

**MINUTES OF THE APRIL 1, 2013**  
**CHINCOTEAGUE TOWN COUNCIL MEETING**

**Council Members Present:**

John H. Tarr, Mayor  
Ellen W. Richardson, Councilwoman  
John N. Jester, Jr., Councilman  
Gene W. Taylor, Councilman  
Tripp Muth, Councilman  
Terry Howard, Councilman

**Council Members Absent:**

J. Arthur Leonard, Vice Mayor

**CALL TO ORDER**

Mayor Tarr called the meeting to order at 7:00 p.m.

**INVOCATION**

Councilman Taylor offered the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Tarr led in the Pledge of Allegiance.

**OPEN FORUM/PUBLIC PARTICIPATION**

Mayor Tarr opened the floor for public participation.

There was none.

**STAFF UPDATE**

**Planning Department**

Town Planner Neville stated that they received a letter from Mr. Joe McCauley with the U. S. Fish and Wildlife in response to the questions from Mayor Tarr. This was to inform Council of the CCP. The target date is in May. They advised, they would inform the public and address the points Council requested.

Town Planner Neville also encouraged Council to read through the FEMA fact sheet regarding the flood program. He feels there should be a larger public input meeting. He added that they appear to be targeting the non-primary homes first for the possible increase. He added that they will have to work for more credits to help the community.

**Police Department**

Chief Lewis advised that the monthly report was included in the agenda.

**Public Works Department**

Public Works Director Spurlock stated that the Sanitation Contract bid announcement will go out in Wednesday's paper and he should have something to report in May. He added that there are no major changes in the contract.

He also reported that the paving on Willow Street is dependent on the weather. He added that the street drain and conduit was installed at the museum earlier today.

There was discussion regarding the reservoir on Willow Street and how the backwash pit works along with the necessary repairs needed.

### **General Government**

Town Manager Ritter reported that there were 55 EMS responses, which were 15 less than March of 2012. He reviewed the schedule for the Downtown Revitalization Project. He advised that the Town decals are on sale and the quarterly newsletter has been published.

There was discussion regarding the grants and the Town moving forward individually as they originally were without using one grant to help pay for the Town's percentage of another grant.

Town Manager Ritter advised that the Town wants to move forward with dredging.

Councilman Howard asked Town Planner Neville about an ordinance revision regarding wayside stands and yurts.

Town Planner Neville responded that there are a number of pictures in the staff report that describe a yurt. He explained the difference in a permanent dwelling unit type versus a temporary dwelling unit. He stated that the pictures and definitions are in the Planning Commission packet for review.

### **AGENDA ADDITIONS/DELETIONS AND ADOPTION**

Councilman Howard motioned, seconded by Councilwoman Richardson to adopt the agenda adding item #7a. Colocation Agreement. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

#### **1. Consider Adoption of the Minutes**

- **Regular Council Meeting of March 4, 2013**
- **Council Workshop of March 21, 2013**

Councilman Jester advised that he was absent during the March 21<sup>st</sup> Workshop.

Councilwoman Richardson motioned, seconded by Councilman Jester to approve the minutes as corrected. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

#### **2. Information on NASA's Upcoming Launches**

Mr. Bruce Underwood with NASA Flight Facility introduced Mr. Jeremy Agers who was with him to give Council an update on the upcoming events at NASA. He reviewed a PowerPoint presentation:

