

SPECIAL COUNCIL WORKSHOP

A G E N D A

TOWN OF CHINCOTEAGUE

October 21, 2010, 5:00 P.M. - Council Chambers - Town Hall

CALL TO ORDER BY MAYOR TARR

INVOCATION BY COUNCILMAN T. HOWARD

PLEDGE OF ALLEGIANCE

AGENDA ADDITIONS/DELETIONS AND ADOPTION:

1. Proclamation on Cemetery cleanup week **(Page 2 of 17)**
2. Resolution for a Quick Deed with VDOT on the Bridge Fender **(Page 3 of 17)**
3. Resolution on the Mobile Data Terminal **(Page 8 of 17)**
4. Possible adoption of the Broadband Network Build out with ESVBA **(Page 10 of 17)**
5. Discussion of potential consultant/lobbyist to represent the Town
6. Directional Signage Program Update
7. Mayor & Council Announcements or Comments
(Note: Roberts Rules do not allow for discussion under comment period)
8. Closed Meeting in Accordance with Section 2.2-3711(A) (1 & 3) of the Code of Virginia.
 - Interview with Perspective Candidates
 - Discussion of Real Property
 - Personnel Matters

ADJOURN:



PROCLAMATION

WHEREAS, throughout our community there are many cemeteries and family burial grounds; and

WHEREAS, over the years many of the loved ones of those buried in our cemeteries have moved away or are no longer able to tend to these cemeteries; and

WHEREAS, many organizations and individuals throughout our community have volunteered to assist in the cleanup of those sites and common areas within these cemeteries; and

WHEREAS, these organizations and individuals need assistance from all citizens to accomplish their cleanup goals.

NOW, THEREFORE, I, Mayor John H. Tarr do hereby proclaim the week of November 8TH through 13TH, 2010, as Cemetery Cleanup Week within the Town of Chincoteague and call upon our citizens to volunteer to organize and assist in the cleanup of our Island cemeteries.

DATED this 21st day of October 2010.

John H. Tarr, Mayor

ATTEST:

Robert G. Ritter, Jr., Town Manager

MEMORANDUM

THE TOWN OF CHINCOTEAGUE

To: Mayor & Council
From: Robert G. Ritter Jr., Town Manager
Date: October 19, 2010
Subject: Bridge Fender Quick Deed Resolution with VDOT

The bridge fender along side of the old bridge has been discussed to turn it into an observation pier. We have received all permits to allow the change of use of the existing bridge fender to a 160 foot observation pier. We are currently working up an estimate to know how much it would cost to convert the fender into a pier. Once we receive the quote, we will begin seeking grants to help convert it to a pier.

The attached resolution is part of a VDOT formality to turn the surplus property over to the Town.

Staff recommends a possible motion to read:

“Move to approve the Resolution to allow the surplus property of VDOT bridge fender to be turned over to the ownership of the Town.”

See attached Resolution

**PREPARED BY VDOT
UNDER SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes
and fees under Sections 58.1-811(A)(3),
58.1-811(C)(5), 58.1-3315, 25.1-418,
42.1-70, 17.1-266, and 17.1-279(E)

THIS DEED, made this ____ day of _____ 2010, by and between the COMMONWEALTH OF VIRGINIA, acting by and through the Commonwealth Transportation Commissioner, "GRANTOR", and the TOWN OF CHINCOTEAGUE, a municipal corporation of the Commonwealth of Virginia, located in the County of Accomack, "GRANTEE.":

WITNESSETH:

WHEREAS, the hereinafter described property on Route 175 was constructed or acquired as part of the State Highway System; and

WHEREAS, the Virginia Department of Transportation is constructing a replacement for Route 175, State Highway Project 0175-001-V12, RW-202, C-502 which will make the existing bridge and fender system unnecessary for transportation purposes; and,

WHEREAS, by Resolution duly adopted on _____, the Town of Chincoteague has requested the GRANTOR to convey unto them the following:

All its rights, title and /or interest in and to the approximately one hundred and fifty foot (150') of concrete bridge fender, located in the waters adjacent to Chincoteague channel, and further being located on the south (right) side of the Route 175 survey baseline from opposite approximate Station 83+75 to opposite approximate Station 85+30 all as shown on Plan Sheet number 5E of the plans for said Project, attached hereto. Also to be conveyed are the bridge abutments and wing walls that will be left in place and serve as retaining walls. Abutment "A" and wing walls are shown on plan sheet 5E and are the East abutment. Abutment "B" and wing walls are shown on plan sheet 5C and are the West abutment. These plans sheets are a part of VDOT Project 01-0175-001-V12, B606.

