

**HOPEWELL CITY MARINA
LEASE AGREEMENT**

THIS LEASE AGREEMENT, entered into this ____ day of _____ 2014, by and between the City of Hopewell, Virginia, a political subdivision of the Commonwealth of Virginia (the "City"), and Fish Tales 2, Inc. (the "Tenant").

WITNESSETH:

WHEREAS, on or about December 20, 2013 the City advertised a Request for Proposal (Request for Proposal RFP 2013-#24-13) (the "RFP"), copy attached as Exhibit A, for the operation and maintenance of the Hopewell City Marina, East Side Only. The Tenant submitted a proposal dated December 30, 2013 (the "Proposal"). The RFP and Proposal are incorporated herein by reference.

WHEREAS, on or about January 14, 2014, the City determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, following proper procurement required with competitive negotiation on February 11, 2014 the Hopewell City Council adopted a resolution authorizing the City Manager to execute this Lease Agreement with the Tenant.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions stipulated in this Lease Agreement, hereinafter referred to as (the "Lease"), the City does hereby lease to Tenant and Tenant does hereby rent from the City, the following described lots, pieces or parcels of land, together with all improvements thereon (the said land and improvements thereon collectively referred to as the "Marina") to-wit:

Tax Map Parcel #066-0003
4.58 acre parcel on Appomattox River, Northwest B Village
Only the East Side – see attached document as part of RFP.
Excluding approximately 300 Square feet as noted in Exhibit "B"
attached hereto.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

I. TERM

a. The initial term of this Lease shall be for THREE (3) year(s) (the "Term") and shall commence as hereafter defined. If the City, for any reason whatsoever, cannot deliver possession of the Marina to Tenant on the Commencement Date, then this Lease shall not be affected or impaired in any way except as herein expressly provided and the City shall not be liable to the Tenant for any loss or damage resulting there from or caused thereby. In such event the rent reserved herein shall not become due and payable until the date on which the City gives Tenant written notice that the Tenant can take possession of

the Marina. Unless expressly otherwise provided herein rent shall commence on the earlier of: (i) occupancy of the Marina by Tenant; (ii) the date the City has the Marina ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same; or (iii) the date the City could have had the Marina ready had there been no delays attributable to the Tenant (the "Commencement Date").

b. If the Expiration Date, as determined herein, does not occur on the last day of a calendar month, then the City, at its option, may extend the Term by the number of days necessary to cause the Expiration Date to occur on the last day of the last calendar month of the Term. The Tenant shall pay Rent for such additional days at the same rate, payable for the portion of the last calendar month immediately preceding such extension. The Commencement Date, Term and Expiration Date shall be set forth in a commencement letter (the "Commencement Letter"), prepared by the City and executed by the Tenant.

c. Prior to the expiration of this Lease, the parties may, renew the Lease for an additional TWO (2) year Term. Prior to the expiration of the TWO (2) year renewal Term, the parties may, upon mutual written agreement, extend the Lease for an additional FIVE (5) Year or other mutually agreeable Term. Subsequent renewals are permitted upon mutual written agreement between the parties.

d. The department of Recreation and Parks shall be the point of contact for the lease agreement.

2. RENT

During the first year of the original term of this Lease, Tenant covenants to pay a base annual rental to the City equal to Eighteen Thousand Dollars (\$18,000.00) ("Rent"), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Fifteen Hundred Dollars (\$1,500.00). The Rent for the second and third years of the original term shall be \$18,900.00 (\$1,575.00 monthly) and \$19,845.00 (\$1,654.00 monthly) respectively. If the initial TWO (2) year renewal is granted, the Rent for the fourth and fifth years shall be \$21,837.00 (\$1,820.00 monthly) and \$22,929.00 (\$1,911.00 monthly) respectively. Rent for any additional Terms shall be as mutually agreed upon by the parties.

A security deposit of \$5,000.00 is required and will only be returned at the end of the lease if all areas on the East side of the marina are kept in good standing with only normal wear and tear. In the event any areas on the East side of the marina have more than normal wear and tear, a pro-rated portion of the \$5000.00 deposit shall be withheld by the City of Hopewell to cover the cost of repairs. This deposit will be deducted from the fees collected by City of Hopewell for annual slip rentals or annual ramp fees. The first month's rent of \$1,500 would also be deducted from the annual slip rental or annual ramp fees. Also due to drink and snack inventory any items left as of close on March 31, 2014 will be credited and reflected as a deduction from annual slip rental or annual ramp fees. Any dollars remaining from the annual slip rental or annual ramp fees will be paid to the tenant within 30 days of the first day they begin operation.

The Tenant shall pay to the City Rent, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the City and without set off

or deduction; provided, however, if the Term commences on a day other than the first day of a calendar month, then Rent for such month shall be (i) prorated for the period between the Commencement Date and the last day of the month in which the Commencement Date falls, and (ii) due and payable on the Commencement Date. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the City's obligations under this Lease. For each monthly Rent payment the City receives after the tenth (10th) day of the month, the City shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of ten percent (10%) of all Rent due for such month. The city will provide to the Tenant any dollars collected for season passes for the ramp prorated to the date of commencement of contract. And same for slip holders who may have paid a yearly rate.

If the Tenant raises fees for slips or ramps the City shall receive twenty-five percent (25%) of any such increase.

3. TAXES AND ASSESSMENTS

Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof, excepting only real property. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed with the real property, the Tenant shall pay to the City its share of such taxes within ten (10) days after delivery to the Tenant by the City of a statement in writing setting forth the amount of such taxes applicable to the Tenant. Monthly a list of slip holders must be given to the Commissioner of Revenue by the 1st of each month. This will allow for proper taxes to be paid by slip holders at the Hopewell City Marina.

4. USE AND NAME OF MARINA

a. Use. The Tenant shall be permitted to use the Marina for marine slip rentals, and Marina Ramp consistent with the Marina's current use, to include additional Marina uses as described in the Proposal (the "Current Use"). The Tenant must obtain the City's permission prior to any proposed change in the size or scope of the Current Use or prior to establishing any new use at the Marina. The Tenant shall never make any use of the Marina which is in violation of any federal, state, or City laws, rules and regulations, whether now existing or hereafter enacted or as may be developed or modified from time to time by the City effective as of the day delivered to the Tenant or posted on the Marina providing such rules do not unreasonably interfere with the conduct of the Tenant's business. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the City on the Marina.

b. Name. The City shall have the exclusive right to name and/or rename the Marina currently Hopewell City Marina. The Tenant shall use and promote only the Hopewell City Marina. The use of any name for the Marina other than the Hopewell City Marina, if any, shall be prohibited; however, Tenant may name the Marina store "Fish Tales II". If the City confers Hopewell City Marina, the Tenant shall only use the Hopewell City Marina in connection with the operation of the Marina. The City shall retain any and all rights to the Hopewell City Marina upon termination of this Lease for whatever reason. The Tenant may use the name "Hopewell City Marina" as the primary name for all activities within the Marina

boundaries. The Hopewell City Marina shall be used for Marina uses.

5. CONDITION OF THE MARINA

a. Prior to the Tenant's occupancy and use of the Marina, Tenant and the City shall execute a Punch List delineating which portions of the Marina shall be accepted by the Tenant "as is" and which portions of the Marina shall be accepted by the Tenant as under retainage and subject to final completion by the City and its agents. The Punch List is attached hereto and marked Exhibit "C". The Tenant's occupancy and use of the portions of the Marina deemed "as is" in the Punch List shall be the Tenant's representation to the City that the Tenant has examined and inspected the same, finds the Marina to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance "as is". Upon completion by the City and its agents of the portions of the Marina under retainage, the Tenant's continued occupancy and use of those portions of the Marina thereafter shall be the Tenant's representation to the City that the Tenant has examined and inspected the same, finds those portions of the Marina to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of those portions of the Marina "as is". The Tenant shall deliver at the end of this Lease each and every part of the Marina in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Marina to the City or to an employee of the City prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Marina except upon written notice by the City in accordance with the terms hereof. The Tenant shall: (i) keep the Marina in good order; (ii) make repairs and replacements to the Marina and premises as needed because of the Tenant's, employees', or invitees' misuse or primary negligence; (iii) repair and replace special equipment or decorative treatments installed by the Tenant, except if this Lease is ended because of casualty loss or condemnation; and (iv) not commit waste. The Tenant, however, shall make no structural or other alterations of the Marina other than routine maintenance without first obtaining written permission from the City. "Routine Maintenance" shall be performed by the Tenant and shall include minor, usual repairs and upkeep (e.g., replacement of light bulbs, fixtures, wood planks on piers, roof patches, etc.) and including, but not limited to, the following:

1. **Grass Maintenance.** Mowing of all grass areas between all buildings and parking areas and the marina basin/canal once per week during the growing season. Mowing of all other grass areas on the property around all developed areas of the property once per month during the growing season. All holes on property filled to include areas behind bulkheads.
2. **Wood Deck Maintenance.** Replacement of all missing deck boards on the walking surface of all decks within 24 hours of condition developing or first notification of condition. If, due to unusual conditions, replacement cannot be done within 24 hours, the Tenant will close that portion of the deck to pedestrian traffic until replacement is completed, and the Tenant shall provide the City with immediate notice thereof.
3. **Drainage.** All drainage pipes and ditches shall be cleared of any debris, grass clippings, or soil that may be causing malfunction of the facility or diversion of waters in a way that causes damage to other portions of the property. This is particularly important for the drains along the front parking lot which shall be cleared immediately after every mowing

or trimming operation.

