



TOWN COUNCIL
Special Meeting Agenda

February 7, 2013 6 p.m.

Town Hall

2 Plum Street

Immediately Following the Public Hearing

1. Call Special Meeting to Order; Roll Call
2. Public Comments on Agenda items only
3. Order of Business
 - a. Bids for Easements on Tax Parcel 83A3-10
 - *b. Granting of Easements on Portions of Tax Parcel 83A3-10
 - *c. Proposed South Port Lease Amendments
 - *d. Cape Charles Memorial Library Allocation
 - *e. 2013 Harbor Rate Schedule
 - *f. Harbor Rules and Regulations
 - *g. Police Car Replacement Financing
4. Adjourn



TOWN OF
CAPE CHARLES

AGENDA TITLE: Granting of Easements on Portions of Tax Parcel 83A3-10

AGENDA DATE:
January 10, 2013

SUBJECT/PROPOSAL/REQUEST: Enact ordinance granting the easements on portions of tax parcel 83A3-10

ITEM NUMBER:
3B

ATTACHMENTS: Encroachment Easement Agreements, Ordinance #20130207

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
Heather Arcos

REVIEWED BY:
Heather Arcos, Town Manager

BACKGROUND:

The Town currently leases of five parcels of Town property to South Port Investors, LLC. South Port's plans have evolved and the leases require amendment to allow for currently planned uses.

Easements are needed to recognize encroachment on the harbor bottom of Parcel 10 for lift facility piers, floating dock piles and similar equipment. The proposed encroachment would be up to 100' west of Parcel 83A3-12 and 70' north of Parcel 83A3-19.

The granting of such easements on public property is governed by the Code of Virginia, Sections 15.2-1800 and 2100. A Public Hearing must be held, per Section 1800, and we must advertise the proposed easement for public bids, per Section 2100, et seq. The easement must be granted by an ordinance, which must be referenced in the advertisement and be available in the office of the Town Clerk.

DISCUSSION:

An advertisement was placed in the January 23rd and 30th issues of the Eastern Shore News and placed on the Town's website along with a copy of the ordinance. Bids are due by 2:00 PM on February 7, 2013 at which time the Town Manager will open, announce and records the bids received.

A public hearing is scheduled for February 7, 2013 preceding the Special Meeting.

RECOMMENDATION:

Staff recommends discussion of whether to enact Ordinance 20130207 granting the easements on portions of Parcel 83A3-10 on the harbor bottom to extend 100' west of Parcel 83A3-12 and 70' north of Parcel 83A3-19 and a vote thereon.

Prepared by: Vandevanter Black, LLP
101 W. Main Street
500 World Trade Center
Norfolk, VA 23510

Tax Parcel Number: 83-A3-10.

Prepared without the benefit of a title search.

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT ("Agreement") is made this _____ day of _____, 2013, between MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia ("Grantor"), and _____, a _____ whose address is _____ ("Grantee").

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following definitions:

(a) "Easement Area" shall mean that portion of Tax Parcel 83-A3-10 consisting of the portion of the bottom of Cape Charles Harbor extending seventy (70) feet north of the bulkhead on the northern boundary of Parcel 83-A3-19 ("Parcel 19") as indicated on the diagram attached hereto as Exhibit A and incorporated herein.

(b) "Parcel 19 Lease" means the lease between Grantor and the tenant thereunder for the lease of Parcel 19.

2. **Grant of Easement.** Grantor does hereby grant, sell and convey to Grantee a non-exclusive easement, right and privilege on, over and across the Easement Area as necessary for the construction, installation, and maintenance of floating docks, piers, wave attenuators and other complementary structures and equipment and piles to support or anchor these structures and equipment used in connection with the business operated pursuant to the Parcel 19 Lease (the "Easement"). If the Grantee is a party other than the tenant (or its successor) under the Parcel 19 Lease, then the Easement shall commence upon the full execution of this Agreement and shall terminate forty (40) years thereafter. If the Grantee is the tenant (or its successor) under the Parcel 19 Lease, then the Easement shall commence upon the full execution of this Agreement and shall terminate (a) simultaneously with the termination or expiration of the Parcel 19 Lease, if the tenant thereunder does not acquire fee simple title to Parcel 19 prior to the expiration or termination of the Parcel 19 Lease, or (b) forty (40) years after the full execution of this Agreement, if the tenant acquires fee simple title to Parcel 19 prior to the expiration or

termination of the Parcel 19 Lease on the terms set forth therein. The Easement and all rights thereunder shall terminate automatically on the applicable date described above without the need for any act by either Grantor or Grantee. Notwithstanding the foregoing, Grantor and Grantee agree to execute such documents as either party may reasonably deem necessary to confirm the expiration or termination of the Easement.

3. **Maintenance.** Grantee shall be solely responsible for maintaining all structures and equipment in the Easement Area in good, safe condition, making such repairs and replacements as may be necessary in connection therewith. Grantor shall have no responsibility for maintaining the Easement Area or any structures or equipment located therein.

4. **Release and Indemnification.**

(a) Grantee accepts the Easement Area in its "AS IS" condition, "WITH ALL FAULTS" and without representation or warranty of any kind from Grantor. Grantee, for itself, its tenants, and their respective successors and assigns and their respective owners, officers, managers, directors, and employees (together with Grantee, collectively the "Grantee Parties"), hereby forever releases and discharges Grantor, its successors and assigns and their respective officials, officers, directors, and employees (together with Grantor, collectively the "Grantor Parties") from any and all claims, actions, suits, liabilities, losses, fines, penalties, costs, and fees, including without limitation attorneys' fees and expenses (all of the foregoing, collectively "Claims"), whether for personal injury, death, property damage, or otherwise, arising out of or relating to this Agreement, the Easement Area, or the existence or use of the Easement granted herein.

(b) Grantee hereby indemnifies, defends, and holds harmless each of the Grantor Parties for, from, and against all Claims, whether for personal injury, death, property damage, or otherwise, arising out of or relating to this Agreement, the Easement Area, or the existence or use of the Easement granted herein, except to the extent caused by the gross negligence or intentional misconduct of the party to be indemnified.

5. **Miscellaneous.**

(a) **No Assignment.** If the Grantee is a party other than the tenant (or its successor) under the Parcel 19 Lease, Grantee's rights under this Agreement may not be assigned, encumbered or conveyed without the prior written consent of Grantor, which Grantor may withhold or deny in Grantor's sole discretion. If the Grantee is the tenant (or its successor) under the Parcel 19 Lease, the assignment of Grantee's rights under this Agreement shall be governed by the terms of the Parcel 19 Lease and applied equally with the assignment of Tenant's rights under the Parcel 19 Lease. If the Grantee acquires fee simple title to Parcel 19 prior to the expiration or termination of the Parcel 19 Lease on the terms set forth therein, there shall be no restriction on Grantee's assignment of its rights under this Agreement.

(b) **Modification.** This Agreement may be modified only by written agreement signed by of the parties hereto or their respective successors or assigns.

(c) **Headings.** Headings are for convenience or reference only and shall not affect meanings or interpretations of the contents of this Agreement.

(d) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that this paragraph shall not modify any restrictions or limitations on assignment found elsewhere in this Agreement.

(e) **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles.

(f) **No Recording.** This Agreement may not be recorded without the written consent of Grantor.

(g) **Notices.** All notices or communications hereunder shall be written and shall be by personal delivery or nationally recognized overnight carrier (e.g. Federal Express) or by certified mail, return receipt requested, to the parties hereto at the addresses shown below, or at such other address as any of them may designate by proper notice.

GRANTOR: MUNICIPAL CORPORATION OF CAPE CHARLES
Attention: Town Manager
2 Plum Street
Cape Charles, VA 23310

GRANTEE: _____
Attn: _____

REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURES TO FOLLOW.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal the day and year first above written.

GRANTOR:

MUNICIPAL CORPORATION OF CAPE CHARLES

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA,

City of _____, to-wit:

I, _____, a Notary Public of the above referenced jurisdiction, do hereby certify that _____, in his or her capacity as _____ of Municipal Corporation of Cape Charles, has acknowledged the due execution of the aforesaid instrument this _____ day of _____, _____. The person is _____ personally known to me, or _____ I have examined the following type of identification: _____ (Identification must be a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card).

Notary Public

My commission expires: _____

Registration Number: _____

[Signatures continue on following page.]

GRANTEE:

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA,

City of _____, to-wit:

I, _____, a Notary Public of the above referenced jurisdiction, do hereby certify that _____, in his or her capacity as _____ of _____, has acknowledged the due execution of the aforesaid instrument this _____ day of _____, _____. The person is _____ personally known to me, or _____ I have examined the following type of identification: _____ . (Identification must be a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card).

Notary Public

My commission expires: _____

Registration Number: _____

Exhibit A

Diagram of Easement Area

4849-4266-0114, v. 1

Prepared by: Vandeventer Black, LLP
101 W. Main Street
500 World Trade Center
Norfolk, VA 23510

Tax Parcel Number: 83-A3-10.

Prepared without the benefit of a title search.

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT ("Agreement") is made this _____ day of _____, 2013, between MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia ("Grantor"), and _____, a _____ whose address is _____ ("Grantee").

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following definitions:

(a) "Easement Area" shall mean that portion of Tax Parcel 83-A3-10 consisting of the portion of the bottom of Cape Charles Harbor extending one hundred (100) feet west of the bulkhead on the western boundary of Tax Parcel 83-A3-12 ("Parcel 12") as indicated on the diagram attached hereto as Exhibit B and incorporated herein.

(b) "Parcel 12 Lease" means the lease between Grantor and the tenant thereunder for the lease of Parcel 12.

2. **Grant of Easement.** Grantor does hereby grant, sell and convey to Grantee a non-exclusive easement, right and privilege on, over and across the Easement Area as necessary for the construction, installation, maintenance, and operation of vessel hauling equipment, floating docks, piers, wave attenuators and other complementary structures and equipment and piles to support or anchor these structures and equipment used in connection with the business operated pursuant to the Parcel 12 Lease (the "Easement"). If the Grantee is a party other than the tenant (or its successor) under the Parcel 12 Lease, then the Easement shall commence upon the full execution of this Agreement and shall terminate forty (40) years thereafter. If the Grantee is the tenant (or its successor) under the Parcel 12 Lease, then the Easement shall commence upon the full execution of this Agreement and shall terminate (a) simultaneously with the termination or expiration of the Parcel 12 Lease, if the tenant thereunder does not acquire fee simple title to Parcel 12 prior to the expiration or termination of the Parcel 12 Lease, or (b) forty

(40) years after the full execution of this Agreement, if the tenant acquires fee simple title to Parcel 12 prior to the expiration or termination of the Parcel 12 Lease on the terms set forth therein. The Easement and all rights thereunder shall terminate automatically on the applicable date described above without the need for any act by either Grantor or Grantee. Notwithstanding the foregoing, Grantor and Grantee agree to execute such documents as either party may reasonably deem necessary to confirm the expiration or termination of the Easement.

