



TOWN COUNCIL
Work Session
Civic Center
June 4, 2015
Immediately Following Public Hearing

1. Call to Order: Roll Call

2. Order of Business
 - A. PSA/Regional Wastewater Service

3. Motion to Adjourn

Town Council Work Session June 4, 2015

Regional Wastewater System

Southern Node, Commercial, Phase 1

Potential Agreement with Public Service Authority

What We Will Cover

- Background
- Treatment Cost
- Town Surcharge
- Potential Revenue from PSA
- Facility Fee and Plant Expansion
- Way Ahead

Background

- Ordinance 20100621 – Cape Charles joins the ESVA PSA.
- July 2010 – Southern Node PER (residential & commercial); CC plant is least costly alternative for treatment.
- Sufficient grant funding not available to yield affordable usage fees.
- PSA develops Phase 1 project to serve 70 commercial properties.
- PSA subcommittee formed (BOS, PSA, CC) to negotiate agreement.
- Two issues from review of draft agreement:
 1. Town surcharge on treatment cost.
 2. Facility fee.

Treatment Cost

- Dec. 2013 - CC provided treatment cost estimate of \$0.01215/gallon.
- Aug. 2014 – Updated cost estimate of \$0.01187/gallon.
- Cost basis:
 - ✓ Excludes pump stations and collection system operation & maintenance.
 - ✓ Excludes meter reading and billing.
 - ✓ Based on 150,000 gpd average flow.
- CC offers price of \$0.015/gallon.

Town Surcharge

- Offer of \$0.015/gallon equates to a surcharge of 26.3% above cost.
- PSA proposes a surcharge of 10%; \$0.013/gallon.
- Base cost would be adjusted annually before surcharge.

Potential Revenue from PSA

<u>GPD</u>	<u>\$0.015</u>	<u>\$0.013</u>
• 10,000	\$ 54,750	\$ 47,450
• 15,000	\$ 82,125	\$ 71,175
• 20,000	\$109,500	\$ 94,900
• 25,000	\$136,875	\$118,625

Facility Fee

Class II, Commercial

- Class II FF = Class I FF x Residential Equivalent X 0.75
- Class I FF = \$6,600 (wastewater only)
- Residential Equivalent = Estimated consumption/125 gallons per day.
- Calculations (15,000 gpd & 20,000 gpd):
 - Class II FF = $\$6,600 \times 15,000/125 \times 0.75 = \$594,000$
 - Class II FF = $\$6,600 \times 20,000/125 \times 0.75 = \$792,000$

Facility Fee

- Existing buildings (about 30) have on-site sewage disposal systems.
- The fee would significantly increase the capital cost of the project.
- Would need to be recouped through taxes or in service fee.
- Could impact tax rate for CC properties.
- Alternative – recovery over time from PSA revenues:
 - ✓ 75% fixed cost offset.
 - ✓ 10% surcharge.
 - ✓ About 10 years to recover forgone fee.
- Fee for increments above initial flow?

Facility Fee and Plant Expansion

- Existing permitted capacity is 250,000 GPD.
- About 100,000 GPD capacity remaining; 800 Equiv. Res. Conn. (ERCs).
- Doubling capacity to 500K GPD would cost about \$5M.
- Incremental expansion to 350-375 GPD costs less, maybe \$2M.
- Also, need reuse pipeline to Bay Creek; \$0.5M.
- Required capacity at full build-out is about 750,000 GPD.

Facility Fee and Plant Expansion

Additional Funding Sources

- If 20,000 used by PSA, 80,000 GPD remain, or 640 ERCs.
- $640 \times \$6,600 = \4.2M additional reserved for plant expansion.
- Reaching existing capacity triggers Annexation Agreement cost sharing provision for expansion.
- At existing capacity customer base increases by about $\frac{2}{3}$, generating significant increase in usage fees.
- 640 more buildings @ $\$400\text{K} = \256M increase in tax base; at current rate $\$700\text{K}$ additional annual tax revenue.