4. **Vehicle Parking.** Placement and maintenance of measures as deemed appropriate by the City to prevent parking on turf areas adjacent to the marina basin in any areas.
5. **Building and Covered Dock Maintenance.** Replacement of broken or missing light bulbs, outlet covers, and fixtures. Cleaning and painting of interior areas of all buildings as necessary. Cleaning of the restrooms shall be done once per day but may need to be done more so if tournament or special event is held or due to heavy use. Minor repairs to plumbing components or fixtures such as sinks, hose equipment, or toilets. Any spills of petroleum based products or other products that may cause contamination of building or grounds areas shall be promptly cleaned up and disposed of appropriately.
6. **Equipment Maintenance.** Repair of any outdoor equipment in place at the time of the lease execution used in the operation of the marina such as pump outs. Outdoor water fixtures shall be inspected on a daily basis for proper functioning and operation.
7. **General Cleaning of Grounds and Buildings.** Litter pickup once daily and emptying of dumpsters and trash containers on a regular basis. This may need to be done more so if tournament or special event is held or due to heavy use.
8. **Monitoring and Restricting Access to Areas.** Tenant shall monitor and restrict access to portions of the property. A designated area for fishing beyond the canal on the West side is posted and fishing is only allowed during day light hours. Posting of signage for this shall be maintained by the City. Tenant shall notify the City immediately of any loss or damage to the signage. Any changes to designated fishing area or times will be determined by City, with any changes given to the Tenant.
9. **Stormwater and Pollution Management Tasks.** The Tenant's employees will attend any City-offered and City-required training for City employees on pollution prevention measures. The Tenant will develop and implement standard operating procedures for spill prevention, mitigation and control for both interior and exterior operations. The Tenant will document a formal operation and maintenance plan for any stormwater facilities, including inlets, road ditches, BMPs, etc.
10. **Hopewell City Marina** will not provide onsite vessel fueling unless approved by the City with request submitted in writing.

The City shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have 10 calendar days from the day of receipt of written notification to correct the deficiency. Email shall constitute "written notification." If the deficiency is not corrected within this time period, the City may procure the required goods or services from other sources and

hold the Tenant responsible for any resulting additional purchase, staff and administrative costs. This remedy shall be in addition to other remedies which the City may have.

If the Tenant desires alterations other than Routine Maintenance (e.g., replacement of entire pier structure, enclosure of dock slips, enlargement of structure, etc.), the Tenant shall make such request in accordance with section 8 of this Lease Agreement.

b. Upon termination of this Lease or vacation of the Marina by the Tenant, the Tenant shall restore the Marina, at Tenant's sole expense, to the same condition as existed at the Commencement Date; ordinary wear and tear, alterations approved pursuant to section 8 of this Lease Agreement, and damage by insured casualty only excepted. The City, however, may elect to require the Tenant to leave alterations performed by or for the Tenant unless at the time of such alterations the City agreed in writing that such alterations could be removed on the Expiration Date, upon the termination of this Lease or upon Tenant's vacation of the Marina.

c. The Tenant shall keep the Marina free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Marina by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after the filing thereof. Should the Tenant fail to discharge such lien within such ten (10) day period, then the City may discharge the same, in which event the Tenant shall reimburse the City, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the City in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the City under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage or other encumbrance upon the reversionary or other estate of the City, or any interest of the City in the Marina. **NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO THE MARINA SHALL ATTACH TO OR AFFECT THE INTEREST OF CITY IN AND TO THE MARINA.**

6. ASSIGNMENT, SUBLETTING AND MORTGAGING

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Marina, in whole or in part, without the City's prior written consent.

7. UTILITIES

During the term of this Lease, the Tenant shall promptly pay all fuel, water, gas, electricity, sewerage, telephone, trash and other utility bills, as the same become due. The City shall not be liable for any interruption or failure in the supply of any utility to the Marina and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the City's negligence, nor shall the Lease or any of the City's obligations be in any way affected thereby. Be it known that each slip has electricity, which currently is paid by the slip holder directly to Dominion Power.

8. REPAIRS AND ALTERATIONS

a. The Tenant shall, at its sole expense, perform or contract to have performed all Routine Maintenance that it deems necessary about the Marina. The Tenant shall not be reimbursed for any Routine Maintenance unless otherwise agreed to in writing by the City.

b. The Tenant may make improvements to the Marina using its own resources. Other than Routine Maintenance, the Tenant shall not make any alterations or, additions to, or changes ("Improvement") to the Marina without the prior written consent of the City, such consent not to be unreasonably withheld. All such Improvements shall meet local, state and Federal requirements and avoid adverse impacts to cultural and environmental resources. The Tenant shall provide construction drawings to the City for each proposed Improvement and shall provide the City with a cost estimate for each. The City shall consider each such proposed Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Improvement or any portion thereof. All proposed Improvements shall be classified as either "infrastructure solely dedicated to the Hopewell City Marina and not required for marina operations" or "other." These two classifications shall determine which improvements are eligible for removal upon Termination of this Lease pursuant to paragraph 8(c). It is understood between the parties that all buildings on the property as of the date of this Agreement are considered required for marina operations. Upon completion of the Improvement, the Tenant shall provide the City with a set of as-built construction plans and a complete accounting for the City's review and approval. If the City approves the accounting and as-built construction plans, the Improvement shall be deemed an "Approved Improvement". The department of Recreation and Parks is the designated department for review and approval.

c. Improvements specific to infrastructure solely dedicated to the Marina and not required for marina operations can be removed at a mutually-agreeable date and time upon termination of this Lease. All Improvements and Approved Improvements classified as "other" as described in paragraph 8.b. above shall, upon the termination of the Lease for whatever reason, become the City's property.

d. A marina annual capital improvement plan for those Approved Improvements classified as "other" shall be developed by the parties as of September 30 for each subsequent year of the Lease. City of Hopewell Procurement Policies and Procedures shall be followed for any approved Improvements. The total amount of money expended by the City during any twelve (12) month period for Approved Improvements or other repairs shall be limited to the following:

- i. the amount of Rent collected by the City in the preceding twelve (12) months, less any amount previously spent by the City for an Approved Improvement or other repair during those twelve (12) months; or
 - ii. the amount of money appropriated by the Council of the City of Hopewell for each Approved Improvement or other repair necessary to maintain the property up to applicable state and local regulations.
- e. Upon termination of the Lease, the City shall reimburse the Tenant for any

Approved Improvement (the "Approved Improvement Reimbursement") not removed by the Tenant pursuant to the terms of paragraph 8.b. The Approved Improvement Reimbursement shall be calculated according to the following formula: Cost of the Approved Improvement subtracted by a rate of depreciation considered as Generally Accepted for the asset in question for each month following completion of the Approved Improvement. The date of completion shall be the date a temporary or final Certificate of Occupancy was obtained for the Approved Improvement. If no temporary or final Certificate of Occupancy was obtained for the Approved Improvement, the completion date shall be determined by the City.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Marina shall terminate and title to the Improvements and Approved Improvements thereon, except as provided for in paragraph 8(c), shall automatically pass to, vest, belong to, and become the property of the City. The Tenant shall, if the City shall deem it appropriate, execute any further documents to confirm this transfer of title to the City with cost of charge to the City. The Tenant shall be responsible for the removal of its personal property and/or Approved Improvements described in paragraph 8(c), upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Marina and equipment to the City, broom-clean, including all Improvements, Approved Improvements, un-removed Improvements as described in paragraph 8(c), alterations, rebuilding's, replacements, changes or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear excepted.

h. The \$5,000.00 deposit, or the amount pro-rated pursuant to paragraph 2, above, will be returned within 30 (thirty) days of the last day of the term, if all areas on the East side of the marina lease are kept in good standing with normal wear and tear expected.

9. EMINENT DOMAIN

If all of the Marina, or such part thereof such that will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the City and the Tenant as of such date. If only a portion of the Marina is taken and the Tenant can continue use of the remainder, than this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking. The City shall be entitled to receive and retain the entire award for the affected portion of the Marina. The Tenant shall have no right or claim to advance any claim against the City for any part of any award made to or received by the City for any taking and no right or claim for any alleged value of the unexpired portion of this Lease, or its leasehold estate, or for costs of removal, relocation, business interruption expense or any other damages arising out of such taking.

10. INSPECTION BY THE CITY

Upon reasonable notice, the Tenant shall permit the City, its agents, or its employees to inspect the Marina and all parts thereof, during business hours and to enforce and carry out any provision of this Lease and for the further purpose of showing the Marina to prospective

tenants and purchasers and representatives of lending institutions. The City shall at all times have the right to place signs in conspicuous places about the Marina and to otherwise advertise the Marina for sale or rent, in addition to having the rights of entry and inspection set forth herein.

11. DEFAULT BY THE TENANT

a. The happening of any of the following enumerated events shall constitute a default for which the City, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Marina by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Marina; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent, (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state; or a receiver of the property of the Tenant is appointed; or the levy of execution or other taking of property, assets or the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions or covenants of this Lease.

b. Should the City elect to re-enter and terminate the Tenant's use of the Marina as herein provided, or should the City take possession pursuant to legal proceedings or pursuant to any provisions under law, the City may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet or sell the Marina or any part thereof for such term or terms (which may be for a term extending beyond the original or renewal terms of this Lease) and at such rent and upon such other terms and conditions as City, in its sole discretion may deem advisable. Upon each such reletting all rent received by City from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from the Tenant to the City; second, to the payment of any costs and expenses for such repossession and reletting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by the City and applied in payment of future rent as the same may become due and payable hereunder. If the Marina is not relet or sold as aforesaid, or if the rent received for such reletting during any month be less than that to be paid during the month by the Tenant to the City hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the City. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Marina by the City shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the City may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant will pay to the City all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the City.

c. Except as expressly herein provided to the contrary, any amount due to the City not paid when due shall bear simple interest at legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the City may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

12. INDEMNIFICATION OF CITY

a. To the extent permitted by law, the City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Marina or the appurtenances thereto, or for any injury or damage to the Marina, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Marina or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Marina from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Marina, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Marina i) by the City; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the City, after notice, to enter and inspect the Marina are made for the purpose of enabling the City to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the City is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant agrees to defend, indemnify and hold harmless, the City of Hopewell and its members, officers, directors, employees, agents, and representatives from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, and any other losses of any kind or nature whatsoever including claims for bodily injuries, illness, disease, or death and physical property loss or damage in favor of contractor, its sub-contractors, their employees, agents, and third parties arising during the performance of services and resulting from tort, strict liability, or negligent acts or omissions of the Tenant, its sub-contractors and their employees or agents under the agreement, or resulting from breaches of contract, whatever by statute or otherwise.

