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City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 2, 2010
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: JAMES K. HARTMANN, CITY MANAGER 
SUBJECT: APPROVAL OF A LICENSE AGREEMENT WITH LA YACHTS TO BERTH THE *POTOMAC BELLE* IN COMMERCIAL DOCK SPACE AT THE CITY MARINA

ISSUE: Approval of a five-year license agreement with LA Yachts for the *Potomac Belle* for commercial dock space at the City Marina.

RECOMMENDATION: That City Council approve and authorize the City Manager to execute the attached five-year license agreement (January 1, 2010 through December 31, 2014) with LA Yachts allowing it to berth the *Potomac Belle* in commercial dock space at the City Marina.

DISCUSSION: The *Potomac Belle* is used by LA Yachts to provide charter boat services. The existing agreement expired December 31, 2009. Current terms allow the first right of negotiation for a new three-year agreement upon termination of the existing license. However, with Council's interest in providing a five year agreement with the other commercial boat owners at the Marina, a two year license agreement with LA Yachts is recommended. The dates specified are January 1, 2010, through December 31, 2014. Since the expiration of the license agreement in December, the parties used a series of monthly extensions to continue service.

The City and LA Yachts agree to these changes for the new five-year license agreement:

1. An increase of the license agreement payments from the current level to show a 0% no increase in 2010 and 3% annual increase in years 2011 through 2014. License payments are consistent with the market for commercial berths at other marinas within the geographic area.
2. All other terms and conditions of the existing license agreement would remain the same.
3. LA Yachts pays annual personal property tax on the vessel. This has been the case for previous license periods. LA Yachts does not receive a credit against its license fee for taxes paid to the City.
4. LA Yachts would have the right of first refusal to negotiate a new three-year license agreement in 2014 which would be the end of the initial five year period. If negotiations were successful, the new lease agreement would run to the end of 2017.

FISCAL IMPACT: The license fee revenues help offset part of the City's costs of operating the City Marina. The total expected license fee revenue to the City over the term of the five-year license agreement is 2010 - \$15,504, 2011 - \$15,972, 2012 - \$16,452, 2013 - \$16,946 and 2014 - \$17,454.

ATTACHMENT:

Attachment I. The proposed license agreement between the City of Alexandria and LA Yachts for the operation of the *Potomac Belle* charter vessel in commercial dock space at the City Marina.

STAFF:

Mark Jinks, Deputy City Manager

Jim Spengler, Director Recreation, Parks and Cultural Activities

LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2010, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the L.A. Yachts, Incorporated (the "Licensee").

WHEREAS, Licensee is the owner of the tour boat "Potomac Belle" and desires to operate a boat service ("Service"), using the "Potomac Belle," 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 the purposes stated above from January 1, 2010, through and including December 31, 2014; and

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

NOW, THEREFORE, it is mutually agreed as follows:

1. Representations: By executing this agreement, the Licensee warrants that it is the legal operator of the vessel described in section 14 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 all applicable rules and regulations of the City of Alexandria, including Rules and Regulations of the Alexandria Marina which are set forth in Attachment A to this agreement and which are incorporated by reference into this agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the City or of the Alexandria Marina, which are adopted subsequent to the execution of this agreement unless such rules are manifestly unreasonable in their application to Licensee.

4. Insurance. Licensee shall provide a certificate of insurance to the Licensor that shows that the Licensee and the Vessel 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;

(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 boat service, the Vessel, 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) that names Licensor as an additional insured, or the insurance required by subsection (c), or both, Licensee agrees to indemnify and hold Licensor harmless against all of the claims identified in said subsection (b) or against all losses incurred by Licensor that are identified in said subsection (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in subsection 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, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or 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.

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 located within, 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) In exchange for the consideration described herein and upon the conditions described herein, Licensor grants non-exclusive permission for the Licensee to operate, on a regular basis, a service using the Vessel from the berth (described in subsection (b), below) for the term of the Agreement.

(b) Licensee shall be permitted to berth at Commercial Berth 5, Torpedo Factory North Pier ("Berth").

(c) The term of this license shall be from January 1, 2010, to and including December 31, 2014.

(d) Provided that Licensee is not in default at the termination of the License on December 31, 2014, 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. January 1, 2015 terminating on December 31, 2017).

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.