Way Ahead Council Action

- Consider treatment price surcharge.
 - ✓ Counter offer?
 - ✓ Tie to facility fee issue; i.e., higher surcharge for initial PSA flow?
- Consider facility fee:
 - ✓ Initial PSA flow; up-front fee or recovery through treatment price?
 - ✓ Future increments.

MEMORANDUM OF AGREEMENT BETWEEN

The TOWN OF CAPE CHARLES and

the EASTERN SHORE OF VIRGINIA PUBLIC SERVICE AUTHORITY

This Agreement made and entered into this ____ day of _____, 2015, by and between the Eastern Shore of Virginia Public Service Authority, and the Town Council of the Town of Cape Charles;

WITNESSETH:

WHEREAS, the Eastern Shore of Virginia Public Service Authority (“ESVA PSA”) is a duly formed Authority pursuant to the Code of Virginia §15.2-51 et.seq; and

WHEREAS, the ESVA PSA is charged with studying, implementing and operating a septage treatment and disposal system, a sewer system, a water system, a stormwater control system, or any combination of such systems; and to transfer and operate existing systems; study and construct and operate expansions of existing systems; and study and construct new systems. The Authority is further authorized to exercise those powers set forth in the Virginia Water and Waste Authorities Act, Code of Virginia §15.2-51 et.seq., which pertain to water and waste systems; and

WHEREAS, the ESVA PSA is desirous of purchasing wastewater treatment services (“WASTEWATER SERVICES”) for the Southern Node Commercial District from the Town of Cape Charles; and

WHEREAS, the Town of Cape Charles (“TOWN”), a duly formed municipal corporation located in Northampton County owns and operates a wastewater treatment system with available wastewater capacity;

NOW THEREFORE, by mutual covenant of the parties hereto, it is agreed as follows:

I. Scope of Services

The ESVA PSA shall connect to the TOWN’s wastewater system at (either the grounds of the Cape Charles Wastewater Plant or at the Cape Charles main in the vicinity of the north terminus of Creekside Land – this will need to be firmed up once construction is completed) (“ESVA PSA Connection Point”); said connection will be designed and constructed by the ESVA PSA and approved by the TOWN for compliance with any and all construction standards as contained in the TOWN’s sewer regulations, rules or ordinances.

The ESVA PSA's responsibility for the wastewater line maintenance shall end at the ESVA PSA Connection Point.

The TOWN shall contact the ESVA PSA in the event of any service disruption within thirty (30) minutes and the ESVA PSA shall be responsible for notifying their customers of said service disruption. The TOWN shall maintain communications with the ESVA PSA regarding any and all repairs to restore service until service is fully restored. The TOWN shall notify the ESVA PSA of routine maintenance which may impact service to the ESVA PSA; said notification shall be at least 24 hours in advance.

II. Term of Agreement

The initial term of this Agreement shall be from January 1, 2017 to December 31, 2037 for a period of 20 years ("Original Term"), unless specified otherwise in this Agreement. Thereafter, the Agreement will automatically renew for a further 10 year term unless either party provided written notice of its intent not to renew; said notice needs to be provided at least sixty (60) months prior to the expiration of the Original Term.

The Agreement may be amended by mutual consent of both parties unless specified otherwise in this Agreement.

III. Price of Services

Pricing will be composed of two elements: the base price per gallon ("Base Price") and the Town Surcharge ("Surcharge").

- A. The Base Price is based upon a rate per gallon calculation established by the TOWN pursuant to their annual budget to operate and maintain the wastewater plant. The budget is composed of the annual personnel costs for the wastewater plant, the annual wastewater treatment plant operations & maintenance expenses and the debt service incurred for the construction of the Cape Charles wastewater treatment plant as of 2014. These costs are exclusive of any costs the TOWN incurs for utility billing and collections, meter reading and pump station maintenance. If the ESVA PSA contracts with the TOWN for any services relating to utility billing and collections, meter reading or pump station maintenance, then those services will be contracted through a separate agreement.