- Antares – there was a “hot-fire” test on February 22<sup>nd</sup>, the Launch vehicle is being prepared for rollout to the launch pad on April 4<sup>th</sup> and scheduled for launch April 17<sup>th</sup> – 19<sup>th</sup> in the late afternoon.
- LADEE - He explained that this is the largest vehicle to be launched at Wallops. It is a NASA satellite that will orbit the moon studying the lunar “exosphere” and influences of dust. This contains 3 science instruments and 1 technology experiment. This will be the 1<sup>st</sup> launch of the new Minotaur V rocket and the 1<sup>st</sup> deep-space launch from Wallops.
- Hurricane & Severe Storm Sentinel (HS-3) – This is a Global Hawk, which is an unmanned aircraft that returned to Wallops August-October. This is the 2<sup>nd</sup> year of a 3 year campaign. They will study the physical process that controls storm intensity.
- Navy Field Carrier Landing Practice (FCLP) – This is training for those pilots to practice landing as they would on an aircraft carrier. In mid-March the Navy and Fleet forces Command along with NASA signed an agreement supporting the FCLP operations. This provides critical Navy training flights with propeller aircraft only. The Navy will provide critical funding contributions for Wallops airfield maintenance. He reviewed the aerial photos of Wallops Island and advised they are actively replenishing the beach.
- Upcoming Wallops Launches :
  - April 17<sup>th</sup> – Antares 1<sup>st</sup> launch
  - June 4<sup>th</sup> – 10<sup>th</sup> – Black Brant XII (science)
  - June 20<sup>th</sup> – 21<sup>st</sup> – Rock-on (education)
  - June 24<sup>th</sup> – July 8<sup>th</sup> – Black Brant V/Terrior Orion (science)
  - July 1<sup>st</sup> – 3<sup>rd</sup> – Terrier-Malemute (technology)
  - August 12<sup>th</sup> – 16<sup>th</sup> – RockSat X (education)
  - August 12<sup>th</sup> – LADEE (Minotaur V)
  - Late September – ORS-3 (Minotaur I)

Mr. Underwood advised that Wallops is doing well during this challenging budget period. He stated that overall, Wallops remains very healthy as all programs are stable and growing along with more than \$200,000,000 in new infrastructure investments. He stated that the annual budget is \$215,000,000 adding that NASA and contractor workforce is at 1,100 with some limited hiring underway. He added that the research range is busy and there are new commercial rocket companies interested in setting up at Wallops.

Mr. Underwood also stated that sequestration is having an impact, but is manageable. He stated that support from the local communities and governments are critical and appreciated. They recognize their responsibility to be a good neighbor. He also added that there are a number of educational activities and would like to encourage everyone who has children or grandchildren to consider Wallops educational opportunities. He concluded that the social media will keep everyone up on the schedule changes and events.

There was discussion regarding the viewing areas for a launch and contacting the tourism agencies with information. They discussed proposals for educational programs.

Mayor Tarr thanked them for attending and advised that the Town plans to continue to support their cause.

### **3. Discussion on the Sign Ordinance & Multiple Businesses**

Town Planner Neville advised that Council requested that the Planning Commission review this issue and report back. He stated that the Planning Commission has completed the review and given a report in the agenda packet. They included photos and an aerial view. He explained that one example was a larger property with the maximum amount on the sign. He asked Council if these were unique examples or felt they needed the Ordinance changed. He recommended that each case be addressed separately. He also gave options as opposed to changing the Ordinance. He stated that an ordinance revision is also an option.

Town Planner Neville reviewed both cases. He stated that in the first case the Planning Commission didn't recommend that a revision to the Sign Ordinance is necessary. They identified two solutions; one for the existing non-conforming sign could be repainted or another sign placement on top of this as long as it doesn't change in dimensions. The other recommendation is that the businesses are located on 3 different parcels and the section regarding free standing signs only limit the number of signs per lot. They feel this particular business may be on a separate lot that would be permitted its own sign.

Town Planner Neville also addressed the signage for the Fairfield Inn/Chincoteague Inn. The Commission, with the information provided, didn't feel there was a clear enough request to generate a change to the Ordinance at this time. He explained that this could be considered, however, there wasn't a specific proposal as there was no sign application. He stated that the ordinance allows the free standing sign for each lot. He added that these are unique conditions. They feel this could be a BZA appeal for a variance. The Commission didn't feel that changing the Ordinance was a solution and it could be resolved in another way. They are concerned that if this is changed and is used on another site in Town it could create more issues.

Councilman Jester asked if the owner has contacted the Town.

Town Planner Neville stated that a sign application has been recently submitted to Building and Zoning Administrator Lewis. Mr. Burbage was notified that they couldn't leave the nonconforming sign in place. He added that the Fairfield signage has now been approved and in place. He stated that Mr. Burbage was not willing to put any other signage under the Fairfield Inn logo. The Chincoteague Inn's signage permit application has been submitted by the restaurant owner not the property owner.

