, *Cherry Blossom*, *Miss Christin* and a *work boat* in commercial dock space at the City Marina.

DISCUSSION: The *Matthew Hayes*, *Admiral Tilp*, *Cherry Blossom*, *Miss Christin* are used by the Potomac Riverboat Company to provide sightseeing tour boat services. The existing agreements all expired on December 31, 2009, but were extended by one month to January 31, 2010, as negotiations were not completed. Current terms in the expired licenses allowed the first right of negotiation for a new three-year agreement upon termination of the existing license. The dates specified for this three-year period are January 1, 2010, through December 31, 2012. The *work boat* is a new commercial boat brought into the City Marina by the Potomac Riverboat Company. It is used to provide maintenance services to the existing sightseeing vessels.

The City and Potomac Riverboat Company have met and discussed the new license agreement. Based on that discussion the following points were agreed to by the parties:

1. An increase of the license agreement payments from the current level for each vessel to reflect a 3% increase in 2011, and a 3% increase in 2012. License payments are consistent with the market for commercial berths at other marinas within the geographic area.
2. A new provision in the license agreement to allow the Potomac Riverboat Company to move the five vessels in this license and their water taxis among licensed individual berths in the Marina to support operational flexibility.

3. To eliminate the provision of existing licenses that allows the Potomac Riverboat Company to offset monthly license payments against vessel personal property taxes that may be due to the City.
4. That the work boat would be added under the license as a permitted commercial boat in the City Marina and a \$1,422 annual fee would be charged also subject to a 3% annual increase.
5. All other terms and conditions of the existing license agreements would remain the same, however the four individual license agreements for the boats named above and the *work boat* have now been rolled into a single license agreement. The water taxi license remains a stand alone agreement as it expires in 2018.

Staff proposed a new three-year agreement with no first right of negotiation for an extension. The parties did not reach agreement on this point.

1. The Potomac Riverboat Company would like to have (Attachment 1) an extension term of five years (to December 31, 2014) with the first right to negotiate a new license for an additional three years (to December 31, 2018).

In previous action in 2004 and 2005, City Council brought all the existing separate license agreements within the same format. All agreements were approved with a common termination date of December 31, 2009. The licenses were approved by City Council in 2004 with a single first right to negotiate extension for three years from December 31, 2009, to December 31, 2012. Under staff's above recommendation, the commercial berths would be competitively bid on the open market prior to 2013 in time for an award to be made to be effective at the beginning of 2013. The Potomac Riverboat Company has had a vessel in the City Marina since June 1989. Since that time, the existing berth licenses held by the Potomac Riverboat Company have not been competitively bid. The berth licensed by LA Yachts was competitively bid when it was first established.

This new license has no impact on the existing agreement for water taxi service provided by PRC. That license with right to negotiate extensions runs through the end of 2018.

FISCAL IMPACT: The total expected revenue to the City over the term of the three-year license agreement is 2010 - \$79,440; 2011 - \$81,823; 2012 - \$84,278. The impact of eliminating the personal property tax offset will be

ATTACHMENTS:

Attachment 1. Letter from Potomac Riverboat Company requesting consideration of longer terms for the license agreement.

Attachment 2. Proposed license agreement between the City of Alexandria and Potomac Riverboat Company for the operation of sightseeing vessels the *Matthew Hayes*, *Admiral Tilp*, *Cherry Blossom*, *Miss Christin* and a *work boat* in commercial dock space at the City Marina

STAFF:

Mark Jinks, Deputy City Manager

Jim Spengler, Director Recreation, Parks and Cultural Activities



Rec'd 12/09

Attachment 1

Alexandria - National Harbor Water Taxi

Mr. Jim Spengler, Director
Recreation, Parks, and Cultural Activities
City of Alexandria
1108 Jefferson Street
Alexandria, Virginia 22314

Dear Jim,

On behalf of Potomac Riverboat Company, we respectfully request the following in our new leases beginning 2010:

- Term - Five (5) year lease with three (3) year option to Renew after the five (5) year term ends. This will bring all of our leases to 2018 for complete review.