3. **Maintenance.** Grantee shall be solely responsible for maintaining all structures and equipment in the Easement Area in good, safe condition, making such repairs and replacements as may be necessary in connection therewith. Grantor shall have no responsibility for maintaining the Easement Area or any structures or equipment located therein.

4. **Release and Indemnification.**

(a) Grantee accepts the Easement Area in its "AS IS" condition, "WITH ALL FAULTS" and without representation or warranty of any kind from Grantor. Grantee, for itself, its tenants, and their respective successors and assigns and their respective owners, officers, managers, directors, and employees (together with Grantee, collectively the "Grantee Parties"), hereby forever releases and discharges Grantor, its successors and assigns and their respective officials, officers, directors, and employees (together with Grantor, collectively the "Grantor Parties") from any and all claims, actions, suits, liabilities, losses, fines, penalties, costs, and fees, including without limitation attorneys' fees and expenses (all of the foregoing, collectively "Claims"), whether for personal injury, death, property damage, or otherwise, arising out of or relating to this Agreement, the Easement Area, or the existence or use of the Easement granted herein.

(b) Grantee hereby indemnifies, defends, and holds harmless each of the Grantor Parties for, from, and against all Claims, whether for personal injury, death, property damage, or otherwise, arising out of or relating to this Agreement, the Easement Area, or the existence or use of the Easement granted herein, except to the extent caused by the gross negligence or intentional misconduct of the party to be indemnified.

5. **Miscellaneous.**

(a) **Assignment.** If the Grantee is a party other than the tenant (or its successor) under the Parcel 12 Lease, Grantee's rights under this Agreement may not be assigned, encumbered or conveyed without the prior written consent of Grantor, which Grantor may withhold or deny in Grantor's sole discretion. If the Grantee is the tenant (or its successor) under the Parcel 12 Lease, the assignment of Grantee's rights under this Agreement shall be governed by the terms of the Parcel 12 Lease and applied equally with the assignment of Tenant's rights under the Parcel 12 Lease. If the Grantee acquires fee simple title to Parcel 12 prior to the expiration or termination of the Parcel 12 Lease on the terms set forth therein, there shall be no restriction on Grantee's assignment of its rights under this Agreement.

(b) **Modification.** This Agreement may be modified only by written agreement signed by of the parties hereto or their respective successors or assigns.

(c) **Headings.** Headings are for convenience or reference only and shall not affect meanings or interpretations of the contents of this Agreement.

(d) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that this paragraph shall not modify any restrictions or limitations on assignment found elsewhere in this Agreement.

(e) **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles.

(f) **No Recording.** This Agreement may not be recorded without the written consent of Grantor.

(g) **Notices.** All notices or communications hereunder shall be written and shall be by personal delivery or nationally recognized overnight carrier (e.g. Federal Express) or by certified mail, return receipt requested, to the parties hereto at the addresses shown below, or at such other address as any of them may designate by proper notice.

GRANTOR: MUNICIPAL CORPORATION OF CAPE CHARLES
Attention: Town Manager
2 Plum Street
Cape Charles, VA 23310

GRANTEE: _____
Attn: _____

REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURES TO FOLLOW.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal the day and year first above written.

GRANTOR:

MUNICIPAL CORPORATION OF CAPE CHARLES

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA,

City of _____, to-wit:

I, _____, a Notary Public of the above referenced jurisdiction, do hereby certify that _____, in his or her capacity as _____ of Municipal Corporation of Cape Charles, has acknowledged the due execution of the aforesaid instrument this _____ day of _____, _____. The person is _____ personally known to me, or _____ I have examined the following type of identification: _____ (Identification must be a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card).

Notary Public

My commission expires: _____

Registration Number: _____

[Signatures continue on following page.]

GRANTEE:

By: _____ (SEAL)

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA,

City of _____, to-wit:

I, _____, a Notary Public of the above referenced jurisdiction, do hereby certify that _____, in his or her capacity as _____ of _____, has acknowledged the due execution of the aforesaid instrument this _____ day of _____. The person is _____ personally known to me, or _____ I have examined the following type of identification: _____. (Identification must be a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card).

Notary Public

My commission expires: _____

Registration Number: _____

Exhibit A

[Intentionally omitted.]

Exhibit B

Diagram of Easement Area

[See attached.]

4812-5095-1698, v. 1

**ORDINANCE 20130207
GRANTING EASEMENTS ON TOWN PROPERTY
(TAX PARCEL 83A3-10)**

WHEREAS, the Town of Cape Charles has leased Tax Parcels 83A3-12 and 83A3-19 for the operation of a boat repair business; and

WHEREAS, such Parcels adjoin Tax Parcel 83A3-10, which includes the bottom of the Cape Charles Harbor; and

WHEREAS, the Town of Cape Charles desires to grant easements on, across, and under portions of Tax Parcel 83A3-10 for the purposes of construction, installation, maintenance and operation of vessel hauling equipment, floating docks, piers, wave attenuators and other complementary structures and equipment and piles to support or anchor these structures and equipment used in connection with the boat repair business operating on Tax Parcels 83A3-12 and 83A3-19; and

WHEREAS, such easements shall extend seventy (70) feet north of the bulkhead on the northern boundary of Tax Parcel 83A3-19 (the "70 Foot Easement") and one hundred (100) feet west of the bulkhead on the western boundary of Tax Parcel 83A3-12 (the "100 Foot Easement" and, together with the 70 Foot Easement, collectively the "Easements"); and

WHEREAS, the 70 Foot Easement will terminate upon the (a) the expiration of the lease for Tax Parcel 83A3-19 (which lease has less than 40 years remaining), if the lessee does not exercise its rights under such lease to acquire Tax Parcel 83A3-19, or (b) forty (40) years from the date of adoption of this Ordinance, if the lessee exercises its rights under such lease to acquire Tax Parcel 83A3-19; provided that if the lessee is not the successful bidder, the 70 Foot Easement will expire forty (40) years from the date of adoption of this Ordinance; and

WHEREAS, the 100 Foot Easement will terminate upon the (a) the expiration of the lease for Tax Parcel 83A3-12 (which lease has less than 40 years remaining), if the lessee does not exercise its rights under such lease to acquire Tax Parcel 83A3-12, or (b) forty (40) years from the date of adoption of this Ordinance, if the lessee exercises its rights under such lease to acquire Tax Parcel 83A3-12; provided that if the lessee is not the successful bidder, the 100 Foot Easement will expire forty (40) years from the date of adoption of this Ordinance; and

WHEREAS, the general location and other terms of the 70 Foot Easement are contained in the form of Exhibit A attached hereto; and

WHEREAS, the general location and other terms of the 100 Foot Easement are contained in the form of Exhibit B attached hereto; and

WHEREAS, a public hearing has been held on February 7, 2013 as required by the Code of Virginia, Section 15.2-1800; and

WHEREAS, the proposed Ordinance and Easements have been advertised with invitations for bids as required by the Code of Virginia, Sections 15.2-2100-2102; and

WHEREAS, the successful bid has been received from _____, which bid was either:

_____ the highest bid; or

_____ not the highest bid, but the Town Council, in the opinion of at least a majority of the members elected to Council, believes it to be in the best interest of the Town to accept a bid other than the highest bid for the following reason: _____.

THEREFORE BE IT ORDAINED by the Town Council of Cape Charles, this 7th day of February 2013, that the Mayor be authorized to execute such Easements in favor of _____, generally in the forms of Exhibit A and Exhibit B attached hereto.

Adopted by the Town Council of Cape Charles on February 7, 2013

By: _____
Mayor

ATTEST:

Town Clerk

Exhibit "A" to Ordinance 2013

Form of 70 Foot Easement Adjacent to Tax Parcel 83A3-19

Exhibit "B" to Ordinance 2013

Form of 70 Foot Easement Adjacent to Tax Parcel 83A3-19

4828-1109-1730, v. 1

 <p>TOWN OF CAPE CHARLES</p>	AGENDA TITLE: Amendment of South Port Leases		AGENDA DATE: February 7, 2013
	SUBJECT/PROPOSAL/REQUEST: Approve amendments to the leases of Town property to South Port, LLC.		ITEM NUMBER: 3C
	ATTACHMENTS: Second Amendment to Parcel 12 Lease, Fifth Amendment to Parcel 14 Lease, Draft Resolution		FOR COUNCIL: Action <input checked="" type="checkbox"/> (X) Information <input type="checkbox"/> ()
	STAFF CONTACT (s): Bob Panek	REVIEWED BY: Heather Arcos, Town Manager	

BACKGROUND:

The two leases of five parcels of Town property to South Port contain language that describes the permitted uses based on previous preliminary site plans. South Port's plans have since evolved and the leases require amendment to allow for currently planned uses. These uses are consistent with South Port's Conditional Use Permit which was approved on January 10, 2013 subject to approval of the lease amendments.

DISCUSSION:

We have negotiated amendments to the two leases, primarily to refine language based on their current site plan. The amendments would:

1. Standardize language concerning permitted uses, acquisition rights and lease termination.
2. Recognize encroachment, via easements, on the harbor bottom (Parcel 10) for lift facility piers, floating dock piles and similar equipment.
3. Delete liquidated damages provisions associated with closure of the former wastewater plant.

Council has previously reviewed the details of the proposed amendments. The proposed amendments, except for the easements on the harbor bottom, do not extend the time nor enlarge the territory of the existing leases.

The granting of easements on public property is governed by the Code of Virginia, Sections 15.2-1800 and 2100. A Public Hearing is scheduled for February 7, 2013 preceding the Town Council Special Meeting, per Section 1800, and we have advertised the proposed easements and will accept public bids, per Section 2100, et seq.

RECOMMENDATION:

Staff recommends that Council adopt the attached Resolution approving the amendments to leases of Town property to South Port, LLC.