(b) **Embarkation and Disembarkation.** Passenger embarkation and disembarkation shall not permit passengers to embark between the hours of 12:00 a.m. to 9:00 a.m. The final disembarkation of passengers on each day of operation shall be no later than 12:00 a.m.

(c) **Trash Removal and Disposal.** Licensee shall provide convenient on-board trash receptacles for use by passengers and crew and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of its sightseeing tour boat 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 expense incurred for such collection of refuse within; 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(d) **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.

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

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

9. Annual License Fee.

(a) Licensee shall pay to Licensor an annual fee for the license granted under this agreement. This fee shall be \$15,504 payable at the rate of \$1,292 per month for the period January 1, 2010 through and including December 31, 2010; the annual fee shall be \$15,969 per year payable at the rate of \$1,331 per month for the period of January 1, 2011 through December 31, 2011; \$16,448 per year payable at the rate of \$1,371 per month for the period of January 1, 2012 through December 31, 2012; the annual fee shall be \$16,941 per year payable at the rate of \$1,412 per month for the period January 1, 2013 through December 31, 2013; the annual fee shall be \$17,450 per year payable at the rate \$1,454 per month for the period January 1, 2014 through December 31, 2014.

(b) The annual fee shall be paid in twelve (12) monthly installments, to be paid on or before the 1st day of each month for which payment is due.

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

(d) 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, and other waterfront construction and harbor improvement, activities, plus 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 that Licensee is unable to berth at the Marina because of the events or activities referred to in this subsection, Licensee shall be entitled to reduce its monthly payment of the license fee for such time on a per-diem basis. The per diem

credit allowed for each such day shall be calculated by dividing the annual license fee for that year by 365 (current annual license fee/365 days).

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 that 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 any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel. The Licensor shall also have the right to terminate this agreement, effective immediately, if Licensee fails to maintain all the types of insurance required by section 4 of this agreement. In addition to the foregoing, Licensor may terminate this agreement by passage of a resolution by the City Council of the City of Alexandria to that effect, in the exercise of its sole discretion. Upon passage of such a resolution, Licensor shall provide to Licensee written notice of such resolution and termination of this agreement, at least thirty (30) days before the effective date of such termination. In the event of termination of this Agreement by Licensor, Licensor shall not be obligated to Licensee for anticipatory profits or any costs incurred by Licensee in vacating the Berth and ground based support facilities used the performance of this Agreement.

13. 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.

14. Vessel. The Vessel subject to this agreement is named the Potomac Belle, ("Vessel"). The Vessel is a coastal cruiser built in Minnesota, and measures 59 feet long and 14 feet wide. The Potomac Belle is capable of carrying a maximum of 47 passengers and is owned by Licensee. In the event Licensee wishes to replace the 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 no larger in size than the "Potomac Belle", (ii) Licensor consents to the replacement; and (iii) Licensor and Licensee agree upon the assessed value of the replacement vessel solely to reflect any increase or decrease in the value of the replacement vessel over the value of the current vessel, the "Potomac Belle". If these conditions are met, the replacement vessel shall, for purposes of this agreement, be considered the Vessel.

15. 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 Licensor's office and on board the Vessel. 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.

16. Utility and Service Costs. Licensee shall pay the costs of all utilities, with the exception of water, consumed or utilized by the Vessel. If Licensee is not billed directly by the utility, Licensor shall provide Licensee with invoices for monthly usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, within 30 days of receipt.

17. Cooperation and Noninterference. Licensee acknowledges that the Berth is located immediately adjacent to Commercial Berth 7, Torpedo Factory North Pier ("the adjacent Berth"). Licensee agrees to operate in a manner which will not unreasonably interfere with the use of the adjacent Berth.

18. 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 time as delivery is not accepted by the intended recipient), when deposited with Federal Express or other reputable overnight delivery services, 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 of receipt, addressed respectively as follows:

Licensor:

City of Alexandria
Department of Recreation,
Parks and Cultural Activities
1108 Jefferson Street
Alexandria, VA 22314
Attn: Director
Fax (703) 746-5502

With a copy to:

City of Alexandria
301 King Street
Suite 1300
Alexandria, VA 22314
Attn: City Attorney
Fax Number (703) 746-3750

Licensee:

L.A. Yachts
412 Belle Haven Meadows Court
Alexandria, VA 22306
Attn: George Stevens, President
Fax (703) 768-9017

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

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

L.A. Yachts, Incorporated

Date: _____

By: _____
George Stevens, President