WHEREAS, this conveyance was authorized in accordance with the provisions of Section 33.1-149 of the 1950 Code of Virginia, as amended, at a meeting of the Commonwealth Transportation Board held on _____, by a resolution duly adopted and recorded in the minutes of the said meeting.

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00), the receipt and sufficiency of which is hereby acknowledged, the GRANTOR doth hereby release, remise, and quitclaim to GRANTEE, the hereinabove described property, all of which lies upon the waters of the Commonwealth, in the Town of Chincoteague, in the County of Accomack, Virginia.

It is understood and agreed by and between the parties hereto, that:

- 1) GRANTEE is solely responsible for any and all maintenance, safety, future requirements for lighting, loss or damage by wind storm or any other causes to the structure, and future demolition of the structure, if necessary.
- 2) GRANTEE, coincident with GRANTOR's anticipated completion date for the existing bridge removal, will install any necessary navigation light that may be required by Federal or State laws or regulations.
- 3) GRANTEE shall, upon execution of this agreement obtain any and all necessary permits from the Virginia Marine Resources Commission.
- 4) Upon completion of the aforementioned Project that GRANTOR shall have no further construction obligations related to the concrete bridge fender, abutments and wing walls conveyed herein.
- 5) This property conveyed hereby is conveyed "as is, where is" with no warranties express or implied and there are no separate promises, guarantees or understandings with respect to the condition of the property or its fitness for a particular purpose.

IN WITNESS WHEREOF, the Commonwealth of Virginia, acting by and through the Commonwealth Transportation Commissioner, has caused this deed to be executed in her name as of the day, month, and year first above written.

COMMONWEALTH OF VIRGINIA

BY _____
Commonwealth Transportation Commissioner

COMMONWEALTH OF VIRGINIA

City of Richmond

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Gregory A. Whirley, Acting Commonwealth Transportation Commissioner.

My Commission expires _____

Notary Registration No.: _____.

Notary Public

Accepted by:

Town of Chincoteague, a municipal corporation of the Commonwealth of Virginia

Town Manager

COMMONWEALTH OF VIRGINIA

TOWN OF CHINCOTEAGUE

The foregoing instrument was acknowledged before me this _____ day of _____, 201009, by _____.

My Commission expires _____.

Notary Registration No.: _____.

Notary Public

MEMORANDUM

THE TOWN OF CHINCOTEAGUE

To: Mayor & Council
From: Robert G. Ritter Jr., Town Manager
Date: October 19, 2010
Subject: USDA Grant for the Mobile Data Terminal Units

We have received notice from United States Department of Agriculture Rural Development (USDA) that the \$50,000 grant that we went after for the Mobile Data Terminal units for the police cars have been awarded. The Towns matching funds are in the amount of \$20,000, which was budgeted in this fiscal years budget.

The attached resolution is a part of the formality for USDA to receive the funding.

Staff recommends a possible motion to read:

“Move to approve the Resolution and allow the Town Manager to execute the purchase of the Mobile Data Units for the Police Cars.”

See attached Resolution



RESOLUTION OF GOVERNING BODY OF
The Town of Chincoteague

The Town Council governing the Town of Chincoteague, consisting of six (6) members, in a duly called meeting held on the 21st day of October, 2010, at which a quorum was present, RESOLVED as follows:

BE IT HEREBY RESOLVED that, in order to facilitate obtaining financial assistance from the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture, (the Government), the Town Council does hereby adopt and abide by the covenants contained in the following agreements:

1. Form RD-400-4, "Assurance Agreement"
2. Form RD-400- 1, "Equal Opportunity Agreement"
- 3, Form RD-1940-1, "Request for Obligation of Funds"
4. Form RD-442-7, "Operating Budget"
5. Form 19 10- 11. Applicant Certification
6. Form AD-1047, "Certification Regarding the Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions"
7. Form AD- 1049, "Certification Regarding Drug-Free Workplace"
8. Form RD 3570-3, "Agreement for Administrative Requirements for Community Facility Grants"
9. FmHA 1940-4, "Exhibit A-I, Certification Regarding Lobbying"
10. Form RD 3570-3, Grant Agreement

BE IT FURTHER RESOLVED that Robert G. Ritter be authorized to execute, on behalf of the Town of Chincoteague the above agreements and to execute such other documents including, but not limited to, debt instruments and security instruments as may be required in obtaining the said financial assistance.