13. HAZARDOUS SUBSTANCE

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Marina by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the City.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or City law or becomes regulated by any federal, state or City authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks,

pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and City laws and regulations.

c. The Tenant shall provide the City, in a timely manner, a Material Safety Data Sheet ("MSDS") upon the City's request. Said MSDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Marina.

14. LIMITATION OF CITY'S OBLIGATION

The City shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the City or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Marina except by reason of the negligence of the City or its agents. As a material part of the consideration to the City, the Tenant further assumes all risk of damage to property or injury to persons in or about the Marina arising from any cause and the Tenant hereby waives all claims in respect thereof against the City.

15. INSURANCE

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on the Marina, and all equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Marina, including all alterations, renovations, replacements, substitutions, changes, and additions thereto, insured against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value"). Such Full Insurable Value shall be determined from time to time at the request of the City (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Marina or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the City which approval shall not be unreasonably withheld. The failure of the City to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant, the City of Hopewell as an additional insured, on a primary basis with no participation required by the City's liability policy, against personal injury, including without limitation, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence. The City reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Marina and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto while including marina operations.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the City and the Tenant, "all risk" builders risk insurance on the Marina and all Improvement(s) under construction.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in the following minimum amounts: Coverage A - Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force commercial auto liability including hired and non-owned car liability coverage in the amount of not less than One Million Dollars (\$1,000,000) per occurrence.

f. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the City; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Marina for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Marina. If requested by the City, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the City. All insurance policies shall be renewed by the Tenant and proof of such renewals, accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the City, at least twenty (20) days prior to their respective expiration dates. All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the City Attorney and the City of Hopewell Risk Manager.

16. RESERVED RIGHTS

The City explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease Agreement:

a. To name and/or change the name or street address of the Marina without liability of the City to the Tenant;

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Marina, for the purpose

of altering, renovating, remodeling, repairing, or otherwise preparing the Marina for re-occupancy;

c. To enter the Marina for the making of inspections, repairs, alterations, improvements or additions at or to the Marina as the City may deem necessary or desirable, and for any purpose whatsoever related to the safety, protection, preservation, or improvement of the Marina or of the City's interest in the Marina;

d. At any time or times the City, either voluntarily or pursuant to governmental requirement, may, at the City's own expense make repairs, alterations, or improvements in or to the Marina or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Marina, unless there is an unforeseen emergency or the nature of the repair, alteration or improvement makes such temporary closure before 5:00 p.m. necessary;

e. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Marina, including without limitation selling or developing all or portions of the Marina or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

f. To provide for public access to the Marina including without limitation parking, boat launching, recreation, and other public activities at the City's discretion.

g. At any time, the City may cut power to the slip areas and/or Marina office due to possible emergency such as fire, hurricane, tornado or like event.

h. The Tenant must present any increases to fees for the slips or ramps in writing to be approved. The City will respond within thirty (30) days if approval is granted. All Hopewell residents who rent slips will be given a twenty-five percent (25%) reduced fee approved by the City. The City shall receive twenty-five percent (25%) of any increase in fees for the slips or ramps.

i. The City has agreed to lease an area for a 24 hour ice service with all dollars going to the City. The general area for this is shown on attached drawing in Exhibit B. Tenant may not sell ice as long as the City maintains the 24 hour ice service.

j. The City has entered into an agreement with a vendor to supply coolers, coffee and products to be sold that the Tenant will have to honor through January 2015.

The City may exercise any or all of the foregoing rights hereby reserved by the City without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of rent, unless such interruption is prolonged and is a result of the City's negligence, or other compensation, and such acts shall have no effect upon this Lease.

17. MISCELLANEOUS

a. The failure of the City to enforce in any one or more instances any term,

condition, rule, regulation or covenant as to which the Tenant shall be guilty of a breach or be in default, shall not be deemed to waive the right of the City to enforce the same or any subsequent breach or default notwithstanding the City had knowledge of such breach or default at the time of the receipt of any rent or other sums by the City, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the City of checks or cash from persons other than the Tenant shall in no event evidence consent of the City to any assignment or sub- lease by the Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by the Tenant unless such waiver or modification or release or surrender be in writing and signed by the City.

b. Each provision hereof shall bind and inure to the benefit of the City and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the City's successors and assigns; if the Tenant is a corporation, its successors; and in the event that City consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

18. DAMAGE TO BUILDING

a. Partial Casualty. If the Marina shall be partially damaged by fire or other casualty insured under the City's insurance policies, and if the City's lender(s) shall permit insurance proceeds paid as a result thereof to be so used, then upon receipt of the insurance proceeds, the City shall, except as otherwise provided herein, repair and restore the same (exclusively of improvements made by the Tenant, the Tenant's trade fixtures, decorations, signs, and contents) substantially to the condition thereof immediately prior to such damage or destruction; limited, however, to the extent of the insurance proceeds received by City. If, by reason of such occurrence: (a) the Marina is rendered wholly untenable; (b) the Marina is damaged in whole or in part as a result of a risk which is not covered by the City's insurance policies; (c) the City's lender does not permit a sufficient amount of the insurance proceeds to be used for restoration purposes; (d) the Marina is damaged in whole or in part during the last year of the Lease Term; or (e) the Marina is damaged to an extent of twenty five percent (25%) or more of the fair market value thereof, the City may elect either to repair the damage as aforesaid, or to cancel this Lease by written notice of cancellation given to the Tenant within ninety (90) days after the date of such occurrence and thereupon this Lease shall terminate. The Tenant shall vacate and surrender the Marina to the City within fifteen (15) days after receipt of such notice of termination. In addition, the Tenant may also terminate this Lease by written notice given to the City at any time between the one hundred fifty first (151st) and one hundred sixty sixth (166th) day after the occurrence of any such casualty, if the City has failed to restore the damaged portions of the Marina within one hundred fifty (150)

days of such casualty or such longer time as the Tenant shall consent, which consent will not be unreasonably withheld. However, if the City is prevented from repairing or restoring the damaged portions of the Marina within the said 150 day period as a result of causes beyond its reasonable control (including, without limitation, those encompassed in the meaning of the term "force majeure") ("Delays"), then in that event, the City shall have an additional reasonable period beyond the initial 150 day-period within which to complete the repairs and/or restoration work. The City shall provide the Tenant with a written notice of the causes for such Delays within fifteen (15) days of the occurrence thereof; and, the written notice to the Tenant shall contain an explanation of the reasons for such Delays with a good faith estimate of the reasonable period of delay resulting. The City shall use its best efforts to complete all required repairs and/or restorations within a reasonable time, not to exceed 196 days from the date of the casualty. Provided that the City diligently pursues the completion of such repairs and/or restoration within a reasonable time of such Delays, the Tenant shall not have the right to terminate this Lease until the expiration of such 196 day period. Upon the termination as aforesaid, the Tenant's liability for the Rent and other charges reserved hereunder shall cease as of the effective date of the termination of this Lease, subject however, to the provisions of abatement of Rent hereinafter set forth.

Unless this Lease is terminated as aforesaid, this Lease shall remain in full force and effect and the Tenant shall promptly repair, restore, or replace the Tenant's improvements, trade fixtures, decorations, signs, and contents in and about the Marina in a manner and to at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by the Tenant on said property shall be held in trust by the Tenant for the purposes of such repair, restoration or replacement.

b. Casualty. If, by reason of such fire or other casualty, the Marina is rendered wholly un-tenantable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Marina rendered un-tenantable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Marina by Tenant; (ii) the date the City has the Marina ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the City could have had the Marina ready had there been no Delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Marina or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance coverage, the policy must be issued by an insurance carrier reasonably acceptable to the City, and the Tenant shall deliver to the City a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the City no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the City for any compensation or damage for loss of use of the whole or any part of the Marina and/or for any inconvenience or annoyance occasioned by any such damage,

destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Marina during the final two (2) years of the Lease Term or loss occurs to the Building during the final two (2) years of the Lease Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Marina, then in that event the City and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs.

19. EMPLOYMENT DISCRIMINATION/DRUG-FREE WORKPLACE BY CONTRACTOR: By entering this Lease Agreement, the Tenant certifies to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the *Virginia Public Procurement Act*. Every contract over Ten Thousand Dollars (\$10,000) shall include the provisions below. During the term of this Lease Agreement, the Tenant agrees as follows:

1. The Tenant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law related discrimination employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The Tenant, in all solicitations or advertisements for employees placed by or on behalf of the Tenant, will state that such Tenant is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements of this section.
4. To provide a drug-free workplace for the Tenant's employees.
5. To post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Tenant's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
6. To state in all solicitations or advertisements for employees placed by or on behalf of the Tenant that the contractor maintains a drug-free workplace.

The Tenant will include the provisions of the foregoing paragraphs 1, 2, 3, 4, 5 and 6 in every subcontract or purchase order over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

20. SIGNS

The Tenant may not erect, install, or display any sign or other advertising material in or about the Marina without the prior written consent of City; however, the Tenant may place signage for "Fish Tales II" on the Marina store pursuant to paragraph 4.b., and may display signage in or about the Marina for a limited duration not to exceed seventy-two (72) hours for special events.