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Second Amendment") is made as of this ____ day of _____, 2013~~2012~~, between the MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia ("Landlord"), and SOUTH PORT INVESTORS, L.L.C., a Virginia limited liability company ("Tenant"), as follows:

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated December 14, 2007 (the "Lease"), as amended by the First Amendment to Lease Agreement dated April 14, 2011 (the "First Amendment"), pursuant to which Tenant leases from Landlord Tax Parcel 83-A3-12 as described and defined therein as the "Property"; and

WHEREAS, the parties desire to modify the Lease and the First Amendment as set forth below.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and in the Lease, and other good and valuable consideration, Landlord and Tenant acknowledge and agree as follows:

1. ~~By separate instrument~~For so long as the Lease is in effect, Landlord shall grant an easement to Tenant to permit Tenant to encroach onto the harbor bottom on Tax Parcel 83-A3-10 to the extent necessary for the construction, installation, maintenance, and operation of vessel hauling equipment-, floating docks, piers, wave attenuators and other complementary structures and equipment and piles to support or anchor these structures and equipment used in connection with Tenant's business,; provided that such encroachment shall not extend further than one hundred (100) feet west of the bulkhead on the western boundary of the Property (the "Encroachment Easement"). The Encroachment Easement shall commence upon the Easement Effective Date, as defined below, and shall terminate (a) simultaneously with the termination or expiration of the Lease, if Tenant does not exercise the Acquisition Rights, or (b) forty (40) years after the Easement Effective Date, if Tenant exercises the Acquisition Rights. The Encroachment Easement shall provide that upon the termination of the Encroachment Easement-
~~Upon the expiration or earlier termination of the Lease, at Landlord's option Tenant shall either (i) remove all structures, improvements, fixtures, and personal property from the encroachment area and properly dispose of the same, or (ii) leave all structures, improvements, fixtures, and personal property in the encroachment area, title to which shall vest in Landlord without the need for further action by Landlord or Tenant. As used herein, "Easement Effective Date" shall mean the later of (x) the effective date of this Second Amendment, or (y) the date on which Landlord executes and delivers the Encroachment Easement following all notice periods, public hearings, and votes of Landlord's governing body as required by law~~Upon Tenant's exercise of its Acquisition Rights to purchase the Property and the transfer thereof to Tenant, it shall have a permanent easement to encroach onto the harbor bottom of Tax Parcel 83-A3-10 to the extent permitted herein and this permanent easement shall be included in the granting paragraph of Landlord's deed conveying the Property to Tenant.

2. Paragraph 3 of the First Amendment, amending Paragraph 4 of the Lease, is deleted and is replaced by the following:

4. Use of Property. The Property shall be used to provide (i) a work area for the operation of a commercial boat repair business with lift facilities to lift yachts and boats of all sizes in and out of the water for repairs and out-of-water storage, (ii) fuel storage and dispensing facilities, (iii) short-term pier facilities for these yachts and boats, (iv) café/market facility providing casual meals for breakfast, lunch and dinner, and prepackaged food and galley supplies for transient boaters and the general public, (v) upland rigging and ship store facilities providing marine hardware and supplies, (vi) administrative offices for marine specific services such as boat brokers, marine insurance, yacht designers and similar businesses, (vii) temporary housing for boat owners and crew needing space while boat repairs are undertaken, (viii) long and short-term out-of-water boat storage, and (ix) other similar services and facilities that will assist Tenant and its tenants in their business operations. The Property shall be used for no other purpose without Landlord's prior written consent which shall not be unreasonably withheld. In addition, no portion of the Property may be used for the operation of a commercial marina in competition with the marina facilities owned or operated by Landlord within a radius of five (5) miles from the Property. For purposes of this Lease, the term "commercial marina" shall mean a combination of docks, boat slips, moorings, boat ramps, piers or other marine docking facilities located in a harbor or boat basin that are available to the general public at daily, monthly or other periodic fixed rental rates to house pleasure craft and/or commercial vessels and/or to provide supplies such as fuel but such term shall not include docking facilities provided by a business enterprise only to vessel owners at no charge or in connection with repair, appraisal, insurance, fuel or water removal, fuel replacement or other similar services then being provided to them. Tenant's use of the Property shall be subject to all standard zoning and permitting requirements and other laws, ordinances and regulations as set forth in Paragraphs 7.1 through 7.6 of the Lease.

Services such as temporary lodging, bathrooms, showers, laundry facilities, food, galley supplies and fuel replacement will be provided on the Property. These services will be promoted and advertised as support services available to owners, representatives and crew of pleasure craft or commercial vessels undergoing work or requiring service at Tenant's boatyard facility. Tenant will not promote or advertise these services separately from Tenant's vessel repair services.

3. Paragraph 8 of the First Amendment, adding a new Paragraph 20 to the Lease, is modified by replacing subparagraphs (a) and (d) with the following:

(a) Tenant may exercise its Acquisition Rights only if: (i) Tenant has acquired all permits and completed the construction of the floating docks, bulkheads, lift facilities, work

areas, and buildings needed to operate a boat repair business on Parcel 83A3-12, (ii) Tenant has begun operating or has caused a subtenant to begin operating a boat repair business with lift facilities, work areas and associated equipment on Parcels 83A3-12, and some part or all of Parcels 83A3-17, 83A3-19, and 83A3-20, (iii) the Lease has not been previously terminated, and (iv) Tenant has previously or simultaneously exercises its Acquisition Rights to acquire Tax Parcels 83A3-19 and 83A3-20 under the Lease Agreement dated February 27, 1996, as modified by the Second Amendment to Lease Agreement dated December 14, 2007, as further modified by the Fourth Amendment to Lease Agreement dated April 14, 2011, as further modified by the Fifth Amendment to Lease Agreement executed contemporaneously with this Second Amendment, between Landlord and Tenant (therein called "Lessor" and "Lessee") and their predecessors-in-interest.

(d) The purchase of the Property by Tenant shall be "AS IS, WHERE IS," WITH ALL FAULTS, without any representation or warranty whatsoever. Landlord shall convey the Property by special warranty deed. Landlord may reserve standard easements and rights (temporary or permanent) as may be necessary for the maintenance, replacement and servicing of then-existing utility lines and facilities located on, under or above the Property.

4. To the extent that the terms of this Second Amendment conflict with or are inconsistent with the terms of the Lease or First Amendment, the terms of this Second Amendment shall control. Except as modified by this Second Amendment, the Lease, as amended, remains in full force and effect.

[Intentionally blank. Signatures to follow.]

Witness the following signatures and seals:

LANDLORD:

WITNESS

MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia

By: _____ (SEAL)

Name: _____
Title: _____

TENANT:

WITNESS

SOUTH PORT INVESTORS, L.L.C., a Virginia limited liability company

By: _____ (SEAL)

Name: _____
Title: _____

FIFTH AMENDMENT TO LEASE AGREEMENT

THIS FIFTH AMENDMENT TO LEASE AGREEMENT ("Fifth Amendment") is made as of this ____ day of _____, 2013~~2012~~, between the MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia ("Lessor"), and SOUTH PORT INVESTORS, L.L.C., a Virginia limited liability company ("Lessee"), as follows:

WHEREAS, Lessor and the Joint Industrial Development Authority of Northampton County, f/k/a Joint Industrial Development Authority of Northampton County and its Incorporated Towns ("Original Lessee") entered into a Lease Agreement dated February 27, 1996 (the "Lease");

WHEREAS, Lessor and Original Lessee entered into a First Amendment to Lease Agreement dated April 10, 2001, which First Amendment was later terminated;

WHEREAS, Lessor, Original Lessee, and Lessee entered into a Second Amendment to Lease Agreement dated December 14, 2007 (the "Second Amendment") which, among other things, modified the Lease and assigned the Lease from Original Lessee to Lessee;

WHEREAS, Lessor and Lessee entered into a Third Amendment to Lease Agreement dated January 9, 2008 (the "Third Amendment"), and a Fourth Amendment to Lease Agreement dated April 14, 2011 (the "Fourth Amendment") which, among other things, terminated the Third Amendment and modified certain provisions of the Second Amendment; and

WHEREAS, the parties desire to further modify the Lease, the Second Amendment, and the Fourth Amendment on the terms set forth below.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and in the Lease, and other good and valuable consideration, Lessor and Lessee acknowledge and agree as follows:

1. Paragraph 4 of the Fourth Amendment, amending Paragraph 6 of the Second Amendment, which in turn amends Paragraph 4 of the Lease, is deleted and is replaced by the following:

6. Paragraph 4 of the Lease is deleted and replaced with the following:

Use of Demised Premises. The Demised Premises shall be used to provide (i) a work area for the operation of a commercial boat repair business with lift facilities to lift yachts and boats of all sizes in and out of the water for repairs and out-of-water storage, (ii) fuel storage and dispensing facilities, (iii) short-term pier facilities for these yachts and boats, (iv) café/market facility

providing casual meals for breakfast, lunch and dinner, and prepackaged food and galley supplies for transient boaters and the general public, (v) upland rigging and ship store facilities providing marine hardware and supplies, (vi) administrative offices for marine specific services such as boat brokers, marine insurance, yacht designers and similar businesses, (vii) temporary housing for boat owners and crew needing space while boat repairs are undertaken, (viii) long and short-term out-of-water boat storage, and (ix) other similar services and facilities that will assist Lessee and its tenants in their business operations.

The Demised Premises shall be used for no other purpose without Lessor's prior written consent which shall not be unreasonably withheld. In addition, no portion of the Demised Premises may be used for the operation of a commercial marina in competition with the marina facilities owned or operated by Lessor within a radius of five (5) miles from the Demised Premises. For purposes of this Lease, the term "commercial marina" shall mean a combination of docks, boat slips, moorings, boat ramps, piers or other marine docking facilities located in a harbor or boat basin that are available to the general public at daily, monthly or other periodic fixed rental rates to house pleasure craft and/or commercial vessels and/or to provide supplies such as fuel but such term shall not include docking facilities provided by a business enterprise only to vessel owners at no charge or in connection with repair, appraisal, insurance, fuel or water removal, fuel replacement or other similar services then being provided to them.

Services such as temporary lodging, bathrooms, showers, laundry facilities, food, galley supplies and fuel replacement will be provided on the Demised Premises. These services will be promoted and advertised as support services available to owners, representatives and crew of pleasure craft or commercial vessels undergoing work or requiring service at Lessee's boatyard facility. Lessee will not promote or advertise these services separately from Lessee's vessel repair services.

Lessee's use of the Demised Premises shall be subject to all standard zoning and permitting requirements and other laws, ordinances and regulations as set forth in Paragraph 12 of the Second Amendment.

2. Paragraph 7 of the Fourth Amendment, amending Paragraph 9 of the Second Amendment, which in turn amends Paragraph 12(a)(4) of the Lease, is deleted in its entirety and replaced with the following:

7. Paragraph 9 of the Second Amendment is modified to provide that Paragraph 12(a)(4) of the Lease is deleted in its entirety and replaced with the following:

(4) At Lessor's option, in the event that a boat repair business has not begun operations on some part or all of the Demised Premises within 5 years from the date of the Fourth Amendment.

