



CITY OF HOPEWELL
Hopewell, Virginia 23860

AGENDA

(804) 541-2408

www.hopewellva.gov
info@hopewellva.gov
cityclerk@hopewellva.gov

CITY COUNCIL

Patience A. Bennett, Mayor, Ward #7
John B. Partin, Jr., Vice Mayor, Ward #3
Deborah B. Randolph, Councilor, Ward #1
Arlene Holloway, Councilor, Ward #2
Jasmine E. Gore, Councilor, Ward #4
Janice B. Denton, Councilor, Ward #5
Brenda S. Pelham, Councilor, Ward #6

Concetta Manker, Interim City Manager
Danielle F. Smith, City Attorney
Mollie P. Bess, City Clerk

August 11, 2022

SPECIAL MEETING

Special Meeting - 6:30 p.m.

OPEN MEETING

6:30 p.m. Call to order, roll call, and welcome to visitors

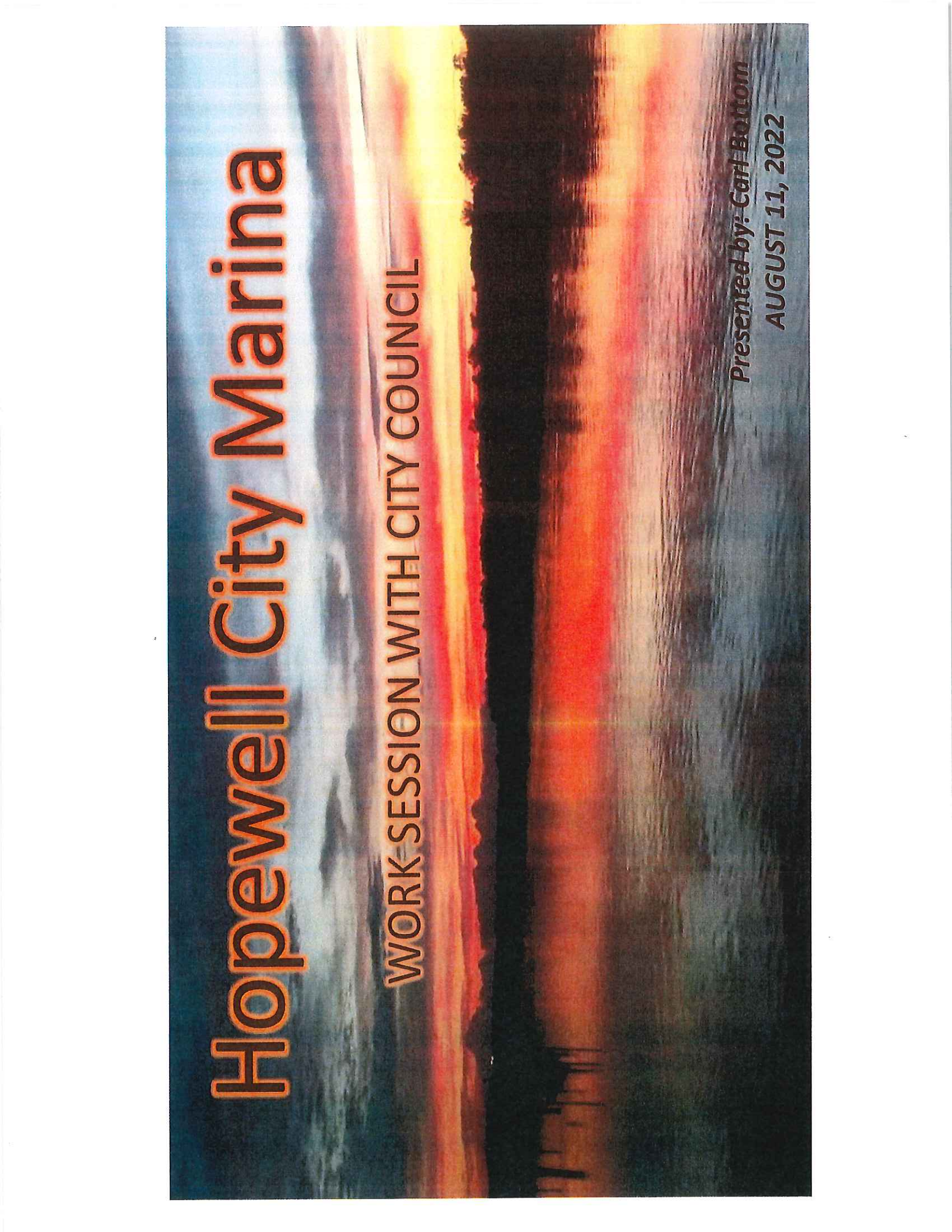
Roll Call

WORK SESSION

WS-1 – Hopewell City Marina

- 1) Existing Contract in force with 3rd party vendor
- 2) Alternative Plan for Marina going forward