21. ACCESS TO MARINA

a. City shall have the right, upon twenty four (24) hours prior notice to the Tenant, either itself or through its authorized agents, to enter the Marina (i) to make repairs, alterations or changes as City deems necessary, (ii) to inspect the Marina, and (iii) to show the Marina to prospective lessees, mortgagees, and/or purchasers. The City shall have the right, either itself or through its authorized agents, to enter the Marina at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to common and public areas of the Marina, provided the City by regulation may control such access, or as needed for making repairs and alterations. The City shall have the right to enter the Marina at any time in the event of any emergency.

b. The City may at no cost and upon twenty four (24) hours notice to the Tenant, use any portion of the Marina for public purposes including, without limitation, City Parks & Recreation activities including summer camp, concerts, parades, plays, speeches, displays, demonstrations, parking, and staging provided that such activity does not unreasonably interfere with Tenant's use of the Marina.

22. RESERVATION OF COVERED BOAT SLIPS

a. The City shall have, without compensation, permanent use of ONE (1) covered boat slip for any vessel approved by the City.

b. Upon twenty four (24) hours' notice to Tenant, the City shall be provided, without compensation to the Tenant, temporary use of a boat slip deemed suitable by the City.

23. PROPERTY OF TENANT

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Marina. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Marina; provided, however, that the Tenant shall, at its sole cost and expense, repair all

damages caused by such removal. If the Tenant does not remove its property from the Marina upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the City may dispose of the same in whatever manner the City may elect without any liability to the Tenant.

24. HOLDING OVER

If the Tenant shall hold over after the Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the City Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 2. The increased Rent during such holding over is intended to compensate the City partially for losses, damages, and expenses, including frustrating and delaying the City's ability to secure a replacement tenant. If the City loses a prospective tenant or purchaser because the Tenant fails to vacate the Marina on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the City can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

25. SEVERABILITY

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

26. JOINT VENTURE DISCLAIMER

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

27. SUCCESSORS AND ASSIGNS

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

28. APPLICABLE LAW, CONSTRUCTION

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia.

29. NOTICES

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to the parties hereto at the respective addresses set forth below or any other address that may be specified by the parties.

Rent Payment Address Recreation and Parks Director
And Point of Contact 100 W. City Point Road
For Lease: Hopewell, VA 23860

Legal Notice Address for City:

City Manager
City of Hopewell
300 N. Main Street
Hopewell, VA 23860

With Copy to:

City Attorney
City of Hopewell
P.O. Box 1625
Hopewell, VA 23860

Tenant:

Fish Tales 2, Inc.
c/o Doreen Creel-Wood Accounting, Inc.,
Registered Agent
1511 W. City Point Road
Hopewell, Virginia, 23860

In each case when this Lease calls for an approval by the City, unless otherwise specified herein or unless otherwise required by law, such approval may be granted by the City Manager or his designee and shall not require action by the City Council.

30. AUTHORITY OF PARTIES

a. Corporate Authority. If Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the City Council of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

b. Limited Partnerships, LLC, and LLP. If the Landlord herein is a limited partnership, LLC, or LLP, it is understood and agreed that any claims by Tenant on Landlord shall be limited to the assets of the limited partnership, LLC, or LLP, and furthermore, Tenant expressly waives any and all rights to proceed against the individual partners or the officers, directors or shareholders of any corporate partner, except to the extent of their interest in said limited partnership, LLC, or LLP.

31. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal and RFP shall be resolved in favor of the Lease Agreement, the RFP and then the Proposal.

32. SLIP HOLDER LIST AND COMMUNICATIONS WITH SLIP HOLDERS

Tenant shall maintain a list of current slip holders and shall provide a copy of such list to the City on the first of each month. The City may request a copy at any other time and the Tenant must provide a copy within TWO (2) business days of the request.

Tenant shall provide the City a copy of all communications sent to all current slip holders within TWO (2) business days of the distribution of the communication.

33. AN ANNUAL CERTIFIED AUDIT

An annual certified audit shall be provided each year based upon the operation of the Hopewell City Marina to include slip fees, ramp fees, visiting vessels fees and sales of items through the operation of a store out of the Marina office.

34. FINAL UNDERSTANDING

This Lease contains all agreements of the parties with respect to any matter mentioned herein.

[Signatures begin on the next page.]

CITY OF HOPEWELL

By: _____
Mark A. Haley
City Manager

COMMONWEALTH OF VIRGINIA
CITY OF HOPEWELL, to wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of _____, 2014, by Mark A. Haley, City Manager, on behalf of City.

NOTARY PUBLIC

My Commission expires: _____
Notary Registration No. _____

TENANT

By: _____
Terri Ellis of Fish Tales 2, Inc.

COMMONWEALTH OF VIRGINIA
CITY OF HOPEWELL, to wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of _____, 2014, by Terri Ellis, its President, on behalf of Fish Tales 2, Inc.

NOTARY PUBLIC

My Commission expires: _____
Notary Registration No. _____

APPROVED AS TO FORM:

David C. Fratarcangelo
City Attorney

RESOLUTION OF THE COUNCIL OF THE CITY OF HOPEWELL

UNFINISHED BUSINESS – APPROVE THE AWARD OF THE CONTRACT FOR THE CITY MARINA MAINTENANCE AND OPERATIONS EAST SIDE ONLY

Motion was made by Councilor Walton, seconded by Councilor Shornak to resolve to approve the award of a contract to Fish Tales, for the operations and maintenance of the Hopewell Marina - east side only and authorize the City Manager to enter into a contract subject to review and approval by the City Attorney. Upon the roll call, the vote resulted:

Councilor Luman-Bailey	-	yes
Councilor Edwards	-	yes
Mayor Bujakowski	-	yes
Vice Mayor Gore	-	yes
Councilor Walton	-	yes
Councilor Pelham	-	NO
Councilor Shornak	-	yes

I, Cynthia Y. Ames, City Clerk of the City of Hopewell, Virginia, do certify the foregoing is a true and correct excerpt of minutes of the Hopewell City Council meeting held on February 11, 2014.

Given under my hand and the Corporate Seal of the City of Hopewell, Virginia this 13th day of March 2014.



Cynthia Y. Ames
City Clerk



EXHIBIT A
REQUEST FOR PROPOSALS
LEASE OF THE HOPEWELL
CITY MARINA AND OPERATIONS AND
MAINTENANCE OF EAST SIDE ONLY
DEPARTMENT OF RECREATION AND
PARKS
CITY OF HOPEWELL

RFP #: #24-13

DATE: DECEMBER 20, 2013

Sealed Proposals, subject to the general conditions and specifications hereby attached, will be received at the Office of the City Clerk, Second Floor, Municipal Building, 300 North Main Street, Hopewell, Virginia 23860 until, but not later than 11:00 a.m. TUESDAY, JANUARY 14, 2014.

1. To be considered for selection, Vendors must submit a complete response to this RFP. One (1) original, twelve (12) copies, and a portable document format (pdf) version of the proposal shall be submitted to the City of Hopewell, Virginia.
2. Regardless of delivery method of proposal, the **outside** of each envelope must clearly indicate the following: *(If Proposal is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of each envelope must also clearly indicate):*

Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860

Closing Date of Proposal: January 14, 2014

Lease of City Marina and Operations and Maintenance, East Side Only
RFP #24-13

3. Proposals by telephone, telegraph, or facsimile **will not** be accepted.
4. **ANY PROPOSAL RECEIVED AFTER 11:00 A.M. ON THE AFOREMENTIONED DATE OF OPENING, WHETHER BY MAIL OR OTHERWISE, WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED.**

Nothing herein is intended to exclude any responsible firm or in any way restrict competition. The selection process will be competitive negotiation as outlined in Chapter 2A of the Code of the City of Hopewell, Virginia, and Section 2.2-4300 *et seq.* (Virginia Public Procurement Act) of the Code of Virginia.

All Proposals submitted must be signed by an individual authorized to bind the Offeror. Proposals submitted without such signature will be deemed non-responsive, and will not be considered. The City of Hopewell reserves the right to cancel the RFQ/RFP, to award in part or in whole or reject any and all proposals deemed to be in the City's best interest. The City may modify any requirements in the RFQ/RFP prior to the deadline by written notice to any Offeror requesting a copy of the RFQ/RFP. The City may modify the project's scope of services and required tasks during negotiation process with the successful Offeror. The City shall neither be obligated nor prohibited from awarding or amending any contract with the successful Offeror for services less than or greater than the scope of services contemplated in this proposal.

If you desire not to quote on this invitation, please forward your acknowledgement of NO PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL BE CAUSE FOR REMOVAL OF YOUR COMPANY'S NAME FROM THE QUALIFIED OFFEROR LIST.

The right is reserved to extend any resulting contract, for terms to be mutually negotiated and agreed upon.

All proposals are subject to general terms and conditions hereby attached and will be rejected if not properly executed.

Individual contractors must provide their social security numbers and other types of firms must provide their federal employer identification numbers in the payment clauses to be included in contracts.

The City reserves the right to be sole judge and to make the award in accordance with its own judgment as to what will best meet its requirements and be in the best interest of the City.

AVAILABILITY OF FUNDS: It is understood and agreed between the Offeror and the City that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this quotation or agreement.

WITHDRAWAL OF PROPOSAL: No proposal may be withdrawn for a period of thirty (30) days from the date of opening unless the Offeror has made a clerical error. The Offeror shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the opening procedure and shall submit original work papers substantiating the error with such notice. The City reserves the right to reject any or all proposals, to waive all informalities, and to reject any or all items of any proposal.

Proposal and contracting procedures shall conform to all applicable regulations and provisions of the *City of Hopewell Procurement Ordinance* effective July 1, 2005, as amended; a copy of which is available for inspection at the Office of the City Clerk.