Town Attorney Poulson stated that a subdivision is not an option. He added that he doesn't like variances.

Town Planner Neville stated that it has to be determined that it is unique and if it changes the character of the neighborhood. He understands that this is seeking to restore what the Chincoteague Inn had before which does not meet the current Ordinance.

Mayor Tarr stated they are also looking at the individual pieces of property. He stated that if they consider it one building then only one sign is allowed. He gave an example.

Town Planner Neville asked if making an ordinance around an example was the way to write an ordinance.

Mayor Tarr responded that it's the wrong way to write an ordinance.

Town Planner Neville stated that the Planning Commission's main obligation is to support the ordinance that was adopted through the public process. They want to help the business through the ordinance the way it was written.

Councilman Jester feels they should do everything they can to work with the system.

Town Planner Neville stated that before opening day of the new motel the sign has to be removed and made conforming.

Discussion continued regarding the parking.

Chairman Rosenberger advised that they were some of the variables. He mentioned the house that was coming down to accommodate parking and didn't come near to what the requirements were between the restaurant itself and the motel.

Mayor Tarr disagreed. He stated that there is an approved plan with approved parking for both the motel and restaurant.

Chairman Rosenberger stated that it was the Commission's understanding, that part of the parking area was dependent on the building being demolished.

Mayor Tarr agreed and added that they were directed to take it down. He knows there is a lease for the house. He added that they have secured the lease on a property that has triple the parking that the house was going to be in. He added that it still doesn't meet the off-site parking requirement because they don't own that property.

Councilman Jester stated that they're so tight on the rules that common sense is lost. He stated that the Town says they would like to save the house but you have to tear it down for parking.

Councilman Howard feels as though the Planning Commission is on the right track. He feels that if Council changes an ordinance every time someone has a problem, what kind of ordinance is the Town going to end up with.

Councilman Jester doesn't want the Town to be in the situation again with the condos. He wants to be cooperative.

Planning Commission Chairman Rosenberger stated that on one case the properties are separate and they were going to look into that and come back. He wanted to know with the Fairfield Inn if the Marriott is going to lease or manage this property. He asked if the Fairfield Inn was going to be completely separated from the Chincoteague Inn or is it going to be co-managed by the corporation. He asked if it's going to be two separate businesses.

Town Attorney Poulson stated it is two separate businesses and Mr. Britton leases the Chincoteague Inn.

Chairman Rosenberger stated that the BZA granted him a variance on that sign in the very beginning in order to maintain the sign. He added that the variance at the time was that if it changed hands or the property was changed the sign was to come down. He stated that the Commission was looking at it as to what could be done now. He stated that the Fairfield Inn could indicate a restaurant on their sign. He added that the Commission did not address the Town wanting the structure there. They were told that the structure was coming down.

Councilman Jester would like to see all parties get together and find a solution.

Chairman Rosenberger stated that it is hard to fit everyone into one set of standards. He added that you can't address each individual's needs and wants by revising the ordinance.

Councilman Howard asked if there was any indication that Mr. Burbage requested to come before the Planning Commission regarding this.

Chairman Rosenberger advised he has not.

Town Planner Neville feels that the Planning Commission is probably not the place he should go. He stated that initially he put in the staff report the description of the conditional use process which can be granted by the Town. He feels that this may allow the Town Council to permit certain land uses and structures under the conditional use permit process. He isn't sure if this allows a sign in this particular situation. He asked Attorney Poulson if in the current ordinance this would allow Council to address this as a unique situation. He added that this involves a public hearing and certain conditions could be attached.

Mayor Tarr said that the process is more in-depth. He informed Town Planner Neville there is a \$1,500 fee to take it to the Planning Commission and would require stamped engineered drawings. He feels this is a very long process for a small flower shop sign or even a motel/restaurant to be in business in a couple of months.

Town Planner Neville stated that the BZA does have history reviewing cases pertaining to signs.

Chairman Rosenberger stated that there have been cases before them relative to the number, the height and location of the signs.

Mayor Tarr asked if these were the only two incidents regarding signage since the Sign Ordinance.