Thank you for this consideration.

Sincerely,

Charlotte A. Hall
Vice President

Alexandria • Gaylord National Resort • Georgetown • Mount Vernon Estate • National Harbor

Office: 205 The Strand, Alexandria, VA 22314 Tel: 703-684-0580 Fax: 703-548-9001

www.potomacriverboatco.com

**LICENSE AGREEMENT BETWEEN THE CITY OF
ALEXANDRIA AND THE POTOMAC RIVERBOAT COMPANY**

FOR THE MOORING OF THE CHERRY BLOSSOM,
ADMIRAL TILP, MATTHEW HAYES, MISS CHRISTIN AND
A SERVICE WORK BOAT AT THE ALEXANDRIA MARINA

THIS AGREEMENT (“Agreement”) is made this ____ day of _____
2010, 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 desires to operate a charter service using a sternwheel paddleboat,
the Cherry Blossom, from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, the Licensee also desires to operate a sightseeing tour boat service using the
Admiral Tilp, Matthew Hayes and Miss Christin, and desires to utilize the
Alexandria Marina in the City of Alexandria, Virginia (the charter service and sightseeing tour
boat service, shall collectively be referred to as “Services”); 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 vessels described in paragraph 15 below (the “Vessels”) and a support Work
Boat, to service the 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, the criminal,
fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia
pertaining to the operation of the Vessels and Work Boat. Licensee shall permit officers and
employees of the City of Alexandria charged with the enforcement of such laws to board and
inspect the Vessels and Work Boat for the purpose of enforcing such laws.

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3. Rules and Regulations. Licensee shall comply with 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 Vessels, the Work Boat and the float (as defined in paragraph 17), are covered by:

(a) Property Damage Insurance in an amount sufficient to replace any of the Vessels 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 Vessels or Work Boat by the Licensee or Licensee's agents and employees, and (ii) against claims of personal injury and property damage arising from use of the floats, 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 Vessels or Work Boat 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 Work Boat, 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 any Vessel or the Work Boat 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 Vessels while located within or approaching or departing the Alexandria Marina or in the course of using the float.

6. Wavier 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 the Licensee's Vessels or Work Boat or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessels or Work Boat sustained while the Vessels or Work Boat are in or 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 charter service and sightseeing tour boat service using the Vessels from the berths (as described below in paragraph 7(b) and as set forth on Attachment B, and a Work Boat, to service the Vessels, at the Alexandria Marina for the term of the Agreement.

(b) Licensee shall be permitted to use the berths at the Alexandria Marina's North Pier that are shown in the drawing attached hereto as Attachment B ("Berths") for the Vessels. Licensee may employ the Berths for embarking and disembarking passengers of the Vessels. Licensee agrees to observe the maximum boat length permitted for each Berth. At no time shall the Licensee dock a boat that exceeds the length permitted by the Berths. Licensee may use the berths to support the operational needs of its fleet by moving vessels between berths for all vessels licensed with the City of Alexandria.

(c) In exchange for the Licensor's grant of permission to operate a charter service and sightseeing tour boat service and to berth the Vessels at the Alexandria Marina, Licensee agrees that, throughout the term of this Agreement, it will operate a sightseeing tour boat service, using the Vessels, (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 may 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 Work Boat shall be moored at the north end of the floating dock and be used solely for the repair, service and maintenance of the PRC licensed sightseeing and taxi vessels.

(e) The term of this Agreement shall be from January 1, 2010, to and including December 31, 2012.

8. Special Condition 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 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 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 any Vessel or the Work Boat presents a navigational hazard if berthed at the Berth; the Vessel or Work Boat shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Services 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 Services to continue from another location at the Marina.

(d) Refueling. Refueling operations are prohibited from taking place at the Alexandria City Marina.

(e) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Services 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. Annual Fee.