3. Paragraph 10 of the Fourth Amendment, which modifies Paragraph 21 of the Second Amendment, is modified by replacing subparagraph (a) with the following:

(a) Lessee may exercise its Acquisition Rights only if: (i) the Lessee has acquired all permits and completed the construction of the floating docks, bulkheads, lift facilities, work areas, and buildings needed to operate a boat repair business on the Demised Premises, (ii) Lessee has begun operating or caused a sublessee to begin operating a boat repair business with travel lift, forklift and associated equipment on some part or all of the Wharf Parcels and Parcel 83A3-12, and (iii) the Lease has not been previously terminated.

4. ~~By separate instrument~~For so long as the Lease is in effect, Lessor shall grant an easement to Lessee to permit Lessee to encroach onto the harbor bottom on Tax Parcel 83-A3-10 to the extent necessary for the construction, installation, and maintenance of floating docks, piers, wave attenuators and other complementary structures and equipment and piles to support or anchor these structures and equipment used in connection with Lessee's business,; provided that such encroachment shall not extend further than seventy (70) feet north of the bulkhead on the northern boundary of Parcel 83-A3-19 (the "Encroachment Easement"). The Encroachment Easement shall commence upon the Easement Effective Date, as defined below, and shall terminate (a) simultaneously with the termination or expiration of the Lease, if Lessee does not exercise the Acquisition Rights for Parcel 83-A3-19, or (b) forty (40) years after the Easement Effective Date, if Lessee exercises the Acquisition Rights for Parcel 83-A3-19. The Encroachment Easement shall provide that upon the termination of the Encroachment Easement, at Lessor's option Lessee shall either (i) . Upon the expiration or earlier termination of the Lease, at Lessor's option Lessee shall either (i) remove all structures, improvements, fixtures, and personal property from the encroachment area and properly dispose of the same, or (ii) leave all structures, improvements, fixtures, and personal property in the encroachment area, title to which shall vest in Lessor without the need for further action by Lessor or Lessee. As used herein, "Easement Effective Date" shall mean the later of (x) the effective date of this Fifth Amendment, or (y) the date on which Lessor executes and delivers the Encroachment Easement following all notice periods, public hearings, and votes of Lessor's governing body as required by law Upon Lessee's exercise of its Acquisition Rights with respect to Parcel 83-A3-19 and the transfer thereof to Lessee, it shall have a permanent easement to encroach onto the harbor bottom of Tax Parcel 83-A3-10 to the extent permitted herein and this permanent easement shall be included in the granting paragraph of Lessor's deed conveying Tax Parcel 83-A3-19 to Lessee.

5. The final paragraph of Paragraph 3 of the Fourth Amendment, which begins with "Lessee's unrestricted access ..." and ends with "... reasonable approximation of Lessee's damages" is deleted in its entirety.

6. To the extent that the terms of this Fifth Amendment conflict with or are inconsistent with the terms of the Fourth Amendment, the Second Amendment, or the Lease, the terms of this Fifth Amendment shall control. Except as modified by this Fifth Amendment, the Lease, as amended, remains in full force and effect.

[Intentionally blank. Signatures to follow.]

Witness the following signatures and seals:

LESSOR:

WITNESS

MUNICIPAL CORPORATION OF CAPE CHARLES, a political subdivision of the Commonwealth of Virginia

By: _____ (SEAL)

Name: _____

Title: _____

LESSEE:

WITNESS

SOUTH PORT INVESTORS, L.L.C., a Virginia limited liability company

By: _____ (SEAL)

Name: _____

Title: _____

RESOLUTION 20130207

RESOLUTION APPROVING (I) THE SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN MUNICIPAL CORPORATION OF CAPE CHARLES AND SOUTH PORT INVESTORS, L.L.C., AND (II) THE FIFTH AMENDMENT TO LEASE AGREEMENT BETWEEN MUNICIPAL CORPORATION OF CAPE CHARLES AND SOUTH PORT INVESTORS, L.L.C.

WHEREAS, the Town of Cape Charles, Virginia, in the capacity of Landlord (the "Town"), entered into that certain Lease Agreement dated December 14, 2007, as amended by the First Amendment to Lease Agreement dated April 14, 2011 (collectively, the "Parcel 12 Lease"), with South Port Investors, L.L.C., as Tenant ("South Port"), pursuant to which South Port currently leases from the Town certain property known as Tax Parcel 83A3-12; and

WHEREAS, the Town has also entered into that certain Lease Agreement dated February 27, 1996 between the Town and the Joint Industrial Development Authority of Northampton County (as original Lessee), as amended and assigned by that certain Second Amendment to Lease dated December 14, 2007¹, as further amended by that certain Fourth Amendment to Lease dated April 14, 2011² (collectively, the "Parcel 14 Lease"), pursuant to which South Port currently leases from the Town certain property known as Tax Parcel 83A3-14, Tax parcel 83A3-17, Tax Parcel 83A3-19, and Tax Parcel 83A3-20; and

WHEREAS, the Town Council has determined that it is in the best interests of the Town to amend both the Parcel 12 Lease and the Parcel 14 Lease, as more fully set forth in the Second Amendment to the Parcel 12 Lease, a copy of which is attached hereto as Exhibit A, and the Fifth Amendment to the Parcel 14 Lease, a copy of which is attached hereto as Exhibit B; now

THEREFORE BE IT RESOLVED by the Town Council of Cape Charles, this 7th day of February 2013:

¹ The First Amendment to the Parcel 14 Lease dated April 10, 2001 was terminated by the Second Amendment to the Parcel 14 Lease dated December 14, 2007.

² The Third Amendment to the Parcel 14 Lease dated January 9, 2008 was terminated by the Fourth Amendment to the Parcel 14 Lease dated April 14, 2011.

1. The Council hereby approves and authorizes the Town to execute the Second Amendment to the Parcel 12 Lease. The Mayor and the Town Manager, either of whom may act, are authorized to execute the Second Amendment to the Parcel 12 Lease.

2. The Council hereby approves and authorizes the Town to execute the Fifth Amendment to the Parcel 14 Lease. The Mayor and the Town Manager, either of whom may act, are authorized to execute the Fifth Amendment to the Parcel 14 Lease.

Adopted by the Town Council of Cape Charles on February 7, 2013

By: _____
Mayor

ATTEST:

Town Clerk



TOWN OF
CAPE CHARLES

AGENDA TITLE: Cape Charles Memorial Library

AGENDA DATE:
February 7, 2013

SUBJECT/PROPOSAL/REQUEST: Approval to allocate funding from the LGIP to the New Library renovations; update on library.

ITEM NUMBER:
3D

ATTACHMENTS: Budget of New Library as of January 29, 2013.

FOR COUNCIL:
Action (x)
Information ()

STAFF CONTACT (s):
Tom Bónadeo- Heather

REVIEWED BY:
Heather Arcos, Town Manager

BACKGROUND:

An update was provided to the Town Council at the December 2012 Council meeting. Staff has been working with the contractors to complete the necessary work in order for the library to move in the former bank building. We expect to be in the building NLT the end of March if the schedule remains unchanged to complete the renovations. The Friends of the Library have scheduled a Gala fund raiser for February 23rd at the new library. If you would like to know more about the details; please contact the Friends or Library. The fund raiser will be sponsored and organized by the Friends of the Library. We will send out more information as it becomes available.

Since the last update, a lot has been completed such as the plaster and paint reconditioning of several rooms and the exit and emergency lights have been installed.

At this time, the work in the bathroom to comply with ADA requirements will be done by our meeting on the 7th of February, the carpet is on order and the new book shelving has been finalized. The new shelving will take 45 days for delivery and installation.

DISCUSSION:

A summary of the revenue and expenses on the new library building is attached for your review. The total expenses for the renovations through January 29th are \$54,399.34. We do not anticipate any further renovations being required prior to move in. We will evaluate needs through the budget process.

In December, upon notification of the renewal of a CD designated for the purpose of the library held at Shore Bank, the Town authorized the Treasurer to transfer the funds from the CD to the Local Government Investment Pool (LGIP) designated for the library. The amount transferred to the LGIP was \$68,420.05.

In addition to the CD, \$922.00 was received from the recycling of the safety deposit boxes and \$970.75 was received from auctioning surplus furniture and items from the former bank building.

Staff requests allocation of the \$70,312.80 for the New Library Building Expenses and authorization for the Town Manager to administer the funds accordingly for the new library. The current unexpended balance of the Library Funds is \$15,913.46.

RECOMMENDATION:

Authorize the Town Manager to allocate the \$70,312.80 for the purpose of the new library.

MUNICIPAL CORPORATION OF CAPE CHARLES

NEW LIBRARY BUILDING

JANUARY 29, 2013

<u>DATE</u>	<u>DOLLARS SPENT TO DATE</u>	<u>DOLLARS</u>
	Maintenance	
11/16/2012	Moving Furniture	\$ (700.00)
11/21/2012	Larry Burkhard - Cleaning of Building	\$ (250.00)
11/23/2012	Professional Heating & Cooling - Contract Annual Preventative Maintenance	\$ (2,186.64)
11/26/2012	Professional Heating & Cooling - Carrier Fan Coil Unit Repair	\$ (1,333.23)
12/5/2012	The Daily Times - Advertise Silent Auction	\$ (57.60)
12/11/2012	Crawford Door Sales of Maryland - Contract Door Removal & Replacement	\$ (2,545.00)
12/11/2012	Watson's Hardware - Safety Glasses	\$ (12.87)
12/21/2012	Q.S., LLC - Deposit Paint Removal	\$ (1,437.50)
12/21/2012	Q.S., LLC - Contract Paint Removal Remainder Due + Extra Work	\$ (4,662.50)
1/15/2013	B&B Plumbing - Labor & Materials for Bathroom & ADA Compliance	\$ (2,940.00)
1/16/2013	VML - Flood Insurance	\$ (2,504.00)
1/28/2013	Q.S., LLC - Contract Switch 2 Doors, Paint Walls & Ceiling	\$ (1,900.00)
1/29/2013	Carpet	\$ (3,128.00)
1/29/2013	Cleaning Prior to Opening	\$ (300.00)
1/29/2013	Library Shelving - Base Shelves	\$ (15,000.00)
1/29/2013	Library Shelving - Circulation Desk	\$ (6,900.00)
1/29/2013	Library Shelving - End Panels	\$ (7,042.00)
1/29/2013	Chapman Electric	\$ (1,500.00)
	TOTAL DOLLARS SPENT TO DATE	\$ (54,399.34)
<u>DATE</u>	<u>REVENUE/BANK \$ TO DATE</u>	<u>DOLLARS</u>
11/27/2012	Eastern Shore Recycling - Recycled Steel	\$ 922.00
12/1/2012	Auction / Sale of Items	\$ 970.75
12/18/2012	CD Transferred to LGIP Account	\$ 68,420.05
	TOTAL REVENUE/BANK \$ TO DATE	\$ 70,312.80
	DIFFERENCE	\$ 15,913.46

 <p>TOWN OF CAPE CHARLES</p>	AGENDA TITLE: Harbor Rate Schedule for 2013		AGENDA DATE: February 7, 2013
	SUBJECT/PROPOSAL/REQUEST: Approval of proposed rate increase for 2013 per the attached schedule.		ITEM NUMBER: 3E
	ATTACHMENTS: Summary Rate Schedule 2013, Proposed Rate Schedule, and Rate Comparison		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): William Dize, Harbor Master	REVIEWED BY: Heather Arcos, Town Manager	

BACKGROUND:

The last rate review and increase to the Harbor Rate Schedule was in early 2011. Recently, a comparison of rates and amenities was done of the Town Harbor and other facilities, including other municipalities, state and private marinas/harbors. Consideration was given to the new floating slips, piers, bath house, restaurant and improvements made to the walkways.

