

LICENSE AGREEMENT BETWEEN THE CITY OF
ALEXANDRIA AND SPIRIT CRUISES, LLC FOR THE OPERATION OF
CHARTER, SIGHTSEEING & DINNER CRUISES AND WATER TAXIS SERVICE
AT THE ALEXANDRIA MARINA

THIS AGREEMENT (“Agreement”) is made this ____ day of _____ 2018, by the City of Alexandria, a municipal corporation of Virginia (“Licensor”), and Spirit Cruises, LLC, Delaware limited liability company (“Licensee”).

WHEREAS, Licensee desires to operate charter services, sightseeing tour boat services, dinner cruises, and water taxi services, collectively “Services” from the Alexandria Marina in the City of Alexandria, Virginia

WHEREAS, Licensee is the owner of a **WORK BOAT** and desires to moor this vessel to service licensed vessels set forth herein in the City Marina in the City of Alexandria, Virginia; (the work boat service shall be referred to as the "Services"); and

WHEREAS, Licensor owns the Alexandria Marina as depicted on Attachment A hereto, which is suitable for docking boats, including the Licensed Vessels (as herein below defined); 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, and in the Solicitation, Offer and Award of Commercial Passenger Boat Berthing, Solicitation number RFP00000675, the “Contract”. The number of and location of slips shall be based on the terms, conditions, insurance, and financial obligations established by the Contract and are hereby incorporated into the License Agreement as if fully set forth herein.

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 16(a) below (the “Licensed 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 Licensed Vessels. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Licensed Vessels for the purpose of enforcing such laws.

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 B 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 Licensor that shows that Licensee and the Licensed Vessels are covered by the terms, conditions, insurance, and financial requirements which are set forth in the Contract and are hereby incorporated into the License Agreement as if fully set forth herein. Licensee will at all times maintain the following insurance coverage:

- a) Hull and Machinery: at the fair market value of the Licensed Vessels
- b) Protection and Indemnity: Limit of \$1,000,000.00
- c) Marine General Liability: Limit of \$1,000,000.00
- d) Vessel Pollution: Limit of \$5,000,000.00
- e) Bumbershoot Liability: (sitting excess of all of the above) Limit Total of \$20,000,000.00

The certificate of insurance, shall name the City of Alexandria as additionally insured.

5. Indemnification. Subject to the dollar limitations set by the terms, conditions, insurance, and financials established by the Contract, which are hereby incorporated into the License Agreement by reference, Licensee agrees to indemnify and hold harmless 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 reasonable attorneys' 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 Licensed Vessels while located within or approaching or departing the Alexandria Marina, except to the extent any such injury or damage arises from or relates to the negligence of Licensor, or its officers, agents, contractors or employees.

6. Waiver of Licensor's Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that 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 Licensed Vessels or while at or on the Alexandria Marina, or for any property damage to Licensee's Licensed Vessels sustained while the Licensed Vessels are in or approaching or departing the Alexandria Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers, agents, contractors or employees.

7. Grant and Term of License.

(a) This Agreement grants a non-exclusive right and license for Licensee to operate, on a regular basis, the Services from the commercial berths C1, C2, C3, D1, D2, and D3, located at the Alexandria Marina's North Pier and as more particularly set forth on Attachment A hereto (the "Berths") for the term of the Agreement. The parties expressly agree that, while Licensee's right to conduct the Services at the Alexandria Marina shall be non-exclusive, Licensee has the exclusive right to use the Berths except as otherwise expressly provided herein.

(b) Licensee shall have the right to employ the Berths for embarking and disembarking passengers of the Licensed Vessels. Licensee agrees to observe the maximum boat

length and beam permitted for each Berth, and to only dock one Licensed Vessel at each Berth at any time. Licensee may use the Berths to support the operational needs of its fleet, including docking, routine maintenance and the delivery of the Services, by moving vessels among the Berths for all Licensed Vessels operated by Licensee.

(c) Licensee will operate sightseeing tour boat services from the Berths using the Licensed Vessels from March through October each year. Licensee shall provide its annual sightseeing schedule to Licensor by March 1 of each year.

(d) The Work Boat shall be used solely for the repair, service and maintenance of Licensee Licensed Vessels and to shuttle Licensee's employees to, from and among the Licensed Vessels. The Work Boat shall be moored at the north end of the water taxi float as identified on Attachment A.

