

**LICENSE AGREEMENT BETWEEN THE CITY OF ALEXANDRIA
AND THE POTOMAC RIVERBOAT COMPANY, LLC
FOR THE OPERATION OF WATER TAXI SERVICES**

THIS AGREEMENT is made this _____ day of _____ 2014, 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 "*Commander Jacques*," "*Lady Josephine*," and "*Miss Sophie*," and desires to operate a water taxi service ("Water Taxi Service"), using the "*Commander Jacques*," "*Lady Josephine*," or "*Miss Sophie*," collectively known as the Vessels, from the City Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensee plans to operate a Water Taxi Service between the National Harbor, Prince Georges County, Maryland; the National Mall, West Basin & Ohio Dr., Washington D.C.; and the Diamond Teague Park, Washington, D.C.; and the City Marina in the City of Alexandria, Virginia beginning on April 1, 2014;

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 14 below (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, 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 City 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 anyone 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 Licensors' 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 City 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, services using the Vessels from the City Marina for the term of this Agreement.
- (b) Licensee shall be permitted to berth at the D-3 Floating Dock ("Berth"). The Berth may be used for vessel mooring and ancillary purposes only and may be used for embarkation or disembarkation of passengers.
- (c) The term of this Agreement shall be from April 1, 2014 through and including December 31, 2017 and this Agreement shall on April 1, 2014, replace the existing agreement between Licensor and Licensee regarding the Vessels.
- (d) The parties agree that the City intends to place the right to use some or all of the commercial berths out for competitive bid in or about June 2016, with new licenses commencing on January 1, 2018.
- (e) The Licensee may provide additional Water Taxi Service in the future provided the Licensee notify the Licensor of new routes 90-days in advance of commencement and provided the Licensee request no additional vessels or berthing locations.

8. **Special Conditions of License.**

- (a) Taxi Restriction. No voyage shall commence before 9:30 a.m. The parties expressly agree that this condition is intended to prevent use of the Water Taxi Service or the Vessels for commuting purposes.
- (b) Hours of Use of Berth. The Berth may be used 24 hours per day, seven (7) days per week for the docking of no more than one (1) of the Vessels identified in this agreement.
- (c) Embarkation and Disembarkation. Passenger embarkation and disembarkation shall be permitted at the Berth and at such locations at the City 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 City 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 City 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 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 of clients of the Service and shall dispose of all trash and debris from the operation of the Service. Licensee shall deposit no trash or debris on any part of the City Marina. 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 Berth 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 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 for the term of the agreement.
- (i) Licensee shall be permitted to maintain, at its sole expense, its current ticket booth (the "Ticket Booth") located at the foot of the North Pier. Licensee shall use the ticket booth only for the purpose of vending tickets for sightseeing and taxi 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 City 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.

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 \$9,864, payable at the rate of \$822 per month for the periods, January 1, 2014 through and including December 31, 2014. On January 1, 2015 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 agreed to by the parties. 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:

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

For the purposes of the above equation: 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 from the operation of the Water Taxi Service between the City Marina and National Harbor.

- (d) Total Operating Expenses is defined as \$1,124,681 for 2013. In 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.
- (e) 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.
- (f) 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.
- (g) The Licensee shall make available to the Licensor for the Water Taxi Service on a reasonable basis the records and accounting for Total Net Annual Revenues and for Debt Service.
- (h) In the event that the Licensor is successful in obtaining federal or state reimbursement, or grant funds, to assist in funding operations or capital costs of purchasing the Vessels, then the Total Operating Expenses and Debt Service shall be adjusted accordingly.

- (i) Debt Service is defined as the payment of principal and interest related to the purchase, the equipping, and 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.
- (j) 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.
- (k) 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 in the City Marina.
- (l) 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 City 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.

11. **Assignment**. This license may not be assigned by the Licensee without the consent of Licensors, 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 Licensors. Notwithstanding the above, Licensors 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 City Marina and any alternate docking facility owned by Licensors. If it becomes necessary for Licensors to remove or cause the removal of the Vessels through any legal proceeding, or otherwise, then the Licensors 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 only Vessels subject to this Agreement, having an overall length not to exceed eighty (80) feet and a width not to exceed twenty-five (25) feet, are the "*Commander Jacques*," "*Lady Josephine*," and "*Miss Sophie*,". 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. The Licensee, after providing written notice to the City, may substitute a single vessel, not exceeding the overall length and width as identified in this paragraph, for one (1) of the named vessels while out of use due to scheduled maintenance or mechanical problems. At no time is the Licensee permitted to operate more than three (3) water taxi vessels from the Berth or other berth in the City Marina in one (1) 24-hour period.
15. **Floating Access Platform**. Licensors will permit the Licensee to maintain a floating access platform ("float") at the Berth, which float is the property of the Licensors. 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 sub-metering 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 City 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 City 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 City 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:

Licensors: City of Alexandria
Department of Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314
Attention: James Spengler, Director or his successor

with a copy to: The City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

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.

20. **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.
21. **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 writing signed by the parties to this agreement.

SIGNATURES FOLLOW

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

CITY OF ALEXANDRIA, a
municipal corporation of Virginia

Date: _____

By: _____
Rashad M. Young, City Manager

POTOMAC RIVERBOAT COMPANY, LLC

Date: _____

By: _____
Willem Polak, President