April Cone, Purchasing Agent

REQUEST FOR PROPOSALS

Please return the Proposals to the Office of the City Clerk, Municipal Building, Second Floor, 300 N. Main Street, Hopewell, Virginia 23860. Regardless of delivery method of Proposal, the **outside** of each envelope must clearly indicate the following: *(if Proposal is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of each envelope must also clearly indicate):*

**Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860
Closing Date of Proposal: January 14, 2014
Lease of City Marina and Operations and Maintenance, East Side Only
RFP #24-13**

In compliance with Invitation for RFP **#24-13** and subject to all conditions thereof and attached thereto, the undersigned offers and agrees if the proposal and conditions are accepted within ninety (90) calendar days from the date of opening, to furnish any and all of the items upon which the prices are quoted, at the price set opposite each item, delivered at the points as specified and as scheduled.

Note of Clarification:

All References to **BID** contained within this Invitation should be referred to as **PROPOSAL**.

NAME OF ORGANIZATION	
STREET ADDRESS	TELEPHONE NUMBER
CITY, STATE, ZIP CODE	FAX NUMBER
NAME (TYPE OR PRINT)	OFFICIAL TITLE
SIGNATURE	DATE
STATE CORPORATION COMMISSION ID#	IRS I.D. #

REQUEST FOR PROPOSALS
FOR LEASE OF THE CITY MARINA AND OPERATIONS AND
MAINTENANCE, EAST SIDE ONLY

The City of Hopewell, Virginia (the "City") invites qualified Offerors with experience in waterfront operations to submit proposals to operate and maintain the City Marina property (the "Site") located at 1051 Riverside Ave, Hopewell VA 23860. The site is strategically located adjacent to State Rt. 10 along the Appomattox River. The overriding intent of this RFP is to operate and maintain the Hopewell City Marina, **East side only**.

The City's goal is to provide an enhanced gateway that capitalizes on the unique assets of the Site's riverfront location and encourages the revitalization of the riverfront and the neighborhoods adjacent to the river. The City envisions the waterfront as part of a larger public river walk connecting the City Marina to downtown.

The City is seeking successful Offerors with demonstrated experience in operations and maintenance of waterfront facilities. Ultimately the selected entity and the City will enter into a long-term lease agreement for the operations and maintenance of the Site's designated lease area (**East side only**) located on the map at Appendix A of this RFP.

Hopewell is a community of 23,000 residents and is located at the confluence of the Appomattox and James Rivers within the Richmond Metropolitan Area. The City is conveniently 20 miles southeast of and 25 minutes from the City of Richmond, Virginia. The approximate 8.5-acre property is situated on the south side of the Appomattox River immediately west of the Route 10 bridge and within 1.5 miles of the Appomattox's confluence with the James River. This location offers the Site an outstanding advantage in terms of access to the Appomattox and James Rivers.

The Site is zoned B-3, Highway Corridor District. The Site provides a critical link in the long-term vision of a boardwalk along the Appomattox River; development of the Site is envisioned to include a public access boat ramp and an appropriate and feasible mix of uses that encourages citizens to utilize the river.

Currently a \$1.5 million renovation project is on-going which will include improvements to the covered slip areas, an addition of a second boat ramp, and reconfiguration of the ramp area, canoe launch, and parking lot which includes updated surfacing, improved lighting, and a marina office/restroom/retail area with 1276 sq. feet. A \$.5 million dredging project of the entire Site was completed in 2012.

1. Hopewell City Marina

General Information –

The City Marina property is currently managed by the City's Department of Recreation and Parks with a budget of \$98,450 for operations based upon anticipated revenues of \$98,450. The Site is approximately 4.3 acres consisting of a 44 boat slips (30 covered and 14 open boat slips) marina, a public boat ramp, and an office/restroom/retail area. There are two pump-out stations, one located on the waterside and the other located in the parking lot for trailer accessible vessels. Additionally the Site contains approximately 41 vehicle parking spaces and 66 trailer parking spaces.

Currently there are three staff members; a Marina Supervisor, Marina Attendant and a part-time Marina Maintenance Specialist.

The City is only interested in leasing the operations and maintenance of the Site's designated lease area (**east side only**) as shown on the map at Appendix A.

2. Goals

- a. **Operations and Maintenance** - The City of Hopewell, Virginia (the "City") invites qualified Offerors with experience in waterfront operations to submit proposals to operate and maintain the City Marina property (the "Site") located at 1051 Riverside Avenue, Hopewell, Virginia 23860. Any lease agreement shall include the following general items/clauses. During the negotiation process, these items/clauses shall be addressed in more detail.
 1. Term of lease – 3 year initial term with renewal options.
 2. Rent – to be paid monthly with the option of minimum 5% increase.
 3. Maintenance of grass and grounds.
 4. Maintenance of wooden deck.
 5. Clearing of all drainage pipes and ditches.
 6. Vehicle parking.
 7. Maintenance of building and covered dock.
 8. Maintenance of outside equipment.
 9. General cleaning of grounds and buildings.
 10. Monitoring and restricting access to restricted areas.
 11. Storm-water and pollution management.
 12. Responsible for utilities.
 13. Routine maintenance.
 14. Alterations or improvements must be approved in advance.
 15. Eminent Domain is applicable.
 16. City shall inspect premises.

17. Default by tenant clause.
 18. Indemnification of City is applicable.
 19. Hazardous substance not allowed clause.
 20. Limitation of City's obligation clause.
 21. Insurance is required.
 22. City will declare reserved rights.
 23. EEOC/Drug Free clauses are applicable.
 24. All signage approved in advance.
 25. City will reserve the right to use the facility with 24 hour notice or sooner if an emergency.
 26. City may request one covered slip without compensation and may request an additional slip for temporary use.
 27. Property of tenant removal clause.
 28. Holding over clause.
 29. Severability clause.
 30. Joint Venture Disclaimer clause.
 31. Successors and assigns clause.
 32. Applicable Law, Construction clause.
 33. Notices Clause.
- b. **Public Accessibility** – Any operation must provide a continuous, uninterrupted public path that allows pedestrian access.
 - c. **Public Boat Ramp** – The operation must preserve the public boat ramp that is located on the Site.
 - d. **Slips** – The operation must preserve the slip areas located on the Site.
 - e. **Maintain View shed** – The operation for the Site should preserve/enhance the generous views of the riverfront from the Site.
 - f. **Recognition of the Site's Riverfront Context** – The operation of the Site should encourage appropriate and feasible water-related activities along the river's edge.

The City Marina is located in a prime location within the City, and offers easy access to major thoroughfares and excellent views of the Appomattox and James Rivers. The operations and maintenance plans for the marina shall preserve public access to the waterfront while providing exciting new recreational and retail opportunities coupled with the functionality of the marina to allow for maximization of the location. Continued public access to the river shall be preserved through a public boat launch, seasonal boat slips, and trail connections with the proposed waterfront boardwalk and city trail system.

3. Invitation

The City is seeking qualified Offerors with experience in operations and maintenance of waterfront facilities to submit proposals to operate and maintain the City-owned riverfront parcel.

The proposals are **to be received no later than 11:00 AM, January 14, 2014** and must be prepared in accordance with the guidelines described in Section 5 below. Unless requested by the City, no additional proposal information may be submitted by the Offerors after the January 14, 2014 deadline.

4. Evaluation Criteria

Proposals in response to this RFP will be evaluated by the City based on the evaluation criteria described below.

The evaluation of Offerors responding to the Request for Proposals will be completed in a systematic manner using the following evaluation criteria:

1. Financial capacity of the Offeror.
2. The proposed preliminary operations and maintenance program.
3. The qualifications and experience of the Offeror.
4. The proposed level of interaction between the Offeror and the City.
5. Completeness of the response to the Request for Proposals.

5. Information to Be Submitted By Respondents

Respondents shall submit one (1) original and twelve (12) copies, and a PDF version of the Proposal (the "Submittal"). Submittals shall address the following:

1. The name, address, telephone and facsimile numbers, and email address of the Respondent's contact for the lease of and the operations and maintenance for the Site.
2. A conceptual operations and maintenance plan for the Site.
3. Rental quote for leasing of the Site.
4. A certified financial statement illustrating assets liabilities (including contingent liabilities).
5. The Offeror must clearly identify what it considers to be trade secret information and confidential commercial and financial information, and must so mark the information in accordance with the Virginia Public Procurement Act, §2.2-4342(F). Information correctly identified shall not be made public except as otherwise required by law. All responses prepared by the respondents under this request will be for the exclusive and deliberate use of the City of Hopewell.

6. Technical Assistance/ Qualification Submission Questions

Questions regarding proposal submissions should be directed to the City's Purchasing Agent, April Cone at (804) 541-2205 or acone@hopewellva.gov. Technical questions regarding this project should be directed to:

Office of the City Manager
300 N. Main Street
Hopewell, VA 23860
Telephone: (804) 541-2243
Fax: (804) 541-2248
E-Mail: mbaley@hopewellva.gov

In order to maintain equal access to information we request that you not contact anyone other than the individuals named above. If there are any changes to the scope of work, addenda will be issued by the Purchasing Agent to all known participants.

7. The Selection Process

A two-phase process has been established for soliciting participation in the finance, operations and maintenance of the Site's designated lease area (**east side only**). The City reserves the right to modify the process. If and when such changes in the schedule occur, notice will then be provided to entities involved at that stage of the selection process.

Phase I. Request for Proposals

For the Request for Proposals phase, Offerors are invited to prepare and submit a detailed technical proposal that provides a sufficient basis for City Council to assess entity financial capacity, and entity's capacity to operate and maintain a waterfront facility. This should include rental quote for leasing of Site.