(e) Licensee may operate a Water Taxi Service between the *National Harbor, Prince Georges County, Maryland*; the **National Mall.**, Washington D.C.; the *Diamond Teague Park*, Washington, D.C.; *The Wharf*, Washington, D.C.; Georgetown, Washington D.C., *Audi Soccer Stadium*, Washington, D.C., and *Mt. Vernon Estate*, Alexandria, VA; and the City Marina in the City of Alexandria; The Licensee may provide additional Water Taxi Service provided that the Licensee notify the Licensor in writing of any proposed additional route, sixty (60)-days in advance of the proposed date of the new or additional route. All additional and/or new Water Taxi Services shall be approved at the discretion of the City Manager and shall be determined within thirty (30) days of receipt of the Licensee's written request. The Potomac Taxis (Potomac Taxi I, Potomac Taxi II, Potomac Taxi III, and Potomac Taxi IV), will berth at Berths D2 or D3.

(f) The term of this Agreement shall be from April 1, 2018, to and including March 31, 2023.

8. Renewal. In the event that Licensee intends to renew the Agreement for an additional five (5) year term, the Licensee shall notify Licensor in writing by June 30, 2022. It is the City's intention that there shall be one mutually agreeable license extension for a period of five (5) years. Any renewal of this Agreement shall be with the approval of the Alexandria City Council.

9. 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 of the Alexandria Marina. The parties expressly agree that this condition is intended to prevent use of the Services or the Licensed Vessels for commuting purposes except as provided in paragraph 7(e), above; provided however, that this prohibition shall not preclude Licensee from undertaking new services utilizing the Licensed Vessels and the Berths with the prior written consent of the City Manager.~~

The parties expressly agree that this condition is intended to prevent use of the Licensed Vessels for commuting purposes from the Alexandria Marina. Water Taxi Service as provided in paragraph 7(e) shall not commence before 9:30 a.m. on Monday through Friday of any week (with the exception of holidays). However, the Licensee may provide Water Taxi Service with Licensed Vessels prior to 9:30 a.m. for special event activities.

This prohibition shall not preclude Licensee from undertaking new services utilizing the Licensed Vessels and the Berths with the prior written consent of the City Manager.

(b) Trash Removal and Disposal. Licensee shall provide convenient on-board trash receptacles for use by clients of the Services and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of the Services. 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 thirty (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 Licensed Vessel presents a navigational hazard if berthed at a Berth; the Licensed Vessel 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, Licensee shall be permitted to embark and disembark passengers at the Berths. In the event of a

determination that a navigational hazard exists that impedes Licensee's ability to continue the Services, Licensor shall use its best efforts to make reasonable arrangements for the Services to continue from another location at the Alexandria Marina, but subject to the limitations applicable to such use as set forth in Section 7(b).

(d) Refueling. Refueling operations are allowed per the June 25, 2014 approval from the Alexandria Assistant Fire Marshall in Attachment C, subject to Licensee complying with the refueling conditions in Attachment C. Such approval may be revoked at any time by the City Manager for reasonable cause.

(d) 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. Notwithstanding the foregoing, Licensee may temporarily place on the exterior of a Licensed Vessel, or its approved replacement vessel, such banners or signs bearing the name, motto, logo or insignia of a group that has chartered such Vessel on the date of the charter.

(e) Cherry Blossom Supplemental Uses. (i) Notwithstanding the general use provisions contained in this Agreement or descriptions of the charter services to be provided by Licensee pursuant hereto, the parties agree that the Cherry Blossom, or its approved replacement vessel, shall be used solely and exclusively on a pre-booked charter basis, reserved for one charter group, and shall not be used as an eating or other establishment sold by Licensee to members of the general public; provided, that the Cherry Blossom may, on no more than eight (8) occasions per year with a frequency of no more than once in any calendar month, be made available by Licensee to members of the general public on a pre-use, per person basis; The Licensor is under no obligation to subsidize any proposed or approved improvements made by the Licensee, and the Licensee will be responsible for returning any changes to the City Marina or public property to its original condition, ordinary wear and tear excepted, at no cost to the City.

(f) Chery Blossom Licensor Use. The Licensee shall allow the Licensor use of the Cherry Blossom four (4) times per year at mutually agreed upon dates at no cost to the Licensor. Any use by the Licensor under this section shall be approved by the City Manager or his designee. The use of the Cherry Blossom does not include food, beverages or entertainment.

10. Marketing. To advance the City of Alexandria's marketing, visitation and cooperative activities on the Potomac Waterfront, Licensee shall:

(a) Participate using best efforts and faithful cooperation with Visit Alexandria, Alexandria Economic Development Partnership and City staff to establish a cooperative events and marketing agreement with one or more of the other regional waterfront destinations (e.g., Mount Vernon, Gaylord, National Harbor, MGM, Destination DC, The Wharf, and Georgetown) to explore and identify collaborative promotional activities for the promotion of the City of Alexandria and that of other Potomac waterfront destination locations.

(b) Provide assistance and reasonable staff resources to assist the City with planning and execution of the annual Potomac River holiday boat parade in conjunction with The Wharf, including providing an on-water boat marshal to ensure the smooth, safe and timely operation of the event.