The customer base at the Town Harbor has grown over the past several years with an increase in reservations and bookings for the upcoming boating season.

The Harbor is an enterprise fund which is self-supporting and rates have to be changed from time to time to offset inflation and to cover the cost of operations and debt service.

DISCUSSION:

Facility comparison:

Cape Charles Town Harbor: 123 mooring spaces with 54 floating, bath house and a restaurant on site. A short walk to town.

Chincoteague Town Harbor: 70 mooring spaces – all fixed piers. About 25 are a short walk to town.

Onancock Town Harbor: 18 moorings – all fixed piers, and shower facilities. A short walk to town.

Somers Cove Marina in Crisfield (State owned): 258 moorings – some are fixed and some are floating, shower facilities, laundry facilities, several gazebos to rent, swimming pools, tennis courts, etc. A short walk to town.

Bay Creek Marina: 175 moorings – all floating, high-end shops, restaurant on site, shower facilities, laundry facilities, bike and golf cart rentals. This a resort type marina.

Old Point Comfort in Hampton: Home to mostly retired and active military personnel.

Cobb's Marina at Little Creek in Norfolk: Fixed piers plus a haul out facility.

RECOMMENDATION:

Review and discuss the proposed Rate Changes and approve if appropriate.



Town Harbor Proposed Rate Schedule for 2013 Summary

An annual rate review is performed by the Harbor Master, Town Manager, and Treasurer in order to analyze the rate schedule for the Town Harbor. A summary of the proposed rate schedule increases in the three major categories is listed below to become effective March 15, 2013.

Docking:

1. **Annual Slip Rental:** We are proposing a \$0.50 per/ft. increase for annual slip rentals which would change the base from \$4.00 per/ft. to \$4.50 per/ft. per/month. We currently have 40 annual slips rented, and we have the possibility of having up to 43 for next year as we still have 2-50ft and 1-60ft slips available. Our current annual income is \$76,046.40. With the proposed rate increase, our annual income would be \$93,747.12. Our rates compared to other locations are as follows: Bay Creek Marina - \$8.00 per/ft., Onancock Wharf - \$3.12 per/ft., Chincoteague Harbor - \$1.72 per/ft., Somers Cove Marina - \$4.50 per/ft. and includes a portion of electric, Cobb's Marina - \$5.90 per/ft., Old Point Comfort - \$6.50 per/ft. and includes electric.
2. **Seasonal Slip Rental:** We are proposing a \$0.50 per/ft. increase on the seasonal slips, which would change the base rate from \$4.75 per/ft. to \$5.25 per/ft. per/month. We currently have 14 seasonal slips with the possibility of 20 for next year. Our current annual income for seasonal slips is \$11,437.72. With the proposed rate increase and the additional 6 slips, our annual income would be \$19,975.41. Our rates compared to other locations are as follows: Bay Creek Marina - \$11.00 per/ft., Old Point Comfort - \$7.50 per/ft. None of the other locations mentioned above have seasonal rates.
3. **Quarterly Slip Rental:** This was a new option in 2011. We had 1 vessel in 2011 and 3 in 2012. Our current rate is \$6.50 per/ft. per/month with a minimum of 3 months and a maximum of 6 months. None of the other marinas listed have a quarterly rate. We recommend no change at this time.
4. **Monthly Slip Rental:** Our current rates are \$9.50 per/ft. in season and \$7.50 per/ft. off season. We recommend no change at this time. Our rates compared to other locations: Bay Creek - \$14.00 per/ft. in season and \$10.00 per/ft. off season, Chincoteague - \$4.00 per/ft. year-round, Somers Cove - \$18.00 per/ft. including a portion of electric, Cobb's Marine - \$8.50 per/ft. year-round, Old Point Comfort - \$8.50 per/ft. year-round.
5. **Weekly Slip Rental:** Our current rates are \$4.50 per/ft. in season and \$3.50 per/ft. off season. We recommend no change at this time. Our rates compared to other locations: Chincoteague - \$1.00 per/ft. and Somers Cove - \$8.00 per/ft. including electric.
6. **Nightly Slip Rental:** We are proposing a \$.25 per/ft. increase in our off season rate only. Our current rates are \$1.50 per/ft. in season, \$1.25 per/ft. for cruising clubs with 10 or more vessels and \$1.00 per/ft. off season rate. Our rates compared to other locations: Bay Creek - \$2.00 per/ft. in season, \$1.50 per/ft. off season and \$1.90 per/ft. for cruising clubs, Onancock - \$1.50 per/ft. year-round, (Chincoteague - \$0.75 per/ft. year-round, Somers Cove - \$1.75 per/ft. year-round, higher on holidays, Cobb's Marine - \$1.25 per/ft. year-round, and Old Point Comfort - \$2.00 per/ft. year-round.

Storage:

1. **Annual Storage Rental:** We recommend no change at this time. Our current rate is \$300. Our rates compared to other locations: Somers Cove - \$650.00 for enclosed storage, Cape Charles Marine - \$300.00.

2. **Seasonal Storage Rental:** We recommend no change at this time. No other comparisons.
3. **Quarterly Storage Rental:** We would like to incorporate this new rate. No other Comparison. Please see attached Proposed Rates 2013.
4. **Monthly Storage Rental:** We recommend no change at this time. Our rates compared to other locations: Cape Charles Marine - \$30.00.
5. **Monthly Boat Davit:** We recommend no change at this time. No other comparisons.
6. **Weekly Storage Rental:** We recommend no change at this time. No other comparisons.
7. **Nightly Storage Rental:** We recommend no change at this time. No other comparisons.
8. **Nightly Storage with Slip:** We are recommending a new rate for those renting short term slips to have a place to store their trailer only. No other comparisons. Please see attached Proposed Rates 2013.
9. **Nightly Events:** We recommend no change at this time.
10. **Daily Gazebo Rental:** We recommend no change at this time.
11. **Nightly commercial equipment over 10 days:** We currently allow certain commercial equipment, such as pots, piles, etc. to be stored on our docks while in use. Over the past couple of years equipment has been abandoned on the harbor property. We still recommend no charge to commercial watermen who are in the Town Harbor and actively using their gear, but we want to add a requirement giving the watermen 10 days to remove their equipment when leaving the harbor or a penalty of \$100 per day will be assessed.

Wharfage:

1. **Crabs:** We recommend no change at this time.
2. **Conchs:** We recommend no change at this time.
3. **Horse Shoe Crabs:** We propose an increase from \$0.20 per bushel to \$0.30 per bushel.
4. **Fish:** We recommend no change at this time.
5. **Gravel Tons:** We recommend no change at this time.
6. **Bait:** We propose a new rate to track weight being loaded or unloaded at our docks. Our system has to associate dollar amounts in order to track tons on an annual basis. This will help us keep an accurate count of the tons loaded and unloaded on the town docks.
7. **Large Trap Piles:** We recommend no change at this time.
8. **Small Trap Piles:** We recommend no change at this time.
9. **Clams and Oysters Basket/Bag:** We recommend no change at this time.
10. **Crab/Conch Pots:** We recommend no change at this time. We propose a rate for watermen, not staying here or working out of the harbor, to use the harbor to load/unload their pots only. For weight purposes, we recommend a charge of \$0.01 each.

Cape Charles Town Harbor Proposed Rates 2013

Docking Rate Per/Ft

Docking Type	Base Rate			Residential/Rental Rate			Commercial Rate		
	Current	Proposed	Difference	Current	Proposed	Difference	Current	Proposed	Difference
Annual	\$4.00	\$4.50	\$0.50	\$3.80	\$4.28	\$0.48	\$3.40	\$3.82	\$0.42
Seasonal	\$4.75	\$5.25	\$0.50	\$4.52	\$4.99	\$0.47	\$4.04	\$4.46	\$0.42
Quarterly	\$6.50	\$6.50	\$0.00	\$6.18	\$6.18	\$0.00	N/A	N/A	N/A
Monthly In Season	\$9.50	\$9.50	\$0.00	\$9.03	\$9.03	\$0.00	N/A	N/A	N/A
Monthly Off Season	\$7.50	\$7.50	\$0.00	\$7.13	\$7.13	\$0.00	N/A	N/A	N/A
Weekly In Season	\$4.50	\$4.50	\$0.00	\$4.28	\$4.28	\$0.00	\$1.10	\$1.20	\$0.10
Weekly Off Season	\$3.50	\$3.50	\$0.00	\$3.33	\$3.33	\$0.00	\$1.10	\$1.20	\$0.10
Nightly In season	\$1.50	\$1.50	\$0.00	\$1.43	\$1.43	\$0.00	\$0.35	\$0.40	\$0.05
Nightly Cruising Clubs	\$1.25	\$1.25	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
Nightly Off Season	\$1.00	\$1.25	\$0.25	\$0.95	\$1.19	\$0.24	\$0.35	\$0.40	\$0.05
First 2 Hours Docking	\$0.00	\$0.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
after First 2 hours docking	\$5.00	\$5.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
Reservation Cancellation Fee	\$15.00	Night	\$35.00	N/A	N/A	N/A	N/A	N/A	N/A