This Resolution, along with a copy of the above-named documents, is hereby entered into the permanent minutes of the meetings of this Town Council.

CERTIFICATION I hereby certify that the above resolution was duly adopted by the Town Council in a duly assembled meeting in the Town of Chincoteague on the 21st day of, October 2010.

Jack Tarr, Mayor

Attest: Town Manager

MEMORANDUM

THE TOWN OF CHINCOTEAGUE

To: Mayor & Council
From: Robert G. Ritter Jr., Town Manager
Date: October 19, 2010
Subject: Broad Band Network Build-Out Agreement

Jon Poulson and the Attorney for Eastern Shore Virginia Broad Band Authority (ESVBA) have come to a mutual understanding and have finalized the Network build-out agreement.

This is the last step to full fill the requirements of the Department of Housing and Community Development agreement for the \$800,000 grant for the installation of the Broad Band fiber loop through out the Island of Chincoteague.

Staff recommends a possible motion to read:

“Move to approve the Network build-out agreement and allow the Town Manager to execute this agreement, along with the \$100,000 certificate of deposited (CD) with Virginia Community Capital Bank (VCCB).”

See attached Network Build-out Agreement

AGREEMENT FOR NETWORK BUILD OUT

This Agreement, made this 21st day of October, 2010 by and between the Town of Chincoteague, Virginia, (the “Town”) a political subdivision of the Commonwealth of Virginia, and the Eastern Shore of Virginia Broadband Authority (the “Authority”), a political subdivision of the Commonwealth of Virginia, (collectively referred to as “the Parties”), provides as follows:

WHEREAS, the Authority is a Virginia Wireless Service Authority created in order to promote economic development on the Eastern Shore of Virginia and to provide for the comfort, convenience and welfare of the citizens of Accomack and Northampton Counties by providing high speed data and internet infrastructure and services to area businesses, local government, and the public; and

WHEREAS, the Authority is in the process of constructing and operating an open access, multi-service regional fiber and/or wireless telecommunications network in the Eastern Shore of Virginia (Northampton and Accomack Counties) (hereinafter referred to as “The Broadband Network”) in order to:

- Create new business opportunities for incumbent service providers
- Create new entrepreneurial business opportunities
- Encourage economic development
- Provide an increased range of telecommunications services and options for the businesses, residents, and institutions of the Eastern Shore; and,

WHEREAS, the Town recognizes that access to the Broadband Network is an essential tool in promoting economic development within the Town and in providing for the comfort, convenience and welfare of the citizens of the Town; and,

WHEREAS, the Town desires to construct certain fiber optic broadband infrastructure (the “Project”) within the Town, and to connect this infrastructure to the Broadband Network in order to obtain access to the Broadband Network for its own use and for the use of its residents, schools and businesses; and,

WHEREAS, the Town is the recipient of a certain Community Development Block Grant,(the “Grant”) from the Virginia Department of Housing and Community Development (the

“VDHCD”) to be used for the purpose of providing broadband network infrastructure to the Town and its citizens; and,

WHEREAS, under the regulations of the VDHCD the Town is the (only) legal entity which has been approved to enter into a contract for the receipt of the grant funds in order to implement the Grant; and,

WHEREAS, it is appropriate and proper for the legal entity receiving the Grant to enter into a contractual agreement with another agency to carry out, implement and administer the project for which the Grant funds are being distributed to the Town; and

WHEREAS, the Town wishes for the Authority to manage the construction and engineering of the project, and the Authority is willing to provide these services to the Town; and,

WHEREAS, the Town has accepted the Grant funds for the Project, and has entered into the necessary Agreement with the VDHCD and made all the assurances required in order to implement the Grant and receive the Grant funds.