Phase II. Ranking

The City Council will decide the final ranking of the proposals. Immediately after determining the final ranking, the City will begin negotiations for the lease to operate and maintain the Site's designated lease area (**east side only**). If an agreement cannot be successfully negotiated in a timely manner, the City has the right to terminate negotiations with the highest ranked Offeror, and begin negotiations with the next highest ranked Offeror. The Offeror ranked below the second highest Offeror would only be contacted if negotiations failed with the Offeror ranked immediately above them.

8. Tentative Selection Schedule

The City reserves the right to extend or otherwise modify the schedule. If and when such changes in the schedule occur, notice will then be provided to Offerors still involved at that stage of the selection process.

Event	Date
Request for Proposals Issued	December 20, 2013
RFP Submission Deadline by 11:00 a.m.	January 14, 2014
City Reviews Proposals	January 14, 2014
City Mnnager Authorized to Negotiate	TBD
Final Lease Agreement Approved by City Council	TBD

**APPENDIX A – OVERVIEW OF HOPEWELL CITY MARINA SHOWING EAST SIDE
PROPERTY**

APPENDIX B: GENERAL TERMS AND CONDITIONS

A. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and the City of Hopewell, Virginia; any litigation with respect thereto shall be brought in the courts of the City. The contractor shall comply with all applicable federal, state and local laws, rules and regulations. This compliance includes obtaining a Hopewell business license, if required, before work is performed.

B. EMPLOYMENT DISCRIMINATION/DRUG-FREE WORKPLACE BY CONTRACTOR: By submitting the bids/proposals, the bidders/offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with the City to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the City. (Code of Virginia, § 2.2-4343.1E).

Every contract over Ten Thousand Dollars (\$10,000) shall include the provisions below. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to discrimination employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements of this section.
4. To provide a drug-free workplace for the contractor's employees.
5. To post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in

the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

6. To state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

The contractor will include the provisions of the foregoing paragraphs 1, 2, 3, 4, 5 and 6 in every subcontract or purchase order over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

- C. **DIRECT TAXES:** All bids/proposals shall be submitted exclusive of direct Federal, State, and local taxes. However, if the bidder/offeror believes that certain taxes are properly payable by the City, he may list such taxes separately in each case directly below the respective item bid/proposal price. Tax exemption certification will be furnished on request.
- D. **INDEMNITY:** The contractor agrees to defend, indemnify and hold harmless, the City of Hopewell and its members, officers, directors, employees, agents, and representatives from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, and any other losses of any kind or nature whatsoever including claims for bodily injuries, illness, disease, or death and physical property loss or damage in favor of contractor, its sub-contractors, their employees, agents, and third parties arising during the performance of services and resulting from tort, strict liability, or negligent acts or omissions of contractor, its sub-contractors and their employees or agents under the agreement, or resulting from breaches of contract, whatever by statute or otherwise.
Each contractor shall assume the responsibility for damage to or loss of its material, equipment or facilities located at the site and, in order to effect this limitation of liability, the contractor agrees to insure or self-insure such property against any such risk.
- E. **SALES TAXES:** The City is exempt from payment of State sales and use tax on all tangible personal property purchased or leased for its use or consumption. Certificate of Exemption will be furnished upon request.
- F. **QUOTATION FORM:** The bidder/offeror must sign and properly fill out all forms in this Bid/Proposal or be subject to being declared unresponsive. If unable to submit a Bid/Proposal, please sign and return this solicitation form, advising reason for no Bid/Proposal.
- G. **CONTRACTOR'S DEFAULT:** In case of default of the contractor, the City may procure the articles of service from other sources and hold the contractor responsible for any excess cost incurred thereafter.

- H. COMPUTATION OF TIME FOR DISCOUNTS:** Time in connection with discount offered, will be computed from date of delivery of the supplies or materials to carrier when final inspection and acceptance are at those points or from date correct invoice is received if latter is later than the date of delivery.
- I. ETHICS IN PUBLIC CONTRACTING:** By submitting the bids/proposals, the bidders/offerors certify that the bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with the bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- J. GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship, or performance of the items offered in this Bid/Proposal prior to their delivery, it shall be the responsibility of the successful bidder/offeror to notify this office at once, indicating in his letter the specific regulation which requires such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
- K. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the City of Hopewell, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the City, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- L. DEBARMENT STATUS:** By submitting the bids/proposals, the bidders/offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- M. ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Hopewell, Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Hopewell, Virginia under said contract.
- N. PAYMENT:** Payment by the City is due thirty days (30) after delivery is made to the City of Hopewell and inspection unless otherwise specifically provided: subject to any discounts allowed.

To Prime Contractor:

Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number and/or purchase order number, social security number (for

individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized.

Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the contractor, in writing, as to those charges, which it considers unreasonable, and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification.

To Subcontractors:

A contractor awarded a contract under this solicitation is hereby obligated:

1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
2. To notify the City and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
3. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the City, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City.

O. PRECEDENCE OF TERMS: Paragraphs A-N of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

P. TESTING AND INSPECTION: The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

Q. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the City.

R. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Purchasing Department may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Department a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Department's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Department with all vouchers and records of expenses incurred and savings realized. The Purchasing Department shall have the right to audit the records of the contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Department within thirty (30) days from the date of receipt of the written order from the Purchasing Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Virginia Public Procurement Act. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Department or with the performance of the contract generally.

- S. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the City may have.
- T. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with the City pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- U. **INSURANCE:** The contractor shall secure and maintain in force, at his/her own expense all required forms of insurance and payment bonds to insure the completion for the work under contract to the satisfaction of the City and without damage to, or claims against the City. The contractor shall provide satisfactory evidence of bonds and insurance on behalf of the sub-contractors, before entering into an agreement to sublet any part of the work to be done under this contract.

The following performance and payment bonds and forms of insurance shall be secured by the contractor to cover all work under contract and to protect the contractor, the City, and general public against any damage or claims in connections with the performance of the contract. The bonds and insurance shall be by companies duly authorized to do business in the State of Virginia. Certificates of Insurance, naming the City as an additional insured for each type of coverage shall be required.

At the discretion of the purchasing agent, bidders/offerors may be required to submit with their bid/proposal a bid/proposal bond, or a certified check, in an amount to be determined by the purchasing agent, which shall be forfeited to the City as liquidated damage upon the bidder's/offeror's failure to execute a contract awarded to him/her or upon the bidder's/offeror's failure to furnish any required performance or payment bonds in connection with a contract awarded to him/her.

At the discretion of the purchasing agent, the winning contractor(s) may be required to submit a performance and payment bond to the City which shall be evoked upon contractor's failure to execute a contract awarded or the failure to satisfactorily complete work for which a contract or purchase order was awarded. Performance bond and payment bond in the amount of one hundred (100) percent of contract price is required as security of contract, or security for payment of all persons performing labor and furnishing materials in connection with the contract, and protecting the City from all damages or claims resulting from, or in connection with the performance of the contract or purchase order.

The performance bond and payment bond shall and does bind the surety company to protect the City from damages, claims or costs by failure of the contractor to make corrective action due to his financial solvency or for any other cause whatever.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits; require that the City of Hopewell, Virginia be added as an additional named insured on contractor's policy.
2. Employers Liability - \$500,000.
3. Comprehensive general liability for bodily injury liability and property damage liability shall be provided as to limits specified.
4. Contractor's protective liability shall be provided for bodily injury liability and property damage liability.
5. Fire and extended coverage shall be provided on the completed builder risk form if specified in bid specifications.
6. The contractor shall require each of his subcontractors to carry Workmen's Compensation Insurance and public liability and property damages liability.
7. Commercial General Liability - \$1,000,000 combined single limit. The City of Hopewell, Virginia is to be named as an additional named insured with respect to the services being procured. This coverage is to include Products and Completed Operations Coverage.
8. Automobile Liability – bodily injury and property damage shall be provided as to limits set forth in the specifications.

The contractor shall have executed and delivered to the City copies of all insurance certificates.

Executed copies of the performance bond shall become a part of all copies of the contract.

APPENDIX C: SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Hopewell, Virginia will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City of Hopewell, Virginia or any department or institution of the City has purchased or uses its products or services.
- B. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City of Hopewell, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD OF CONTRACT:** Selection shall be of an offeror deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the City shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The City may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
- D. **BID/PROPOSAL ACCEPTANCE PERIOD:** Any bid/proposal in response to this solicitation shall be valid for 120 days. At the end of the 120 days the bid/proposal may be withdrawn at the written request of the bidder/offeror. If the bid/proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- E. **CANCELLATION OF CONTRACT:** The Purchasing Department reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 30 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- F. **EXTRA CHARGES NOT ALLOWED:** The bid/proposal price shall be for complete installation ready for the City's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

- G. MINORITY/WOMEN-OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Division of Purchases and Supply. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.
- H. PREPARATION AND SUBMISSION OF BIDS/PROPOSALS:** Bids/proposals must give the full business address of the bidder/offeror and be signed by him/her with his/her usual signature. Bids/proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids/proposals by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid/proposal by a person, who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid/proposal of the individual signing. When requested by the City, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- I. WITHDRAWAL OR MODIFICATION OF BIDS/PROPOSALS:** Bids/proposals may be withdrawn or modified by written notice received from bidders/offerors prior to the deadline fixed for bid/proposal receipt. The withdrawal or modification may be made by the person signing the bid/proposal or by an individual(s) who is authorized by him on the face of the bid/proposal. Written modifications may be made on the bid/proposal form itself, on the envelope in which the bid/proposal is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.
- J. RECEIPT AND OPENING OF BIDS/PROPOSALS:** It is the responsibility of the bidder/offeror to assure that his bid/proposal is delivered to the place designated for receipt of bids/proposals and prior to the time set for receipt of bids/proposals. Bids/proposals received after the time designated for receipt of bids/proposals will not be considered. Bids/proposals will be opened at the time and place stated in the advertisement, and their contents made public for the information of bidders/offerors and others interested who may be present either in person or by representative. The officer or agent of the City, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid/proposal not properly addressed and identified.
- K. NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the City of Hopewell reserves the right granted by §2.2-4318 of the *Code of*

Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the city's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The city shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the city and the lowest responsive, responsible bidder.