Docking Definitions

Annual	12 Month renters (4/1 to 3/31) we propose a \$0.50 per/ft increase per month
Seasonal	Summer (5/1 to 11/30) Winter (12/1 to 4/30) Crabbing and Fishing. We propose the same as Annual
Quarterly	Minimum 3 months rent
Monthly In Season	Month to Month, (5/1 to 9/30) we propose no change
Monthly Off Season	Month to Month, (10/1 to 4/30) we propose no change
Weekly In Season	Week to Week, (5/1 to 9/30) we propose no change except for commercial
Weekly Off Season	Week to Week, (10/1 to 4/30) we propose no change except for commercial
Nightly In season	(5/1 to 9/30) We propose no increase, our rates are compared to others and approved by BIG
Nightly Cruising Clubs	we propose to keep the current rate for cruising/sailing clubs with 10 or more vessels
Nightly Off Season	(10/1 to 3/31) we propose an increase of \$0.25 and \$0.05 for commercial.
First 2 Hours Docking	Hourly docking for visitors poses problems so we propose no charge for the first 2 hours
after 2 hours docking	this rate is for the third hour on, and not to exceed the nightly rate.
Reservation Cancellation Fee	instead of \$15.00 we propose 1 nights docking which can be used as a rain check

Cape Charles Town Harbor Proposed Rates 2013

Storage Rates per occurrence

Storage Type	Base Rate			Residential/Rental Rate			Commercial Rate		
	Current	Proposed	Difference	Current	Proposed	Difference	Current	Proposed	Difference
Annual	\$300.00	\$300.00	\$0.00	\$285.00	\$285.00	\$0.00	\$255.00	\$255.00	\$0.00
Seasonal	\$200.00	\$210.00	\$10.00	\$190.00	\$199.50	\$9.50	\$170.00	\$178.50	\$8.50
Quarterly	N/A	\$105.00	\$105.00	N/A	\$99.75	\$99.75	N/A	\$89.25	\$89.25
Monthly Boat Davit	\$150.00	\$150.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
Monthly	\$50.00	\$50.00	\$0.00	\$47.50	\$47.50	\$0.00	\$42.50	\$42.50	\$0.00
Weekly	\$20.00	\$20.00	\$0.00	\$19.00	\$19.00	\$0.00	\$17.00	\$17.00	\$0.00
Nightly	\$5.00	\$5.00	\$0.00	\$4.75	\$4.75	\$0.00	\$4.25	\$4.25	\$0.00
Nightly with slip	\$5.00	\$1.00	-\$4.00	\$4.75	\$1.00	-\$3.75	\$4.25	\$1.00	-\$3.25
Nightly Events (West Dock)	\$75.00	\$75.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
Nightly Events (Gazebo)	\$25.00	\$25.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A
Nightly Comm. over 10 days	\$100.00	\$100.00	\$0.00	N/A	N/A	N/A	N/A	N/A	N/A

Storage Definitions

Annual	12 Month renters (4/1 to 3/31) we propose no change
Seasonal	Summer (5/1 to 11/30) We propose a \$10 increase.
Quarterly	Minimum 3 months rent, new rate
Monthly Boat Davit	We propose no change
Monthly	No Change
Weekly	Week to Week, we propose no change.
Nightly	we propose no change
Nightly with slip	this is a new rate that we propose for customers renting short term slips.
Nightly Events (West Dock)	Harbor Parties and such, we propose no change
Nightly Events (Gazebo)	Birthday Parties and such, We propose no change
Nightly Comm. over 10 days	this rate is for one which pays wharf fees for loading/unloading, See Summary

Cape Charles Town Harbor Proposed Rates 2013

Wharfees

Wharfage Type	Base Rate			Annual/Seasonal Renters			Commercial weekly Rental		
	Current	Proposed	Difference	Current	Proposed	Difference	Current	Proposed	Difference
Crabs Bushel	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Conchs Bushel	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Horse Shoe Crabs Bushel	\$0.20	\$0.30	\$0.10	\$0.20	\$0.15	-\$0.05	\$0.20	\$0.30	\$0.10
Fish Pounds	\$0.004	\$0.004	\$0.000	\$0.004	\$0.002	-\$0.002	\$0.004	\$0.004	\$0.000
Scallops Bushel	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Gravel Tons	\$0.75	\$0.75	\$0.00	\$0.75	\$0.38	-\$0.37	\$0.75	\$0.75	\$0.00
Bait	N/A	\$0.01	\$0.01	N/A	\$0.01	\$0.01	N/A	\$0.01	\$0.01
Large Trap Piles each	\$1.00	\$1.00	\$0.00	\$1.00	\$0.50	-\$0.50	\$1.00	\$1.00	\$0.00
Small Trap Piles each	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Clams Basket/Bag	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Oysters Basket/bag	\$0.50	\$0.50	\$0.00	\$0.50	\$0.25	-\$0.25	\$0.50	\$0.50	\$0.00
Pots each	N/A	\$0.25	\$0.25	N/A	\$0.01	\$0.01	N/A	\$0.01	\$0.01

Wharfage Definitions

Crabs Bushel	We propose no change to the base rate.
Conchs Bushel	We propose no change to the base rate.
Horse Shoe Crabs Bushel	We propose no change to the base rate.
Fish Pounds	We propose no change to the base rate.
Scallops Bushel	We propose no change to the base rate.
Gravel Tons	We propose no change to the base rate.
Bait	This is a new rate, and is designed to help us with weight that crosses our docks
Large Trap Piles each	We propose no change to the base rate.
Small Trap Piles each	We propose no change to the base rate.
Clams Basket/Bag	We propose no change to the base rate.
Oysters Basket/bag	We propose no change to the base rate.
Pots each	This is a new rate, and is designed to help us with weight that crosses our docks

Cape Charles Town Harbor Rate Comparison 2013

Docking Rate Per/Ft per/month

Docking Type	CCTH	BC	Onancock	Chincoteague	Somers Cove	Cobbs	Old Point Confort
Annual	\$4.00	\$8.00	\$3.12	\$1.72	\$4.50	\$5.90	\$6.50
Seasonal	\$4.75	\$11.00	N/A	N/A	N/A	N/A	\$7.50
Quarterly	\$6.50	N/A	N/A	N/A	N/A	N/A	N/A
Monthly In Season	\$9.50	\$14.00	N/A	\$4.00	\$18.00	\$8.50	\$8.50
Monthly Off Season	\$7.50	\$10.00	\$2.35	N/A	N/A	N/A	N/A
Weekly In Season	\$4.50	N/A	N/A	\$1.00	\$8.00	N/A	N/A
Weekly Off Season	\$3.50	N/A	N/A	N/A	N/A	N/A	N/A
Nightly In season	\$1.50	\$2.00	\$1.50	\$0.75	\$1.75	\$1.25	\$2.00
Nightly Cruising Clubs	\$1.25	\$1.90	\$1.50	\$0.75	\$1.75	\$1.25	\$2.00
Nightly Off Season	\$1.00	\$1.50	\$1.50	\$0.75	\$1.75	\$1.25	\$2.00
Hour Docking	\$5.00	N/A	N/A	N/A	\$5.00	N/A	N/A
Reservatton Cancellation Fee	\$15.00	N/A	N/A	N/A	N/A	N/A	N/A

Storage Rates per occurrence

Storage Type	CCTH	BC	Onancock	Chincoteague	Somers Cove	Cobbs	Old Point Confort
Annual	\$300.00				\$650.00		
Seasonal	\$200.00						
Quarterly	\$100.00						
Monthly	\$50.00						
Weekly	\$20.00						
Nightly	\$5.00						
Nightly Events (West Dock)	\$75.00						
Nightly Events (Gazebo)	\$25.00						
Nightly Comm. over 10 days	\$100.00						

Wharfees

Wharfage Type	CCTH	BC	Onancock	Chincoteague	Somers Cove	Cobbs	Old Point Confort
Crabs/Conchs Bushel	\$0.50						
Clams/OystersBasket	\$0.50						
Horse Shoe Crabs Each	\$0.03						
Fish Pounds	\$0.004						
Scallops Bushel	\$0.50						
Commercial Bait	\$0.01						
Aggregate Tons	\$0.75						
Large Trap Piles each	\$1.00						
Small Trap Piles each	\$0.50						
Crab/conch Pots Each	\$0.25						
Gil Nets	\$1.00						



TOWN OF
CAPE CHARLES

AGENDA TITLE: Harbor Rules and Regulations

AGENDA DATE:
February 7, 2013

SUBJECT/PROPOSAL/REQUEST: Approve the proposed modifications to the Rules and Regulations.

ITEM NUMBER:
3F

ATTACHMENTS: Proposed Town Harbor Rules and Regulations

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
Smitty Dize, Jr.

REVIEWED BY:
Heather Arcos, Town Manager

BACKGROUND:

The current version of the Harbor Rules and Regulations was adopted by the Town Council on February 10, 2011. Since that time, a number of upgrades have been made to the Town's facilities.

DISCUSSION:

The proposed amendments to the rules and regulations are provided for your consideration. An outline of the proposed changes are as follows:

Permits: Per Town Code Sec. 14-66. - Charges for electricity, water, etc., for houseboats.

Minimum water, sewage and trash fees will apply to persons that live on their vessels for a period of one month or longer. Any person renting a stall or docking space in the harbor and using the boat as a residence or for purpose of living thereon shall pay to the harbor master for utility services (electric, water, etc.) and garbage disposal such fees as may be established from time to time by the Cape Charles Town Council in its sole discretion, which fees shall be in addition to the mooring charges assessed pursuant to Section 14-65. A copy of the current fee schedule shall be available at the town office and the office of the harbor master.

Waiting List: Prior to 2007, the waiting list was on a first come, first served basis and at times when we had a 20ft slip available, we would have to contact everyone beginning with the longest tenure, some of which was waiting for a 60ft slip. In 2007, Council approved the current procedures that have been stricken from the attached rules. We feel that we should go back to the first come, first served basis by length and slip size for simplicity of keeping track of the waiting list and because there have been non-residents, who have paid their deposits, on the list since March 4, 2002. We feel that current customers who are paying dock fees should be given first priority to change their slip assignment if such person has asked to do so in writing prior to slip availability.

Liability (Section 6): Where we have storage space available, we propose that land should be added to this section. We also propose a requirement of being designated as an additional insured on insurance policies of persons renting dock or land space for a period of 1 month or longer. This will also ensure that we get copies of the insurance policies when they are renewed. There is no need to obtain of insurance policies for short term rentals of 1 week or less.

Service, Utilities & Rates (Sec. 2): In order to comply with water conservation measures, we feel this rule needs to be added to the harbor rules and regulations.

Safety (Sec. 3): Provisions need to be added for docking in preparation for storms.

RECOMMENDATION:

Staff requests Town Council review the proposed changes to the Harbor Rules and Regulations and approve if deemed appropriate.