Adjournment



Hopewell City Marina

WORK SESSION WITH CITY COUNCIL

Presented by: Carl Bottom

AUGUST 11, 2022

GRANT APPLICATION STATUS?
AND ARE YOU STILL
COMMITTED TO SPENDING THE
ESTIMATED 2.8 MILLION
IN ADVANCE TO RECEIVE 1.4
MILLION IN GRANT MONEY
FOR THE PARK

PLAN B

CURRENT CONTRACT PARKS AND REC HAS WITH FISH TALES 2

Review the existing Contract with Fish Tales

CITY COUNCIL SHOULD HAVE CONCERNS THAT CERTAIN REQUIREMENTS ARE BEING MET UNDER THE PRESENT LEASE AGREEMENT

1. PAGE 2 SECTION PARAGRAPH 1 RENTS HAVE BEEN ESTABLISHED FOR THE FIRST 5 YEARS WHAT IS IT NOW YEAR 8
2. IS THERE A MONTHLY LIST OF SLIP HOLDERS BEING PROVIDED TO THE COMMISSIONER OF REVENUE AS REQUIRED IN PAGE 3 SECTION 3
3. BATHROOMS BEING CLEANED ONCE A DAY AND TWICE FOR TOURNAMENTS PAGE 5
4. PAGE 11 NO. 15 PARAGRAPH B CITY COUNCIL SHOULD MAKE SURE THAT A POLICY IS ENFORCE WITH THE PROPER COVERAGE AMOUNTS
5. PAGE 12 SECTION D AND E COUNCIL SHOULD REQUIRE TO SEE CURRENT POLICY COVERAGES IN FORCE
6. PAGE 20 NUMBER 32 AND 33 GET A CURRENT LIST OF SLIP HOLDERS NAME AND ADDRESS ALSO GET A COPY OF THE REQUIRED AUDIT CALLED FOR IN THE LEASE AGREEMENT TO INCLUDE SLIP FEES RAMP FEES VISITING VESSEL FEES AND SALES OF ITEMS FROM THE STORE

OVERSIGHT OF THE CURRENT SLIP HOLDERS BY THE THIRD-PARTY VENDER

IT IS THE RESPONSIBILITY OF THE THIRD-PARTY VENDER TO MAKE SURE THAT ALL SLIP HOLDERS MAINTAIN A MINIMUM OF 500,000 LIABILITY INSURANCE AT ALL TIMES.

ALSO, TO HAVE THE CITY AND THE MARINA LISTED AS ADDITIONAL INSURED ON THE POLICY.

THE THIRD-PARTY VENDER SHOULD MAKE SURE THAT THEY ARE NOTIFIED IF THERE IS A CHANGE OR LAPSE IN THE POLICY RIGHT AWAY THUS PROTECTING THE MARINA.

IT HAS BEEN BROUGHT TO MY ATTENTION THAT A MINIMUM OF TWO BOATS HAVE NO INSURANCE.