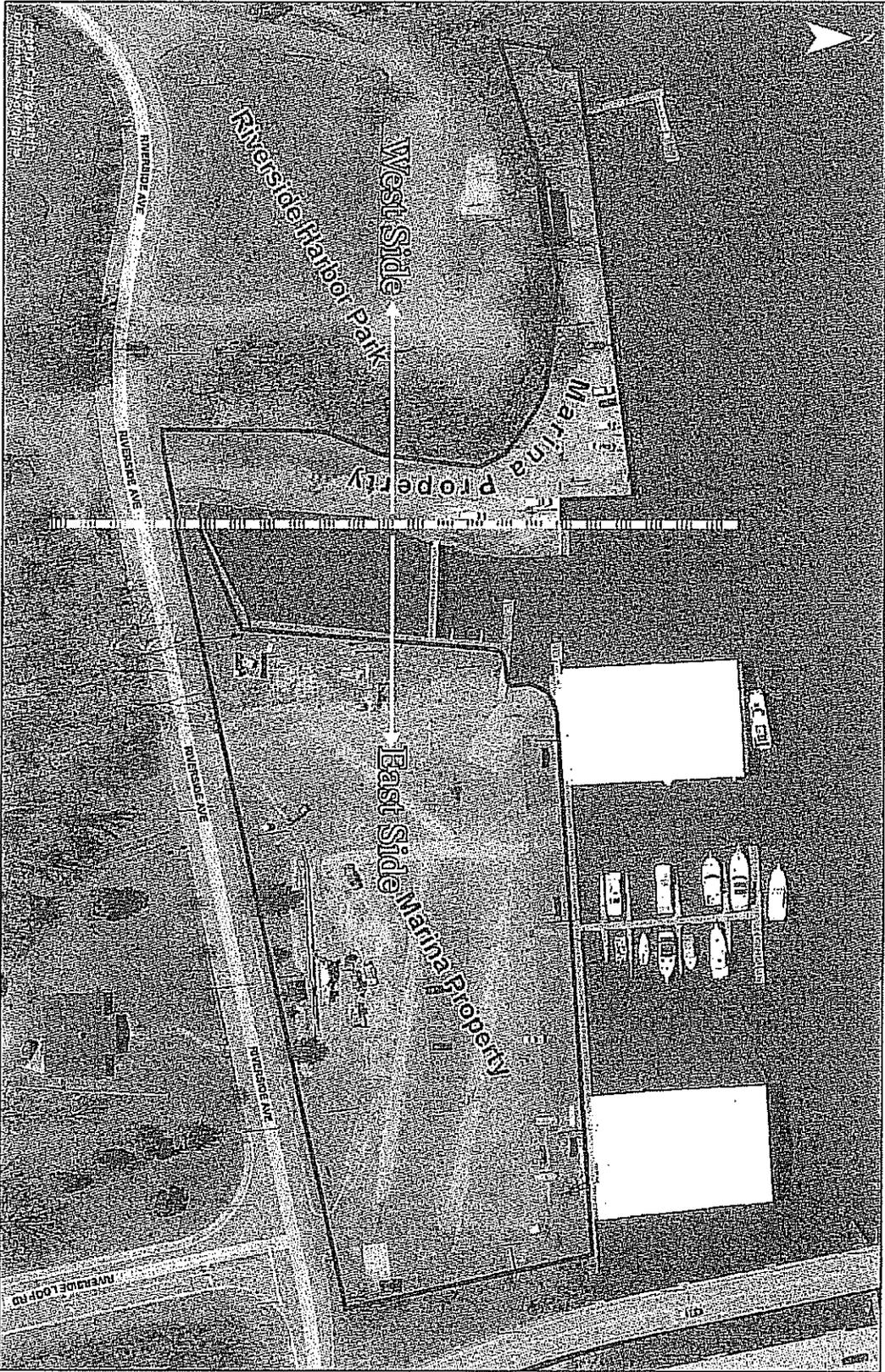


Exhibit A showing layout

PERSONAL INFORMATION

TERRI ELLIS

FISH TALES BAIT & TACKLE, INC.

Fishtalesbaitntackle1@verizon.net

(804) 840-0308

Or

(804) 840-8189

REQUEST FOR PROPOSALS

Please return the Proposals to the Office of the City Clerk, Municipal Building, Second Floor, 300 N. Main Street, Hopewell, Virginia 23860. Regardless of delivery method of Proposal, the outside of each envelope must clearly indicate the following: (if Proposal is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of each envelope must also clearly indicate):

Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860

Closing Date of Proposal: January 14, 2014

Lease of City Marina and Operations and Maintenance, East Side Only
RFP #24-13

In compliance with Invitation for RFP #24-13 and subject to all conditions thereof and attached thereto, the undersigned offers and agrees if the proposal and conditions are accepted within ninety (90) calendar days from the date of opening, to furnish any and all of the items upon which the prices are quoted, at the price set opposite each item, delivered at the points as specified and as scheduled.

Note of Clarification:

All References to **BID** contained within this Invitation should be referred to as **PROPOSAL**.

Fish Tales Bait & Tackle, Inc

NAME OF ORGANIZATION

1501 W Broadway

STREET ADDRESS

(804) 452-2220

TELEPHONE NUMBER

Hopewell, Va 23860

CITY, STATE, ZIP CODE

(804) 452-2220

FAX NUMBER

Terri Ellis

NAME (TYPE OR PRINT)

Owner

OFFICIAL TITLE

Terri Ellis

SIGNATURE

12/30/13

DATE

06767867

STATE CORPORATION COMMISSION ID#

20-8888386

IRS I.D. #

December 30, 2013

Bid Proposal

Personal Information:

Ronnie and Terri Ellis have been married for six years they are both graduates from local schools, Hopewell High and Prince George High. Ronnie has lived in Hopewell for forty years. Terri has lived in Hopewell since 1992. Ronnie has been employed with Hopewell Fire for eleven years and Terri has been employed with Hopewell Police for twelve years.

We currently own and operate a successful business in Hopewell (Fish Tales Bait & Tackle, Inc.) for the last seven years. This is a retail business and sells fishing tackle, bait and other marine items that would be perfect for the new Marina.

Fish Tales Bait & Tackle, Inc. is in good standing with all Vendors and has been since May of 2007. Our vision for the marina is to operate and encourage, appropriate and feasible water related activities along the river's edge- to include fishing tournaments and to also encourage people from surrounding areas to utilize the river and hopefully provide a financial benefit to the community such as staying in local hotels and eating at local restaurants, etc.

Our vision is not solely for financial opportunity but to provide a Marina that the citizens and City Officials can be proud of. We have always wanted to see the Hopewell Marina succeed.

Maintenance:

While operating and running the Marina we will take care of maintenance issues such as maintaining the view, cutting grass, keeping the entire area free of debris, maintaining the docks and boardwalk (above water) and the collection of boat ramp/slip rental fees.

Operation:

The Marina will be staffed from 7am-7pm but will open earlier or stay open later for Marina activities. These hours are for in season months only (March-November) after peak season hours will be adjusted accordingly.

Store:

Our vision for the store is to include Marine/Tackle and convenience store items such as drinks, snacks and ice. We would like, in the near future, to provide a 24 hour bait/tackle vending machine.

The store hours will be the same as the marina hours but store will be staffed with its own employee during busy hours.

Financials:

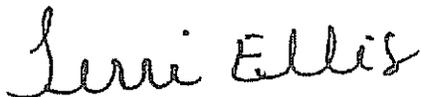
Our most current financial statements dated 12/31/12 are attached as requested.

Proposal:

We would like to propose a lease agreement of \$1500 a month to start March 1, 2014. We also would like a 90 days without cause clause where upon we may each be able to terminate this lease with a 90-day notice to the other during the first 18 months. In order to be prepared for March 1 grand opening date, we would also like to request that we be able to stock the store two weeks prior to the lease date.

We would like to thank you for this opportunity to submit this proposal. We look forward to your response in the near future and look forward to starting this great opportunity for us and our community.

Respectfully,



Terri Ellis

President

Fish Tales Bait & Tackle, Inc.

Fish Tales Bait & Tackle Inc.