Town Harbor Rules and Regulations

The agreement between the Town of Cape Charles (Harbor) and harbor users (Renters) is to be signed, on the Proper permit (Docking, Storage, or Special Land Use) registration form by Renter to insure the safety of the tenants and the orderly operation of the harbor. Your cooperation in the enforcement of these rules and regulations will provide everyone with the maximum enjoyment of the facility.

MISSION STATEMENT

The mission of the Municipal Corp. of Cape Charles Town Harbor is to protect and preserve the lives, health, safety and well being of any person who uses or works at the Harbor; to protect the property of such persons by regulating the use of the facility; and to make reasonable charges for the use of the Harbor.

The primary objective of the Municipal Corp. of Cape Charles Town Harbor is to provide a protective haven to a specific number of small boats. The Harbor policies are directed toward maximum use of the facility by all segments of the boating public up to the limit of the Harbor's capacity to accommodate numbers, size and use of boats. The secondary objective is to provide a facility that insures adequate access of the user to the safe and enjoyable boating in the Chesapeake Bay, basic assistance to the user-both of pleasure and commercial boats, and such services as the staff is capable of routinely providing. The third objective is to financially maintain the facility in such a way as to insure future improvements.

PERMITS

1. All Vessels, trailers, equipment, etc., utilizing or occupying any space for any length of time must first obtain a valid permit and agree to the Cape Charles Town Harbor Rules and Regulations or the parties will not be allowed to remain. All parties renting space will be provided with a copy of these Rules and Regulations.
2. Annual and seasonal permits may be continually renewed provided the renter pays all assessed fees and taxes of any kind owed to the Town and abides by the provisions of this agreement. Annual and seasonal permits may be terminated after the first full year agreement, by the renter with a sixty (60) day written notice to the Harbor Master prior to termination. Monthly, weekly, and daily Permits are guaranteed only for the prepaid period and must be paid in advance. All Harbor fees are subject to current rate schedule.
3. Each permit issued shall apply only to the particular space assigned and to a specific owner as listed in this permit. Permits are non-transferable and Sub-renting or sub-letting is not permitted by the renter. No refunds will be made for slips space vacated during the rented period. The Harbor reserves the right to sub-rent the space on a nightly basis if the Renters vessel, trailer, equipment, etc., is absent for more than one week. Three days notice for a scheduled return must be given to the Harbor Master to insure the space will be available upon the vessel's return.
4. Renter shall provide daytime, nighttime, and alternate phone numbers where the Renter or his/her agent may be reached in the event of an emergency, along with the mailing and physical address of the Renter. The Renter shall immediately notify the Harbor Master of any change of address or phone number.
5. A special land use permit will be required for parties or events with over 10 persons attending, for the Gazebo or other land surrounding the area, proper insurance will be required and at no time will alcohol be consumed without proper ABC license, which a copy must be received by the Harbor Master 7 days before such event.

6. Cooking Grills will be permitted in certain areas, which must be approved by the Harbor Master. At no time, will Cooking grills be allowed within one hundred and twenty five (125) feet of the fuel dock.
7. Temporarily installed items (dock boxes, ladders, steps, fenders, fire hoses, rings, cleats, etc.) shall be permitted with approval of the Harbor Master.
8. No signs shall be displayed nor shall any commercial business activities be conducted in the Harbor area without prior permission of the Harbor Master.
9. Rafting or tying abreast may be permitted at the regular dockage rates with the permission of the vessel being rafted to.
10. Mooring or anchoring in the Harbor or Federal Channel is not permitted. However, in emergency situations such may be necessary. In this event the Harbor Master or his/her assistants shall designate acceptable locations. **Chapter 14 - Article III, Sec. 14-58 Town Code – Cross Reference: Penalty for a class 3 misdemeanor, Sec. 1-10**
11. There shall be no discrimination in the use of or access to the benefits of the harbor facilities regardless of race, age, creed, handicap, color, national origin, religion, sex, political affiliation, sexual orientation, or beliefs.
12. In event of any default in this Harbor Agreement Rules and Regulations by the renter, the Town of Cape Charles may terminate Agreement immediately and, upon such termination, the renter shall be obligated forthwith to remove his/her vessel from the harbor or to have it removed by the Town of Cape Charles at renters risk and expense. The renter shall be liable to the Town of Cape Charles for all unpaid dockage and any associated Harbor fees, costs, and damages that the Town of Cape Charles may suffer as a result of renters default. In the event of any breach of this Agreement or the Harbor Rules and Regulations by the renter or the renter's authorized agent(s), the Town may pursue any and all remedies available to it to enforce same, either at law or in equity, including injunctive relief, and the Lessee shall be solely responsible for all costs incurred by the Town in pursuing any such remedy or enforcement action, including court costs and attorney's fees. Any of the following events shall constitute default on the part of the Renter:
 - a. Failure to make timely payment,
 - b. Breach of any covenant or condition contained in this Agreement,
 - c. Failure to comply with the procedures listed in this Agreement and/or published by the Town of Cape Charles from time to time
 - d. Failure to properly maintain vessel and keep in a safe and seaworthy condition, as determined by the Harbor Master.
13. The Town of Cape Charles may obtain a lien against renter's vessel/equipment described in this Agreement, including all appurtenances and contents, for any unpaid sums due hereunder and for any damages caused to any docks, property or person in the Cape Charles Harbor. Said lien shall be in addition to and not limited by other lien provisions of the laws of the Commonwealth of Virginia.
14. Minor children must be accompanied and supervised by an adult while in the Harbor area.
15. Swimming, diving or bathing within the waters of the Harbor or from the docks is prohibited, except for repairs which must first be approved by the Harbor Master.
16. No persons renting or using any Harbor space shall not, steal from or do Vandalism to, any vessel or property and the properties of the Town of Cape Charles Harbor. **Chapter 50 – Article VIII, Sec. 50-165 Town Code – Cross Reference: Penalty for a class 1 misdemeanor, 50-166 – Cross reference: Penalty for a class three misdemeanor. 50 –168 Cross Reference: Penalty for a class 1 misdemeanor.**

17. Restrooms and Shower facilities are provided for that specific use only. At no time shall they be utilized for sleeping or any other purpose. **Chapter 50 – Article VIII, Sec. 50-161 Town code. Violation Class 1 misdemeanor.**

18. At no time shall any persons renting or using any portion of land and water within the harbor limits use profanity or be drunk in public. **Chapter 50 – Article VIII, Sec. 50-109 Town Code. Violation Class 4 misdemeanor**

19. Any person, party, or agency wishing to rent dock space or the Gazebo for party's or events must first fill out a "Use of Facility Application - Harbor" and follow all rules and regulations.

20. Live-a-boards: shall pay the Minimum monthly water, sewer, and trash rates. This applies to monthly, quarterly, Seasonal, and Annual renters.

WAITING LIST:

Persons wishing to rent annual or seasonal slips must first get on the waiting list. A fifty (50) dollar deposit is required and is non-refundable for each size of slip space. The deposit will be applied to the first month slip rent when such slip is acquired. Waiting list will be prioritized as fist come first serve basis as follows by length of slip and either annual or seasonal.

1. Persons currently renting annual/seasonal dock space wishing to change to a different length or time by doing so in writing.
2. ~~Commercial Watermen.~~
3. ~~Town Residents.~~
4. ~~Everyone else.~~

VESSEL MAINTENANCE

1. Major and Minor Maintenance repairs must first be approved by the Harbor Master or his/her assistants. In any case all maintenance must not be damaging to the environment or Harbor Facilities.

2. All bildge pumps must be secure, before any oil or filter changes or repairs to any part of equipment that oil may disperse into the bildge area whether it is engine oil, fuel, gas, hydraulic oil, or any other kinds of oil that will cause sheen in the harbor area. Such bildge pumps may be unsecured when it is determined by the Harbor Master or his/her assistants; that such bildge is clear and free.

3. Minor sanding and painting will be allowed at times approved by the Harbor Master. All sanding must have a dust collection system and every effort must be made so that no paint or particles enter the water or surrounding land.

4. At no time will scraping and cleaning of vessels bottoms be allowed.

Cross References: penalty for a class three misdemeanor, Sec. 14-16 (b) town code

5. All spills, no matter what amount must be reported to the Harbor Master at once. If the Harbor office is closed contact the USCG at (800) 424-8802. At no time shall anyone try to cover up a spill with detergents or solvents.

Cross References: penalty for class 3 misdemeanor, Sec. 1-10; general prohibition against littering, Sec. 58-2

Discharge of oil or oily waste is prohibited, "The Federal Water Pollution Control Act" up to \$5,000 fine. Failure to report a spill may result in civil penalties. Adding detergents or solvents to cover up a spill could result in \$25,000 in fines.

6. All work areas shall be freed of any oil, buckets, cans, or trash at the end of each day, this includes but not limited to, docks, parking lots, cat walks, etc. or a charge of \$200.00 will be assessed for each day.

7. It shall be unlawful to deposit, or cause or permit to be deposited, in any of the waters of the Harbor, or along the shores thereof, or in any of the streams or ditches emptying therein, or on any of the land

adjacent or contiguous to the Harbor, any abandoned/derelict boats, refuse, offal, waste matter, or other substances or material, whether earth, oil, liquid, animal, fish, or vegetable matter than may injuriously affect the sanitary, clean and safe conditions of the water in the harbor, or diminish the depth thereof.

Cross References: penalty for class 3 misdemeanor, Sec. 1-10; general prohibition against littering, Sec. 58-2

Discharge of oil or oily waste is prohibited, "The Federal Water Pollution Control Act" up to \$5,000 fine. Failure to report a spill may result in civil penalties. Adding detergents or solvents to cover up a spill could result in \$25,000 in fines.

8. Renter agrees that only reasonable and customary use shall be made of the docks and facilities covered hereby, and no unnecessary wear and tear, disturbance, nuisance, rubbish or garbage shall be permitted on the dock or premises. Renter shall keep dock and premises covered hereby free and clear of gear, tackle and all other obstructions. Renter agrees to discard nothing, including treated or untreated effluent or sewage from heads or holding tanks, into the Harbor basin. Infractions will be dealt with according to Local, State and Federal laws.

Cross References: penalty for class 3 misdemeanor, Sec. 1-10; general prohibition against littering, Sec. 58-2

Discharge of oil or oily waste is prohibited, "The Federal Water Pollution Control Act" up to \$5,000 fine. Failure to report a spill may result in civil penalties. Adding detergents or solvents to cover up a spill could result in \$25,000 in fines.