(c) Promote the City of Alexandria through the presentation of the City's Visitors Guide and other collateral at other riverfront venue ticket kiosks where tickets are sold for trips to or stops at the Alexandria waterfront.

(d) Provide and make available the City's Visitor Guides and photo/video content on Vessels that travel to and/or berth in Alexandria. The City will be responsible to supply the printed materials and electronic media.

11. Annual Fee.

(a) Licensee shall pay to Licensor a guaranteed annual fee for the license granted hereunder. The fee shall be based on the terms, conditions, insurance, and financial obligations established by the Contract, which are hereby incorporated into the License Agreement as if fully set forth herein. The Guaranteed Annual Fee for six (6) slips, for the first five (5) years of the license term, and for second five (5) years of the renewal term, if applicable are shown on the table below.

Year One:	\$175,000
Year Two:	\$180,250
Year Three:	\$185,658

Year Four:	\$191,227
Year Five:	\$196,964
Year Six:	\$202,873
Year Seven:	\$208,959
Year Eight:	\$215,228
Year Nine:	\$221,685
Year Ten:	\$228,335

For each lease year, the Licensor shall receive, in addition to the guaranteed annual payments, an Additional Fee equal to five percent (5%) of Net Revenue in excess of \$5,000,000. Net revenues are all net revenues from charter, dinner cruise, water taxi, sightseeing or other operations for passengers departing from the Berths. Within thirty (30) days after each license year, Licensee shall submit to Licensor a report of Net Revenue for the license year and the payment of the Additional Fee.

Net Revenue is defined as the aggregate dollar amount of all business resulting from passengers boarding the Licensed Vessels at the Berths, including all sales of food, beverages and merchandise and all charges for services performed in, upon or resulting from passengers boarding the Licensed Vessels at the licensed Berths, but allowing deduction, if any, for customer refunds, discounts, gratuity, entrance fees collected and remitted to other venues (e.g. Mt Vernon entrance fees), sales, liquor, admission or amusement taxes, and bad debts not to exceed two percent (2%) of gross sales

(b) The Annual Fee shall be made monthly, twelve (12) equal payments, and rendered in advance, on the first business day of the month for which such fees are due.

(c) Other than as outlined in section 11(f) and 12, Licensee shall not be entitled to any reduction in fees in the event any Berth is not occupied by a Licensed Vessel or Licensee does not conduct Services from the Alexandria City Marina.

(d) If Licensee fails to pay any installment in full within ten (10) calendar days of the installment's due date, Licensee shall be liable for a penalty, equal to ten percent (10%) of said installment, plus interest, based upon the amount unpaid and a rate of ten percent (10%) per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

(e) In the event that, during its operating season, a Licensed Vessel is, for mechanical reasons that are beyond the capacity of Licensee to repair, unable to operate for more

than seven (7) consecutive days, Licensor agrees that Licensee may identify and utilize a substitute vessel on a temporary basis until such time that the inoperable Licensed Vessel is returned to service; provided that (i) the temporary vessel does not exceed the size limitations associated with the assigned Berth; and (ii) the Licensor provides its written consent, which consent shall not be unreasonably withheld conditioned or delayed.

(f) In the event that, during its operating season, Licensee is unable to obtain a replacement vessel under Section 11(e) above, for a Licensed Vessel then, for each such consecutive-day period of eight (8) or more days, Licensee shall be entitled to a credit against future license fees payable for such Vessel in an amount equal to $(X/30) \times (Y)$, where “X” represents the total number of days during which the Vessel is out of service in the consecutive-day period and “Y” represents 16.7% of the monthly installment of the Annual Fee.

12. Waterfront Repair Events. Use of the Berths described in paragraph 7(a) 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 Licensed Vessels to the Berth (collectively, “Waterfront Repair Events”). If a Waterfront Repair Event requires the moving of any Licensed Vessel from an assigned Berth, Licensor shall exercise its best efforts to locate another docking location for Licensee at the Alexandria Marina. In the event that Licensor is unable to secure an alternate berth for any licensed Vessel, Licensee shall be responsible for finding an alternate docking location, but subject to the limitations applicable to such use set forth in Section 7(b). For each day in excess of two (2) days per calendar month between March 1 and October 31 that Licensee is unable to dock at one of the Berths because of a Waterfront Repair Event, the 16.7% of the Annual Fee shall be abated day-for-day for the entire period that the Berth is unavailable. Moreover, if a Waterfront Repair Event renders Licensee unable to use the Berths for the purpose of embarking or disembarking passengers, Licensor shall use its best efforts to find alternate docking facility suitable for loading and discharging passengers at the Alexandria Marina for each such affected Licensed Vessel. Notwithstanding anything herein to the contrary, with the exception of Waterfront Repair Events required as emergency measures to ensure public safety of persons using the Alexandria Marina or arising from an act of God, Licensor represents, warrants and

covenants to Licensee that it shall not schedule or permit a Waterfront Repair Event to occur between the period of March 1 and November 1 of any year during the term of the Agreement.