Balance Sheet

As of December 31, 2012

	<u>Dec 31, 12</u>
ASSETS	
Current Assets	
Checking/Savings	
Checking	4,088.53
Total Checking/Savings	<u>4,088.53</u>
Fixed Assets	
Equipment	600.00
Accumulated Depreciation	<u>-600.00</u>
Total Other Current Assets	<u>0.00</u>
Other Current Assets	
Inventory	21,215.00
Total Other Current Assets	<u>21,215.00</u>
Total Current Assets	<u>25,303.53</u>
TOTAL ASSETS	<u><u>25,303.53</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
BBT Credit Card	4,380.00
Total Credit Cards	<u>4,380.00</u>
Other Current Liabilities	
Sales Tax Payable	130.58
Total Other Current Liabilities	<u>130.58</u>
Total Current Liabilities	4,510.58
Long Term Liabilities	
N/P BB&T	28,745.64
Total Long Term Liabilities	<u>28,745.64</u>
Total Liabilities	33,256.22
Equity	
Capital Stock	1,000.00
Retained Earnings	-10,818.69
Net Income	<u>1,866.00</u>
Total Equity	<u>-7,952.69</u>
TOTAL LIABILITIES & EQUITY	<u><u>25,303.53</u></u>

Fish Tales Bait & Tackle Inc.
Profit & Loss
 January through December 2012

	<u>Jan - Dec 12</u>
Ordinary Income/Expense	
Income	
Merchandise Sales	56,679.00
Total Income	<u>56,679.00</u>
Cost of Goods Sold	
Purchases - COGS	13,533.00
Total COGS	<u>13,533.00</u>
Gross Profit	43,146.00
Expense	
Advertising and Promotion	2,133.00
Alarm Services	359.00
Auto Expense	4,216.00
Bad Debt	800.00
Charitable Contributions	894.00
Credit Card Fees	2,493.00
Insurance Expense	1,370.00
Interest Expense	2,916.00
Meals and Entertainment	1,689.00
Professional Fees	800.00
Rent Expense	12,600.00
Repairs and Maintenance	187.00
Taxes and Licenses	4,024.00
Travel Expense	1,941.00
Utilities	5,058.00
Total Expense	<u>41,280.00</u>
Net Ordinary Income	<u>1,866.00</u>
Net Income	<u><u>1,866.00</u></u>

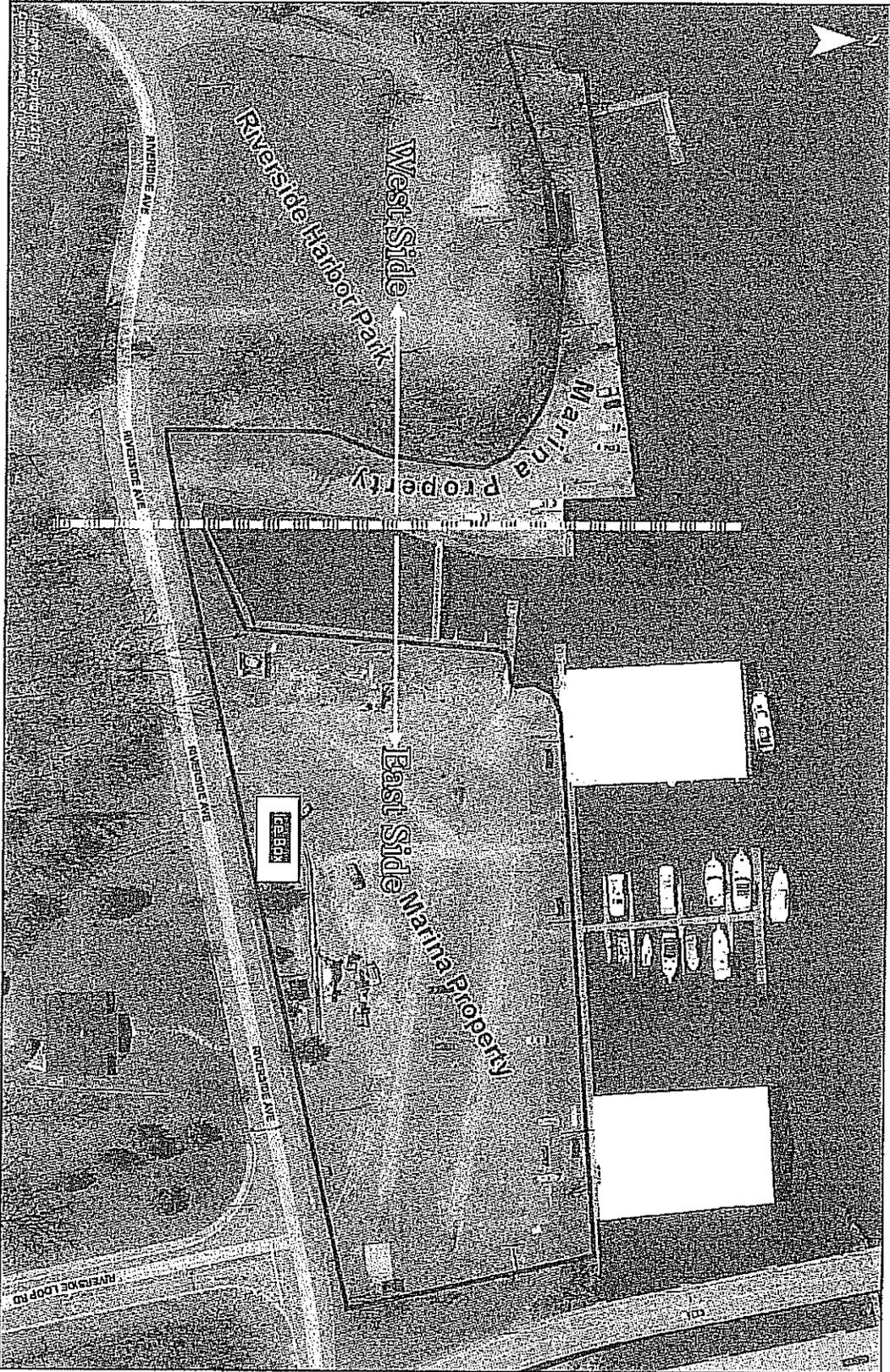


Exhibit B

~~check~~
~~check~~

* ~~Handicap parking to deck~~
~~up~~

* ~~Get parking bumpers~~

* ~~Get ping poles~~

* ~~Womens bath door has small gap~~
~~@ bottom RT - no caulk around~~
~~top of tile floor~~

* ~~Mens room - sheetrock overlaps~~
~~door jam @ top - need rework~~
~~on left side of door - no caulk~~
~~around top of tile floor~~

* ~~Shower room door not~~
~~square and needs caulking~~
~~cleaned up - no caulk around~~
~~door tile~~

* ~~Recept. by water fountain needs~~
~~to be ground fault~~

* ~~Office door threshold has~~
~~gap @ bottom~~

* ~~Attic access door & trim need~~
~~paint~~

* ~~Maint room door has gap all~~
~~the way around door~~

* ~~Floor in office needs to be~~
~~cleaned.~~

* WIRE ON N DOCK LIGHTS

* ~~AWNING ON N DOCK~~

* H₂O LINE ON L DOCK

* EROSION by old Ramp

* ~~GRAVEL AROUND FLAGPOLE AREA~~

* PAUL SMITH - M & N DOCK WORK

slip pier -
w/ braced to
Brazon
→ L Dock →

* ~~WOMEN'S ROOM H₂O PRESSURE~~

* ~~CO~~

* PHONE & COMCAST LINE

knows work on

* INTERNET - working to get straight

Marina issues

Jeff Davis

Sent: Thursday, February 27, 2014 1:30 PM

To: Jo Turek; Johnnie Butler; Wayne Walton

X L DOCK METER
BOARD TRIM to
Be fixed

All,

With the leasing of the marina close at hand, there are still many issues that need to be addressed before weather breaks and we are in full operation. The following are things that I know of to date that require attention.

- ~~1. One window in the office needs to be caulked again due to cracking of the existing caulk.~~
2. The seams in the vinyl flooring are opening up. Appears that they need to be sealed if that is possible at this point in time. *been repaired w/ caulk*
3. The handicap parking markings by the office needs to be repainted and the one in front of M dock needs to be touched up. Not sure why they are wearing so bad as neither has had any traffic across them. *not done*
4. Wiring that was taken down to facilitate the construction of the new awning on N dock needs to be replaced so all lights work.
5. ~~A small piece of the trim on N dock needs to be replaced. I assume wind blew it off but no more than we have had leads me to believe it may not have been secured properly.~~
6. ~~We need to do something about the erosion problem at the corner of the old boat ramp where the new construction was done. If the city has some rip-rap we could get that would fix the problem. If not, maybe use some of the old concrete from across the canal to shore up that area. No matter how it's done we have to do something before the integrity of the boardwalk pilings are compromised.~~
7. ~~We need more gravel around the flagpole area to prevent water from standing at the steps to the office.~~ *on hand*
8. ~~The water pressure in the women's bathroom is low. The plumber needs to look at this as this is the only area where it is bad.~~
- ~~9. Where do we stand with the CO?~~
10. The Comcast line to the building still has not been buried nor has the phone line been repaired that runs underground to the pump station. Currently, the pump station phone alarm line is tapped off of the new office building. *Johnnie Butler*
11. As of yesterday we still do not have internet service. *working on it.*
12. Lastly, and probably the issue that affects the most is the completion of the water and drain lines for the Porta-Pottie dump and lines for the pump out on the end of L dock. Water line repair must also be completed on L dock before we can cut the water back on for the rest of the marina due to damage from the new apron to the ramps. Also, the lack of attention in this area is holding up the new underground power for lights and security cameras and the installation of both. We have had decent enough weather that grading and fill dirt could have been completed. *In work*
13. ~~Harbor Dredge and Dock folks continue to work across the canal but still have a few issues to correct on the marina piers.~~

These items are what we know of to date....more issues may arise and I will bring them to everyone's attention as necessary but bottom line is this.....warm weather is coming and activity down here is going to pick up quickly.....the pump-out and dump need to be up and functioning and the VDH notified once back on line so

they can inspect.....we are 4 weeks and 3 days away from our first major fishing event and they will increase from this point on out through the year.It is time for the contractor to bring this project to the forefront and finish up so we aren't still dealing with these issues this time next year!!! I am now stepping off the soapbox...someone else can get on and rant!!!!!!!!!!!!!!!

Jeff

Hanon Box Relocated and shown where.
 Topsoil: area dressed & seeded.
 Walkway by canal to be done.
~~Ab~~ Electrical added to two poles
 w/ light post on.
 Security camera system in.
 2 Display cases
 Storage structure ordered.
 Enter/Exit signs
 No paint across to reflect some
 Possible - 3 parking spaces added in
 the area near Ice Box w/ one for then's.
 2 Added for stone if allowed.
 Locks put on alarm gate now that we
 have CO - call to be done.
 Contractor will have to call to come in

Gyps filling my holes seen - all boards look fine
 on dock area but we will recheck and remove
 fire before they take over.