NOW, THEREFORE, in consideration of the above referenced recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, and with the intention to be legally bound hereby, the Authority and the Town agree as set forth above and as follows:

1. The Authority will obtain a working capital loan with Virginia Community Capital Bank (VCCB) to fund the Authority’s operations during the term of this Agreement, and in order to facilitate such funding, the Town will deposit One Hundred Thousand Dollars (\$100,000.00) with Virginia Community Capital Bank (VCCB) as security for the Authority’s working capital loan on such terms as may be agreed upon by Town, Authority, and VCCB, provided the VCCB loan term is thirty (30) months maturing on January 1, 2013, and at the conclusion thereof the Security is to be released to the Town absent any default by the Authority as to such loan.

2. The Authority will manage the design and construction of the Project on behalf of the Town, including procurement of the services of such design and construction firms as are necessary for the completion of the Project within the Grant budget. The Authority will require its contractors

to design and construct the Project in an appropriate and workmanlike manner, and maintain liability insurance coverage commensurate with their work on the Project. All contracts will conform to VDHCD requirements. The Authority will keep the Town fully apprised of the progress of the Project, and will coordinate with the Town and VDHCD regarding necessary or advisable deviations in the design or construction thereof. The Town and VDHCD shall have the authority to review and approve all such contracts, including change orders, for design and/or construction, specifically including but not limited to cost.

3. Upon completion of the Project all legal title thereto shall be transferred to the Authority for integration into the Broadband Network, provided however that the Authority is in good financial standing with Virginia Community Capital Bank (VCCB), or VCCB has released and returned to the Town the entire security deposited by the Town as security for the Authority's working capital loan. The Authority shall operate the Project as part of the Broadband Network, consistent with the Authority's purposes and mission, and shall make such services available to Town government, residents, and businesses as the Authority generally provides to other users within the service area of the Broadband Network. For any such period that VDHCD pursuant to the Grant Agreement and/or VCCB requires pursuant to the Loan Agreement with the Authority, the Authority shall, at its cost, insure the equipment and system as may be required, with VDHCD and the Town to be named insureds. In the event that the Authority should ever cease to exist and/or cease to operate the Project as part of the Broadband Network, disposition of its assets and the Project shall be in accordance with the provisions of §15.2-5431.9 of the Code of Virginia of 1950, as amended, or any amendment thereto. The Authority in any such disposition shall endeavor to dispose of the Project as a continuing part of an integrated Broadband Network.

4. The Town agrees to make timely disbursements of the Grant funds following the receipt of approved invoices, receipts and proper inspection reports from the Authority. All applications and certifications for payment to the Authority by any contractor shall be on AIA Document G702 Form and contain the certifications provided for therein.

5. In order to obtain the Grant funds, it is contemplated that the agreement to be entered into

between the Town and VDHCD may impose certain terms and conditions upon the Town, which may include, without limitation, an obligation to create and/or maintain a certain number of jobs within the Town and to construct and operate certain improvements or infrastructure within the Town. The Authority is not a party to any such agreement between the Town and VDHCD pertaining to the Grant funds, and shall not be construed to become a party to any such agreement or obligations by virtue of this Agreement. At all times the Town shall remain solely responsible for any and all performance obligations undertaken pursuant to its agreement(s) with VDHCD, including but not limited to any obligations to repay Grant funds in the event that the conditions of the Grant are not met. Nothing herein shall be construed to impose any obligations or duties upon the Authority to any individuals or entities not a party hereto, including without limitation VDHCD.

6. The parties are currently in the process of developing and refining the design of the Project. As the design of the Project is developed, the Town shall be solely responsible for obtaining all necessary easements and rights of access to enable the construction, maintenance and operation of the Project, and shall be responsible for ensuring that all such easements and rights of access are transferred to the Authority upon completion of the Project and the transfer of legal title as provided for under Paragraph 3 hereof. The Town shall ensure that all easements and rights of access are of such scope and duration as will allow for the maintenance and operation of the Project throughout its useful life.