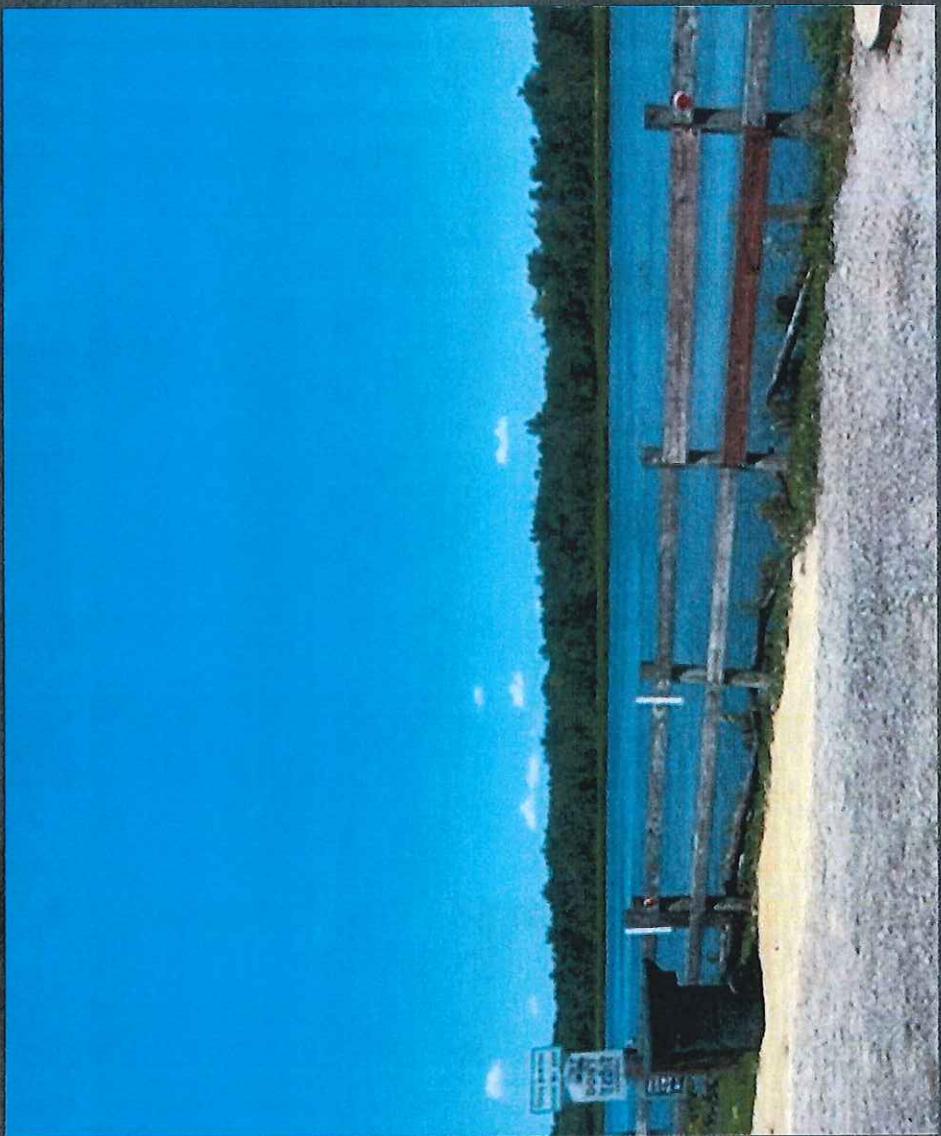
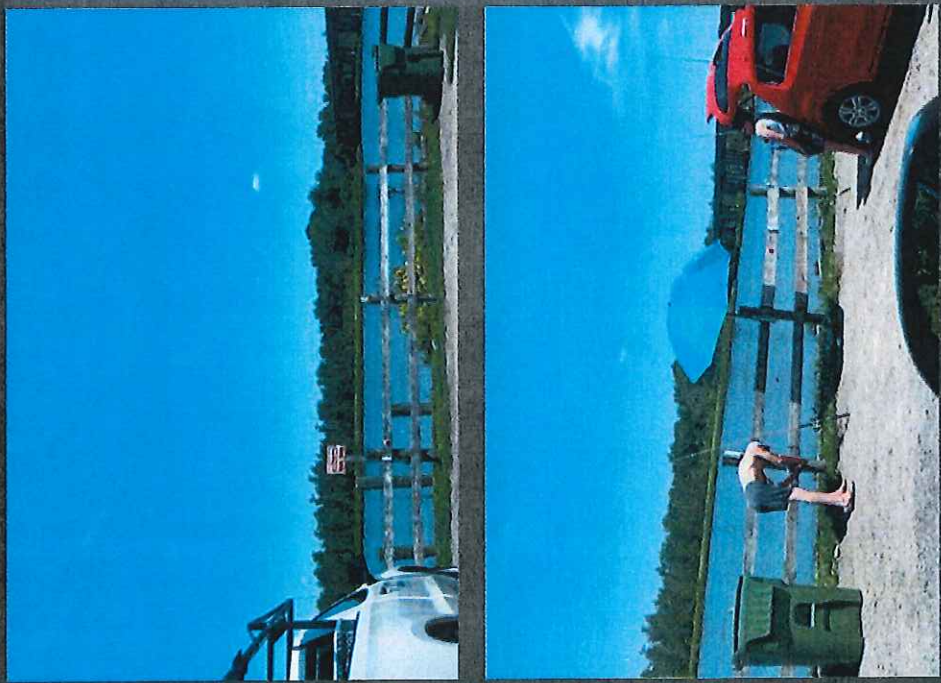
AT THIS TIME. BUT NOT HAVING ACCESS TO THE INFORMATION I CAN NOT CONFIRM THIS TO BE TRUE.