Chairman Rosenberger believes they are.

Mayor Tarr stated that all signs at all the older businesses are nonconforming. He stated that the owner shouldn't be chastised because his sign doesn't meet the Ordinance today the way it's

currently written. He added that the sign was conforming at some point or it wouldn't be in place. He stated that they wanted to change Mr. Britton's sign to a Fairfield Inn sign so it has to come down as it is now nonconforming. He feels it's a bigger issue as to a large parcel with multiple businesses.

Chairman Rosenberger stated that this was addressed because of the Grubstake.

Chairman Jester feels that something has to be done or there will be another pickup truck with a sign in the bed of it.

Councilman Howard agreed that this should have determined if the flower shop is on a separate lot or on the same lot.

Mayor Tarr advised that the property owner has discussed this with Building and Zoning Administrator Lewis.

Town Manager Ritter stated that the owner of that property came in and showed Building and Zoning Administrator Lewis where the property lines are.

Mayor Tarr felt this should have been reviewed and not assumed.

Councilman Howard said this should have been determined by looking at the plat before a denial was made.

Town Attorney Poulson asked how big the Fairfield sign was going to be.

Town Planner Neville advised it is within the 64 square feet allowance and 12 feet high which is allowed. He stated that the two separate driveways are the misleading factor that it's one parcel. He stated that the BZA could determine if it was considered a unique situation. He added that the Commission is trying to find a solution.

Chairman Rosenberger added that there may not be another way. He stated that the Commission will review this again. He feels the main issue is separate buildings on a single property.

Councilman Taylor stated that the Fairfield Inn will not want a Chincoteague Inn sign under it.

Chairman Rosenberger stated that they addressed this like the Grubstake by identifying the owner and all the individual businesses.

There were a few comments and further discussion.

Mayor Tarr asked if the Chincoteague Inn has applied to the BZA.

Town Planner Neville advised not as of yet. He stated that Building and Zoning Administrator Lewis has to send them the denial letter before a hearing can be set.

Mayor Tarr asked about the BZA ruling when the sign was originally placed. He stated that the business is still there and isn't changing.

There was discussion about when the vacation of the property line was done.

Chairman Rosenberger advised that the Planning Commission meets next week and will re-address this.

Councilman Jester expressed his concern to drag this out as Memorial Day is approaching and tourism season is underway.

Mayor Tarr stated that this should be viewed as multiple businesses on a lot. He added that it's the Planning Commission's job to look at the Town's Sign Ordinance and see if there is a real problem with multiple businesses on one property.

Chairman Rosenberger advised that they were approaching this with a different perspective. He stated that they will review this again knowing what Council wants.

Councilman Jester feels this will happen with the Landmark Property also.

Discussion continued reiterating Council's intent regarding multiple businesses on one parcel.

Councilman Taylor thinks that the Sign Ordinance is crazy in the fact that a sign cannot be put up on the corner of the lot they're going to use for parking because the business owner doesn't own that lot.

Chairman Rosenberger stated that the current Sign Ordinance does not provide for all the contingencies.

Councilman Taylor discussed off-premise signs. He stated that the same man owns both parcels but can't have a sign on the other lot because it would be considered off-premise.

Councilman Jester doesn't feel the Town should be so rigid.

Town Planner Neville invited Council to the Planning Commission's meeting next Tuesday to continue this discussion.

#### **4. Proclamation Designating April 13-19 as Cemetery Cleanup Week**

Councilwoman Richardson read the Proclamation Designating April 13-19 as Cemetery Cleanup Week.



## 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 to beautify and preserve our family burial grounds.

**NOW, THEREFORE**, I, Mayor John H. Tarr do hereby proclaim the week of April 13<sup>TH</sup> through 19<sup>TH</sup>, 2013, 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 1<sup>st</sup> day of April, 2013.

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John H. Tarr, Mayor

ATTEST:

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Robert G. Ritter Jr., Town Manager

Town Manager Ritter advised that on April 13<sup>th</sup> from 9:00 a.m. to noon there will be a cemetery cleanup at the Holy Ridge Cemetery. He added that the Town will collect debris the following week.