7. This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

8. During the term of this Agreement, and for a period of five years after termination thereof, the Authority shall have the option, in accordance with the terms and provisions of a “Colocation Agreement(s)” being negotiated between the parties, to utilize the Town’s water tower(s) and surrounding grounds, and the former jail building owned by the Town for the location or installation of such wireless towers, antennas, equipment shelters and equipment as may be necessary or useful to the Authority in the maintenance or expansion of the Broadband Network, and shall be granted a

right of reasonable access to such premises for purposes of maintenance and repair of the Broadband Network equipment or facilities located thereon. As to the water tower site, any such access shall be accompanied by a designee of the Town and in accordance with the Chincoteague Water Works and Maintenance Manual, as amended, in place to insure the integrity of the Town's storage and water delivery equipment. Access for emergency maintenance and repair shall be on a year round twenty four (24) hour day basis. Town hereby designates the police department as the after hours contact to secure emergency access. The placement and operation of such towers, antennas, equipment shelters and equipment shall not unreasonably interfere with the operation of the Town water system. Such placement and the area of the Town premises to be utilized shall be as reasonably agreed between Town and Authority. Should the Authority determine to utilize such water tower or similar premises for the location of the Authority's towers, antennas or equipment, the Town shall not permit any other person or entity to install broadband, wireless or other telecommunications equipment or facilities upon such premises without the express written consent of the Authority, which shall not be unreasonably withheld. In all cases, The Authority shall retain ownership rights and title to the Broadband Network and each device and component thereof, as well as intellectual property, documents, data, or other materials prepared by the parties or their subcontractors resulting from this agreement, subject to the provisions of Paragraph 3 hereof. No portion of the Broadband Network installed upon the Town's water tower or similar premises shall become a fixture of, or vest ownership in the Town, subject to the provisions of Paragraph 3 hereof. Any such Colocation Agreement as to the Water Tower shall contain, at a minimum, the provisions herein contained.

9. Town's obligations hereunder are expressly conditioned or contingent upon (a) Town entering into the Grant Agreement as provided for hereunder, (b) Town and VDHCD approving all contracts for the design and construction of the Project as provided for under Paragraph 2 hereof and such contracts conforming to VDHCD requirements, and (c) Town securing all necessary easements and rights of access as provided for under Paragraph 6 hereof.

10. The Authority will provide the Town with 5 megabits of Internet access for one location of their choosing in exchange for the right to co-locate additional facilities and equipment in

accordance with the negotiated Colocation Agreement(s) at no additional cost to the Authority. The Authority will provide such access for so long as the Authority utilizes or reserves said locations. Should the Authority determine to vacate such site, it will provide the Town with no less than ninety (90) days written notice of its intention to do so.

11. In the event that the Virginia Department of Housing and Community Development terminates the Grant before completion for any reason, Town will be obligated to pay the Authority for any then completed work and such additional direct incurred out of pocket cost as are reasonably necessary to terminate the Project and any legally binding commitments.

12. The Authority will require that the Town be added as an additional insured on the contractors' insurance when the contract is awarded and will require the contractor to maintain such insurance throughout the term of construction of the Project.

13. This Agreement is to be governed by the Laws of the Commonwealth of Virginia.

14. This Agreement may be amended from time to time as the Parties may agree in writing.

15. This Agreement must be presented to and approved by the governing body of ESVBA and the Town Council of the Town prior to execution. Each signatory hereto represents that he/she has the authority to execute this Agreement on behalf of his/her respective organization.

16. Any and all notices permitted or required hereunder shall be in writing, and shall be deemed duly given if delivered in person, mailed by certified or registered mail, return receipt requested, or sent by facsimile transmittal, provided that the notice sent by facsimile shall also be sent, either certified mail, return receipt requested or by Federal Express or other reputable overnight courier service within one (1) business day after such facsimile transmittal, as follows:

To the Town:

Robert Ritter, Town Manager
6150 Community Drive
Chincoteague, Virginia 23336

or

To ESVBA:

Eastern Shore of Va. Broadband Authority
Attn: Nicholas Pascaretti
Post Office Box 449
Wachapreague, Virginia 23480
36272 Lecato Road, Unit #21E
Belle Haven, Virginia 23306

17. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof shall be instituted in the

Accomack County Circuit Court.

WITNESS the following signatures on the dates shown below

TOWN OF CHINCOTEAGUE

By: _____

Its: _____ Date

EASTERN SHORE OF VIRGINIA BROADBAND AUTHORITY

By: _____

Its: _____ Date