COURSE OF ACTION FOR THE FUTURE

1. TERMINATE THE LEASE AGREEMENT WITH THE CURRENT VENDER
2. BRING THE MANAGEMENT OF THE MARINA BACK IN HOUSE
3. CREATE A MARINA AND CONTINGENCY ENTERPRISE FUND TO BE USED IN THE REPAIR AND UPKEEP OF THE MARINA AS WELL AS ANY EXCESS COULD BE USED BY CITY COUNCIL TO COVER ANY OTHER NEED THROUGH OUT THE CITY. COUNCIL BY MAJORITY VOTE SHOULD BE THE ONLY ONE TO USE THIS EXCESS.
4. BEGIN RECEIVING THE SLIPS RENTALS PAID TO THE CITY OF HOPEWELL ASAP
5. CREATE A SUB-COMMITTEE TO CONSIST OF TWO CITY COUNCIL MEMBERS, THE CITY MANAGER OR ONE OF HIS OR HER DESONEES THE CITY ATTORNY AND ONE MEMBER OF THE PORT AND DOCK COMMISSION TO BEST DETERMINE HOW TO MANAGE THE MARINA
6. THE MONEY WILL BE USED AT FIRST TO BRING THE PYLONS NEEDING REPAIR AND WOOD DECKING THAT NEEDS TO BE REPLACED. DECISION OF ROOF REPAIR ON L DOCK TO BE DETERMINED BY THE SUB COMMITTEE AS WHAT IS THE MOST ECONOMICAL ANSWER FOR THE DOCK.
7. TAKE HALF OF THE REVENUE FROM THE MARINA AND BEGIN UP GRADING THE FISHING AREA. SUCH AS INSTALLING A FENCE THAT RESEMBLES THE SIDES OF A FISHING PIER. INSTALL A SIDEWALK ALONG THE FENCE. PAVE THE PARKING LOT INSTALL BENCHES FOR PEOPLE TO SIT ON WHILE FISHING INSTEAD OF THE HOODS OF THE CARS. INSTALL ROD HOLDER ALONG THE FENCE AND FINALLY INSTALL TWO STREET LAMPS IN THE PARKING LOT TO DETER ILLEGAL ACTIVITY AT NIGHT.



FISHING AND KAYAK LAUNCH









City of Hopewell

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

Phone: 804.541.2247
Fax: 804.302.7540

July 26, 2022

Send via e-mail: cbottom916@aol.com
Carl Bottom

Re: FOIA Request

Dear Mr. Bottom:

The City of Hopewell received your request for records made in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). You have requested the following:

"I am requesting a copy of the current contract between the Hopewell Parks and Recreation Department and Fish Tales 2 for the management of the Hopewell City Marina."

Please see the enclosed records responsive to your request.

Thank you for your attention and your anticipated cooperation as the City seeks to comply with your request. Please call 804-541-2247 if you have any questions.

Sincerely,

Marta Leon

/s/

Marta A. Leon, Paralegal
Hopewell City Attorney's Office

Signed copy

**HOPEWELL CITY MARINA
LEASE AGREEMENT**

THIS LEASE AGREEMENT, entered into this 14th day of March 2014, by and between the City of Hopewell, Virginia, a political subdivision of the Commonwealth of Virginia (the "City"), and Fish Tales Bait and Tackle 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, then 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 Bait and Tackle, Inc
3508 Norton St.
Hopewell, VA 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: [Signature]

Mark A. Haley
City Manager

COMMONWEALTH OF VIRGINIA
CITY OF HOPEWELL, to wit:

The foregoing Lease Agreement was acknowledged before me this 10th day of March, 2014, by Mark A. Haley, City Manager, on behalf of City.

[Signature]
NOTARY PUBLIC

My Commission expires: 12/31/2015
Notary Registration No. 203979



Debra W. Pershing
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #203979
My Commission Expires
December 31, 2015

TENANT

By: [Signature]
Terri Ellis of Fish Tales Bait
& Tackle, Inc.

COMMONWEALTH OF VIRGINIA
CITY OF HOPEWELL, to wit:

The foregoing Lease Agreement was acknowledged before me this 14th day of March, 2014, by Terri Ellis, its President, on behalf of Fish Tales Bait & Tackle, Inc.

[Signature]
NOTARY PUBLIC

My Commission expires: 12/31/2015
Notary Registration No. 203979



Debra W. Pershing
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #203979
My Commission Expires
December 31, 2015

APPROVED AS TO FORM:

[Signature]
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 EASTSIDE ONLY

Motion was made by Councilor Walton, seconded by Councilor Shornik 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:

Councillor Lamm-Balloy	-	yes
Councillor Edwards	-	yes
Mayor Bajtkowski	-	yes
Vice Mayor Gore	-	yes
Councillor Walton	-	yes
Councillor Pellum	-	NO
Councillor Shornik	-	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