This annual cost to operate and maintain the wastewater treatment plan shall be divided upon the average gallons used per day as calculated upon the previous

fiscal year's usage and then divided by 365 days per year. For the first year of the Agreement, the Base Price of \$.01187 per gallon has been calculated and is attached as Exhibit A.

The Base Price will be provided to the ESVA PSA no later than April 15 of each year in a format similar to Exhibit A. The ESVA PSA will have the right to receive a detailed budget, upon request, used by the TOWN to calculate the Base Price. Any questions or objections to the Base Price by the ESVA PSA will be submitted in writing to the TOWN no later than 10 days from April 15. The TOWN will respond in writing by May 15. The new Base Price will become effective July 1 of each year of this Agreement and will be attached as part of Exhibit A.

B. The Town Surcharge is set at a rate of 10% of the Base Price per gallon.

IV. Billing and Payment for Services

The Town shall submit to the ESVA PSA a monthly invoice based upon the meter reading at ESVA PSA Connection Point.

All Payments are due within thirty days from receipt of invoice unless the ESVA PSA notifies the TOWN within fifteen days of receipt that an invoice is contested.

The ESVA PSA will pay any uncontested sums within thirty days of receipt of invoice. If ESVA PSA does not make payment by such date, ESVA PSA shall pay a late payment fee in an amount equal to the lesser 1.5% per month on the amount past due or the maximum amount allowed by Applicable Law.

In the event of a contested invoice, the ESVA PSA shall provide written notice to the TOWN setting forth specifically the charges protested. The TOWN will notify the ESVA PSA in writing of position with respect to any contested invoice or item. If the ESVA PSA accepts the position of the TOWN on contested items, it shall make payment of such sums within thirty days following notice of action on the contested items. If the ESVA PSA objects to the decision of the TOWN on contested items, it shall so notify TOWN within thirty days following notice of action on the contested items by TOWN and TOWN may then pursue its remedies under the Agreement.

V. Maximum Volume and Adjustment

There is no minimum usage of wastewater flow that must be generated by the ESVA PSA's Southern Node Commercial Project during this agreement. The TOWN has

established that the maximum annual flow that the ESVA PSA may have is 60,000 gallons per day (gpd).

When the ESVA PSA approaches eighty-five percent (85%) of its maximum volume usage consecutively for three (3) months at any time during this Agreement, the ESVA PSA and the TOWN will commence negotiations to determine if any amendment to this agreement will be considered, either through an adjustment in the maximum volume of flow and/or the base price.

VI. Sewer Use Regulations

The ESVA PSA agrees to administer the wastewater systems, known as the Southern Node Commercial Project, located within the County and connected to the Town's system, in accordance with the same standards, policies and bylaws as applicable to the users in the Town.

VII. OTHER TERMS

A. The ESVA PSA shall not be liable or responsible for any bodily or personal injury or property damage of any nature whatsoever which may be suffered or sustained by the Town, its employees or agents in the performance of this Agreement.

The Town shall not be liable or responsible for any bodily or personal injury or property damage of any nature whatsoever which may be suffered or sustained by the ESVA PSA, its employees or agents in the performance of this Agreement.

B. **INSURANCE:** The ESVA PSA and the TOWN shall each obtain and maintain in full force and effect throughout the term of this Agreement, not less than the insurance coverage set forth below: The limits of liability of all insurance required herein are:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation Coverage A:	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability	\$2,000,000 each occurrence
Except Automobile	\$2,000,000 aggregate
Property Damage Liability	\$2,000,000 each occurrence
Except Automobile	\$2,000,000 aggregate
Automobile Bodily Injury Liability	\$2,000,000 each person
	\$2,000,000 aggregate
Automobile Property Damage	\$2,000,000 each occurrence

(Liability limits shall be a minimum of \$2,000,000 total for each occurrence.)

Each party shall, upon the full execution of this Agreement and thereafter upon request, furnish the other party with evidence that the insurance relative to its said acts or omissions is in force.

All policies shall name the other party to this Agreement, its officers, agents and employees as additional insureds. This coverage shall be reflected on the Certificates of Insurance, which will be provided to each party with any endorsements or riders thereto. Each Certificate of Insurance shall require that notice be given thirty (30) days prior to cancellation of material change in the policies to each party.