(a) Licenses shall pay to Licensor an annual fee for the License. The fee shall be as follows:

- (i) For the Cherry Blossom, the Licensee shall pay to the Licensor a monthly fee payable at the rate of \$2,158 for the period January 1, 2010 through December 31, 2010, the rate of \$2,222 for the period January 1, 2011 through December 31, 2011, and the rate of \$2,289 for the period January 1, 2012 through December 31, 2012.
- (ii) For the Miss Christin, the Licensee shall pay to the Licensor a monthly fee payable at the rate of \$1,543 per month for the period January 1, 2010 through December 31, 2010, the rate of \$1,589 for the period January 1, 2011 through December 31, 2011; and the rate of \$1,637 for the period January 1, 2012 through December 31, 2012.
- (iii) For the Admiral Tilp, the Licensee shall pay to the Licensor a monthly fee payable at the rate of \$1,371 for the period January 1, 2010 through December 31, 2010; the rate of \$1,412 for the period January 1, 2011 through December 31, 2011; and the rate of \$1,454 for the period January 1, 2012 through December 31, 2012.

- (iv) For the Matthew Hayes, the Licensee shall pay to the Licensor a monthly fee payable at the rate of \$1,422 for the period January 1, 2010 through December 31, 2010; the rate of \$1,464 for the period January 1, 2011 through December 31, 2011; and the rate of \$1,508 for the period January 1, 2012 through December 31, 2012.
- (v) For the Work Boat, the Licensee shall pay to the Licensor an annual fee of \$1,512 for the period January 1, 2010 through December 31, 2010, due on January 1, 2010; an annual fee of \$1,557 for the period January 1, 2011 to December 31, 2011, due on January 1, 2011; and an annual fee of \$1,604 due on January 1, 2010.

(b) For all the payments set forth above, with the exception of the fee for the work boat which shall be paid on an annual basis as set forth in paragraph 9(a)(v) above, they shall be made monthly and

rendered in advance, on the first business day of the month for which such fees are due.

(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.

10. Waterfront Events. Use of the Berths described in paragraph 7b 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 any 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 Berths 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.

12. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonable withheld but which may

require action by the Alexandria City Council.

13. 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 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.

14. Removal. If this license is terminated, the Vessels and Work Boat 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 any Vessel or Work Boat 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.

15. Vessels.

(a) The Vessels subject to this agreement are:

- i. Matthew Hayes or any vessel licensed by the City of Alexandria and owned by PRC, having an overall length not to exceed 65 feet and a width not to exceed 25 feet.
- ii. Cherry Blossom or any vessel licensed by the City of Alexandria and owned by PRC, having an overall length not to exceed 90 feet and a width not to exceed 33 feet.
- iii. Miss Christin or any vessel licensed by the City of Alexandria and owned by PRC having an overall length not to exceed 65 feet and a width not to exceed 20 feet.
- iv. Admiral Tilp or any vessel licensed by the City and owned by PRC, having an overall length not to exceed 36 feet and a width not to exceed 17 feet.

(b) Work Boat. The Work Boat shall be no more than 15 feet in length with an outboard engine and a six (6) foot beam, center sole, rigid inflatable vessel.

(c) In the event Licensee wishes to replace any Vessel with another Vessel during the term of this Agreement, it may do so, provided the following conditions are met: (i) the replacement vessel is able to safely dock within the Berths provided by this Agreement; (ii) Licensor consents in writing to the replacement vessel; 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 original licensed vessel. If these conditions are met, the replacement vessel shall, for purpose of this agreement, be considered one of the licensed Vessels.

16. 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 licensed Vessels in this agreement 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 provided by the Vessels 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 service 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 PRC owns other vessels licensed by the City which require use of the ticket booth.

(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.

17. 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.

18. 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.

19. 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: _____
James K. Hartmann, City Manager

Approved as to form:

Karen S. Snow
Assistant City Attorney

POTOMAC RIVERBOAT COMPANY

Date: _____

By: _____
Willem Polak, President