LIABILITY

1. The agreement is for use of a specific permitted space only. Such space shall be used at the sole risk of the Renter and his/her guests. The Harbor shall not be responsible for the care or protection of Renters vessel and/or properties. The Town of Cape Charles shall not be liable for any loss or damage of whatever kind or description to Renters vessel and/or Properties. The Renter agrees to hold The Town of Cape Charles harmless for any such loss or damage.

2. The Town of Cape Charles shall not be liable for any personal injury to Renters, his/her guests, or crew members resulting from the use of any space, and the Renter agrees to indemnify and hold harmless The Town of Cape Charles from any such loss or personal injury.

3. Renters are responsible for damage to the Harbor facility caused by his/her vessel/properties. Renters are responsible for properly securing his/her vessel/properties, especially on approach of any storm.

4. In the event of an emergency, or if the vessel/Properties is unattended and the Renter cannot be reached, the Town of Cape Charles reserves the right for the Harbor Master or other Harbor employees to take whatever action is necessary to provide for the safety of the dock/property, vessel/properties, surrounding vessels/properties. However, the Harbor Staff is not obligated to take such action. Additionally, the Renter agrees to hold the Town of Cape Charles harmless from any and all liability, loss, or damage caused by or to the subject vessel/properties out of failure of Renter to move the vessel, the inability of the Harbor Staff to contact Renter, or the movement of the vessel by the Renter. As soon as the emergency is abated, efforts will resume contacting the Renter.

5. No permit granted by the Town assumes responsibility on the part of the Town for the condition or state of repair of walkways, roadways, parking areas, docks, slips, bulkheads, ladders, etc., within the Harbor. The renter of any slip, berth, properties, or storage, as a condition of its permit or use, shall be deemed to have agreed to hold the Town of Cape Charles, its council and mayor, officials, employees, and agents harmless from any liability resulting from damage to the waters, waterways and surrounding property caused by fire, explosion, fuel spills, hazardous discharges, or the like to which the renter, the user, or its vessel has in any way contributed, or from any liability resulting from injury or damage of any nature or kind to any person or property including any other vessels in the Harbor to which injury or damage the renter or the user or its vessel in any way has contributed.

6. Persons Renting dock or land space at the Town Harbor for a length of 1 month or longer (Monthly, Quarterly, Seasonal, & Annual) must have a current marine liability insurance policy for said vessel, and

the Town of Cape Charles must be designated as an additional insured on the policy. A certificate of this insurance must be submitted to the Harbor Master prior to renting any space, with yearly updates required.

7. No one shall sink or abandon any vessel at the Town Harbor or in the waters within.

Cross Reference: Class 3 Misdemeanor, Article I, Sec. 14-5 Town Code

SERVICES, UTILITIES, & RATES

1. Electrical power is available at most berths. Only water tight marine cords shall be used for dockside power. Electric heaters with exposed heating elements are not permitted. The Town of Cape Charles does not guarantee continuous electric service. Modifications to electric pedestals will not be permitted.

2. Water is provided at most berths, to insure water usage is kept at a minimum all hoses must have an automatic shut off nozzle and shall not leak. Hoses will be disconnected and valves will be capped if leaks are observed or nozzle isn't present.

3. For environmental purposes, no one may bring fuel to the Harbor in hand carried portable containers, external tanks in pick up trucks, or by transport from any fueling company to fuel any vessel Moored to or floating over any portion of property owned by the Town of Cape Charles. Fueling of boats is permitted only at the fuel dock. Refueling by use of approved six (6) gallon containers capable of being carried by one person and designed for connection directly to a motor is permitted. Fueling by trucks will be permitted for vessels to large to get to the Town of Cape Charles fuel docks; this will be permitted in an area designated by the Harbor Master. Vessels will order their fuel through the harbor master, and will fill out the proper declaration forms.

4. Any party using land or docks within the Harbor area for loading or unloading conch or crab pots, fish traps, nets, timber or poles, or any other type of gear shall confine their activities to an area which has been designated by the Harbor Master for such usage. In no event shall any of the above listed gear be permitted to remain in the designated area for more than ten (10) days with the exception dates ranging from March 1, thru May1, and November 1 thru December 31. In the event the ten day limit is exceeded, storage shall be charged to the owner of said property. A storage fee shall be charged at the rate of one hundred dollars (\$100) per day for each item for every day in excess of the Ten day limit unless a hardship can be proven by the owner. Any gear remaining in the storage for more than one month will be considered abandoned and disposed of by the Town of Cape Charles as it sees fit at the Owners expense. No bait of any type shall be permitted on the docks or within the confines of the Harbor area for more than twenty-four (24) hours. In the event the twenty-four hour limit is exceeded, a penalty of twenty five dollars (\$25) per day will be imposed against the owner of said bait for each day the limit is exceeded.

Cross References: Article I, Sec. 14-15, Town Code

5. Any party using land and/or dock space for the purpose of loading/unloading aggregate stone, sand, and any other material from a barge, shall be charged the appropriate wharf fees and docking fees approved by town council. All materials must be removed from dock area within ten (10) days or a storage fee of one hundred (100) dollars per day will be charged each day thereafter.

SAFETY

1. Extreme caution should be exercised in leaving and entering the dock and harbor area. The "No Wake Zone" will be enforced. **The "NO WAKE ZONE" will be adjusted from time to time by the Virginia Department of Game and Inland Fisheries. Please pay close attention to the signs/buoys posted around the harbor areas. NO WAKE is defined as a vessel making way as slow as possible without losing steerage.**

2. For the safety of your vessels and others, all vessels must be moored with a minimum of 3/8 inch 3 strand nylon line.

3. All Vessels shall, in preparation for any Tropical or Subtropical weather storm that has predicted

sustained winds in excess of 50 Mph, shall double up on all lines, and vessels that remain on the floating docks shall position their bow (front of the boat) towards the west.

4. All vessels shall observe the COLREGS Rules of the Road as are prescribed by the regulation of the United States Coast Guard, CG-I 69. The rules and navigation laws of the United States will be strictly enforced.

AGREEMENT

1. This document contains the entire understanding between the Harbor and Renter and no other representation or inducement, verbal or written, has been made which is not contained herein. The Harbor and Renter agree that if any paragraph or provision violates the law and is unenforceable, the remainder of this document will be valid.

2. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Renter certifies that this whole Agreement has been read and all conditions set forth are fully understood. Signing of the any "Permit" enforces this agreement

Proposed February 7, 2013

 <p>TOWN OF CAPE CHARLES</p>	AGENDA TITLE: Police Car Replacement Financing		AGENDA DATE: February 7, 2013
	SUBJECT/PROPOSAL/REQUEST: Approval to submit a loan application to finance replacement of 2008 police vehicle.		ITEM NUMBER: 3G
	ATTACHMENTS: Police Vehicle Financing Options		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Heather Arcos	REVIEWED BY: Heather Arcos, Town Manager	

BACKGROUND:

On December 20, 2012, an accident occurred during inclement weather causing severe damage to the 2008 Ford Crown Vic. The insurance company deemed it a total loss and payment of \$11,400 has been received by the Town.

DISCUSSION:

The Chief is requesting a 2013 Dodge Charger to replace the 2008 Crown Vic at a cost of \$23,145. The insurance proceeds of \$11,400 paid to the Town by VML Insurance will be used towards the purchase of the vehicle.

The Treasurer has explored financing options for replacement of the police vehicle.

The recommendation set forth is to apply to USDA Rural Development to finance the balance of \$12,486.60 for a new 2013 Dodge Charger police vehicle at a fixed rate of 3.125% for three (3) years with annual payments of \$4,162.20. The first annual payment will be included in the FY 2013-2014 budget.

RECOMMENDATION:

Authorize Town Manager to submit a loan application to the USDA RD in the amount of \$12,486.60 for the purchase of a new police car as described above.

Town of Cape Charles

2013 Dodge Charger Police Vehicle

January 31, 2013

Quote - 2013 Dodge Charger Police Vehicle \$ 23,145.00

Less VML Insurance Payment (11,400.00)

Total to Finance (plus loan fees) \$ 11,745.00 (Finance Partial Amount)

	BB&T		SHORE BANK					USDA		
	3 Years	5 Years	Line	3 Years	4 Years	5 Years	3 Years	4 Years	5 Years	
Term										
Interest Rate *	1.82%	2.05%	3.75% Adjust w/ Prime	3.75%	4.00%	4.25%	3.125%	3.125%	3.125%	
Extra Fees	\$ 250.00	\$ 250.00	Annual Renewal Fee	\$ 367.45	\$ 367.45	\$ 367.45	\$ -	\$ -	\$ -	
Financed Amount	\$ 11,995.00	\$ 11,995.00	\$ 11,745.00	\$ 12,112.45	\$ 12,112.45	\$ 12,112.45	\$ 11,745.00	\$ 11,745.00	\$ 11,745.00	
Annual Payment	\$ 4,144.75	\$ 2,548.53	Varies	\$ 4,344.01	\$ 3,336.86	\$ 2,739.92	\$ 4,162.20	\$ 3,169.17	\$ 2,573.74	
Total Payment	\$ 12,434.25	\$ 12,742.65	Varies	\$ 13,032.03	\$ 13,347.44	\$ 13,699.60	\$ 12,486.60	\$ 12,676.68	\$ 12,868.70	

* BB&T and Shore Bank Interest Rates will change daily; USDA rates are good through 3/31/2013

Quote - 2013 Dodge Charger Police Vehicle \$ 23,145.00 (Finance Full Amount)

	BB&T		SHORE BANK					USDA		
	3 Years	5 Years	Line	3 Years	4 Years	5 Years	3 Years	4 Years	5 Years	
Term										
Interest Rate *	1.82%	2.05%	3.75% Adjust w/ Prime	3.75%	4.00%	4.25%	3.125%	3.125%	3.125%	
Extra Fees	\$ 250.00	\$ 250.00	Annual Renewal Fee	\$ 367.45	\$ 367.45	\$ 367.45	\$ -	\$ -	\$ -	
Financed Amount	\$ 23,395.00	\$ 23,395.00	\$ 23,145.00	\$ 23,512.45	\$ 23,512.45	\$ 23,512.45	\$ 23,145.00	\$ 23,145.00	\$ 23,145.00	
Annual Payment	\$ 8,083.90	\$ 4,970.65	Varies	\$ 8,432.51	\$ 6,477.45	\$ 5,318.68	\$ 8,202.13	\$ 6,245.25	\$ 5,071.87	
Total Payment	\$ 24,251.70	\$ 24,853.25	Varies	\$ 25,297.53	\$ 25,909.80	\$ 26,593.40	\$ 24,606.39	\$ 24,981.00	\$ 25,359.35	

* BB&T and Shore Bank Interest Rates will change daily; USDA rates are good through 3/31/2013