- C. **VENUE, WAIVER OF JURY TRIAL; ATTORNEYS' FEES:** Venue for any dispute arising hereunder shall be in the Courts of Northampton County, Virginia.

By execution and delivery of this Agreement, each of the parties knowingly, voluntarily and irrevocably waives any right to trial by jury; and agrees that any dispute arising out of this Agreement shall be decided by court trial without a jury.

If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

- D. **DEFAULT.** A party shall be deemed to have committed a "Default" of this Agreement if the party fails to comply with any requirement or obligation under this Agreement and such failure continues for more than thirty (30) Business Days after written notice, provided that if any such breach is of such a nature that a longer period of time is required to cure the breach, no Default shall exist if the party commences the cure within said time period and thereafter diligently pursues such cure to completion. Upon the occurrence of a Default, the non-defaulting party may pursue all remedies available at law and equity, including termination of this Agreement. No termination under this Section shall be effective until a written termination notice is given by the terminating party to the defaulting party.

- E. **SEVERABILITY:** If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect.

- F. **AUTHORITY:** The Parties represent that they have the authority to enter into this Agreement and that the individuals signing this Agreement on their behalf

have the requisite power and authority to bind the Parties to its terms and conditions. This Agreement shall apply to, and be binding upon the Parties, their elected officials, officers, agents, employees, successors, and assigns.

G. **GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to the conflict of laws and rules thereof.

H. **FORCE MAJEURE:** No Party shall be responsible for its failure to fulfill an obligation pursuant to this Agreement to the extent that such failure is due to acts of God; strikes; war or terrorism; the actions of a third party; the actions of another party; lockouts; or other events not reasonably within the control of the Party claiming *force majeure*. A Party experiencing a *force majeure* event, which prevents fulfillment of a material obligation hereunder, shall (1) give the other Party prompt written notice describing the particulars of the event; (2) suspend performance only to the extent and for the duration that is reasonably required by the *force majeure* event; (3) use reasonable efforts to overcome or mitigate the effects of such occurrence; and (4) promptly resume performance of the affected obligation if and when such Party is able to do so.

VIII. **CORRESPONDENCE**

All notices and written notice under this Agreement shall be addressed as follows:

ESVA Public Service Authority
c/o Executive Director
P.O. Box 66
Eastville, VA 23347

Town of Cape Charles
c/o Town Manager
2 Plum Street
Cape Charles, VA 23310

IN WITNESS THEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the day and year first above written in two (2) counterparts, each of which shall for all purposes be deemed an original.

EASTERN SHORE OF VIRGINIA
PUBLIC SERVICE AUTHORITY

By: _____
Signature

Printed Name: John Reiter
Title: Chairman, ESV PSA

ATTEST:

TOWN COUNCIL OF THE TOWN
OF CAPE CHARLES

By: _____
Signature

Printed Name: _____
Title: _____

ATTEST:

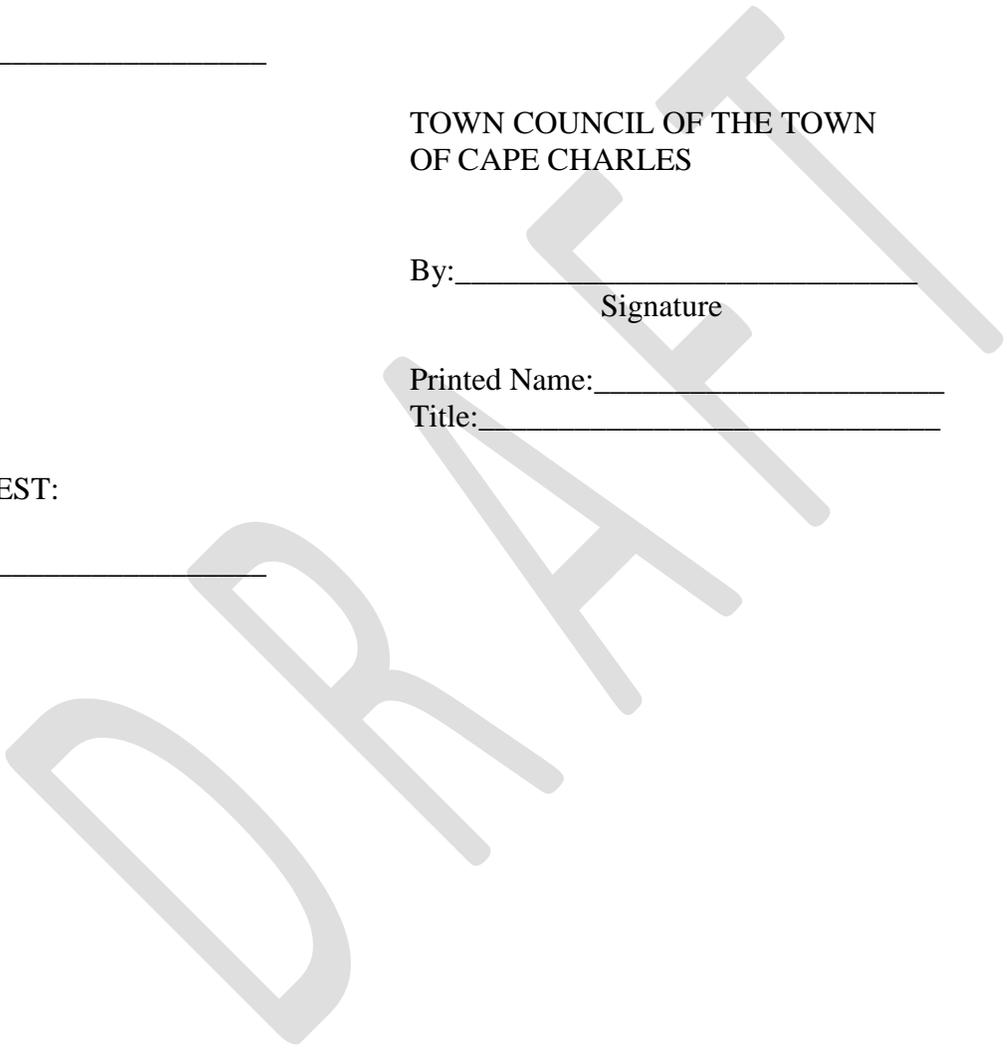


EXHIBIT A - Rate Per Gallon Calculation Dated 8/11/2014

Town of Cape Charles			
Rate Per Gallon Calculation dated 8/11/2014			
Account Description	Annual Cost WWTP		
ANNUAL PERSONNEL COSTS - Salaries & Benefits	\$ 203,823.34		
ANNUAL WASTEWATER TREATMENT PLANT OPERATIONS & MAINTENANCE - IS, Cleaning, Security, Water Samples, Advertising, Landfill Disposal, Electric, Heating, Postage, Telecomm, Insurance, Equipment, Travel, Office Supplies, Computer, Janitorial, Repair & Maintenance, Vehicle & Powered Equip Fuel & Supplies, Uniforms, Books & Subscriptions, Education, Employee Certification, Lab Supplies, Chemicals, Licensing & Fines, Small Hand Tools, Debt Service	\$ 446,304.67		
TOTAL ANNUAL COSTS	\$ 650,128.01		
TOTAL ANNUAL COSTS TO OPERATE & MAINTAIN WASTEWATER	\$ 650,128.01		
Divide by 150,000 Gallons Used Per Day (Average as of 7/1	\$ 150,000.00		
	\$ 4.33		
Divide by 365 Days a Year	365		
Base Price Per Gallon	\$ 0.01187	0.01187	<div style="border: 1px solid black; padding: 5px;"> This info is what would go into Section III, Prices of </div>
	surcharge of 26.3% (to get to the base price of \$.015	surcharge is used, then:	
	\$ 0.00312	\$0.00119	
TOTAL Base Price plus Town Surcharge	\$ 0.01500	\$0.01306	

↑
Town's position

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PSA's position