13. Assignment. This Agreement may not be assigned by Licensee without the consent of Licensor, which consent shall not be unreasonable withheld, but which may require approval or other action by the City Council of the City of Alexandria.

14. Termination. In the event that Licensee violates any of the terms of this Agreement, Licensee shall be considered in default. If such default continues for thirty (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.

15. Removal. If this Agreement is terminated, the Licensed 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 any Licensed Vessel or other vessel through any legal proceeding, or otherwise, then Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including reasonable attorneys' fees, from Licensee.

16. Licensed Vessels.

- (a) The Licensed Vessels owned by Licensee and subject to this Agreement are **Cherry Blossom, Matthew Hayes, Miss Christin, Miss Mallory, Admiral Tilp, Capital Elite, Commander Jacques, Lady Josephine, Miss Sophie, Potomac Taxi I, Potomac Taxi II, Potomac Taxi III, and Potomac Taxi IV.**
 - i. **Work Boat.** The Work Boat, owned by Licensee, shall be no more than 15 feet in length or any replacement vessel that is classified as a non-certified passenger carrying vessel of any size and dimension that fits the

location provided in subparagraph 7(d) or within boat slip at the City Marina subsequently assigned to the Work Boat.

- (b) In the event Licensee wishes to replace any Licensed 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, which consent shall not be unreasonably withheld; and (iii) the original Licensed Vessel that is being replaced shall no longer have the right to utilize the Berths at the Alexandria Marina.
- (c) In the event Licensee wishes to bring another vessel to the Berths on a temporary basis during special waterfront events, it may do so provided the following conditions are met: (i) the vessel is able to safely dock within the Berths; and (ii) Licensor consents in writing to the vessel and the dates, which consent shall not be unreasonably withheld.

17. Float, Ticket Booth and Waiting Area.

(a) Licensor has permitted the Licensee use of floating dock and gangway (collectively, the "Float") as depicted on Attachment A, a ticket booth at the western end of the Torpedo Factory North Pier, and the Waiting Area under the restaurant adjacent to Pier D. The Waiting Area and the Float are the property of Licensor. It shall be the sole responsibility of Licensee, throughout the term of this Agreement, and at its sole cost and expense, to maintain and repair, and if necessary due to damage caused by one of the Vessels or any other vessel in Licensee's fleet 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 Licensee's vessels, or by normal wear and tear. Licensee, at its sole cost and expense, shall maintain and repair the Waiting Area; Licensor shall repair the Waiting Area related to any damage caused by Licensor or its agents, or if due to 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 Services provided by the Licensed Vessels and for distributing

information on such Services. 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.

Notwithstanding anything herein to the contrary, Licensee shall be permitted to sell tickets for other vessels in its fleet pursuant to separate licensing agreements with Licensor or otherwise authorized in writing by Licensor;

(ii) Licensee shall not place any signs, advertisements or notices of any nature 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;

(iii) Licensee shall be allowed to make modifications and upgrades to the ticket booth, subject to applicable laws; and

(iv) Licensee shall remove the ticket booth at the termination of this Agreement, unless Licensee owns other vessels licensed by the City which require use of the ticket booth.

18. Parking. Licensee shall take all reasonable efforts to advise passengers of the Services 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 Agreement. Licensee shall also consider in good faith Licensee's participation in programs that call for retailers in Old Town Alexandria to provide financial incentives to their customers to use off-street parking facilities.

19. Utility and Service Costs. Licensee shall pay the cost of bringing or otherwise making available any new utility service to the Licensed Vessels, the cost of sub-metering any new service providing utilities to the Licensed Vessels and the cost of all utilities, with the exception of water consumed or utilized by the Licensed Vessels. 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 thirty (30) days of receipt.

21. 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 delivered by Federal Express or other reputable overnight delivery service, when delivered by 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: James Spengler, Director or his successor

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

Licensee: Spirit Cruises, LLC
455 N. Cityfront Plaza Drive, Suite 2600
Chicago, Illinois 60611
Attn: Paul Belforti, Senior Vice President of Operations or his
successor

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.

SIGNATURES

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

CITY OF ALEXANDRIA, a
municipal corporation of Virginia

Date: _____

By: _____
Mark Jinks, City Manager

SPIRIT CRUISES, LLC

Date: _____

By: _____
Paul Belforti, Senior Vice President of Operations