Councilwoman Richardson stated that Mr. Gary Turnquist spoke with the Christ United Methodist Men and organized groups to clean up debris at the Redmen's Cemetery on Taylor Street, Island Baptist Church will clean the Bunting Cemetery and she'll be at the Holy Ridge Cemetery. She encouraged anyone who wants to organize a group to pick up debris and put it in a pile so the Town can pick it up

Mayor Tarr asked about new members for the Committee.

Town Manager Ritter stated that it was left as a discussion at the Committee meeting.

Mayor Tarr directed staff to advertise for the 2 vacancies on the Cemetery Committee with a brief description of what they do. He requested a written statement from those interested of why they would like to be considered and they will be reviewed by the Nominating Committee.

Councilwoman Richardson also advised the Cemetery Preservation Plan was included in the packet. She advised that Mr. Turnquist has put the information in the Beacon regarding where to meet to help with the cleanup.

Mayor Tarr also directed staff to put this on the Town's website also.

## **5. Public Works Committee Report of March 5, 2013**

### **• Inundation Study Proposals from Clark Nexsen**

Councilwoman Richardson advised that they want to bring to Council the Inundation Study Proposals presented by the engineering consultant Clark Nexsen.

Public Works Director Spurlock advised that there were two proposals. He stated that there was a study done to show the problems with flooding and the flood gates or event gate would reduce the flooding on the south end of the island looking for the low spots. He suspects that if they put a flood gate at the end of Fowling Gut the tide will then just come in on the back side of Bunker Hill Road.

Councilman Taylor discussed the problems with event gates.

Councilman Howard also discussed where the flooding is coming from.

Public Works Director Spurlock advised that the computer mapping system will show exactly where the flooding is coming in and to be able to slow it down would help.

There was discussion about the causes and what would help.

Councilman Howard is concerned in spending \$36,000 to figure out what's happening. He feels there needs to be a plan.

Mayor Tarr stated this is the first phase of that plan and the study had to be done to write the plan.

Discussion and comments continued.

Public Works Director Spurlock advised that the 2<sup>nd</sup> proposal will study Hallie Whealton Smith Drive. He stated that this is an evaluation study which is more extensive for the north end of the island.

Mayor Tarr asked Public Works Director Spurlock if Clark Nexsen could make initial contact with the Army Corps of Engineers. He would like to know that if the Town has to apply for a permit over the next few years the study can be used toward the permit. He asked for comments regarding the proposals.

Councilman Jester motioned, seconded by Councilman Muth to approve both projects with Clark Nexsen and the flood elevation projects. Motion carried.

Ayes: Jester, Muth, Richardson, Howard, Taylor

Nays: None  
Absent: Leonard.

**6. Recreation & Community Enhancement Committee Report of March 12, 2013**

Councilman Jester explained that the primary discussion was regarding bicycles. They feel there is a need to update the Bike Plan and update the map. They would also like to educate and promote bicycle safety. He suggested that the Town mark the paths for bicycle use. They also discussed the donation policy for a donated bench in honor of a loved one for the park.

There was discussion regarding the benches and the draft policy.

**7. Budget and Personnel Committee Report of March 14, 2013**

Mayor Tarr advised there will be budget workshops on April 8<sup>th</sup> and 9<sup>th</sup>.

**7a. Colocation Agreement**

Town Manager Ritter stated that Town Attorney Poulson reviewed the Colocation Agreement and was able to make his recommendations. He stated that this is an agreement between the Town and Eastern Shore Communications. He advised there is a trial agreement that Council has reviewed with the Eastern Shore Broadband Authority and proposal submitted by Eastern Shore Communications. He explained that this is an agreement that Eastern Shore Communications will have a discounted amount to pay. He reviewed the percentages they would pay per year. Town Manager Ritter stated that this will basically allow them to utilize the tower behind the Town facilities, the water tower and a tower at the Curtis Merritt Harbor. This will allow the town free internet service for the SCADA system and free internet service for the Harbor.

Town Attorney Poulson reviewed the changes.

There was brief discussion.

Councilman Howard asked Town Manager Ritter to review the Town's benefits.

Town Manager Ritter again stated that this gives free internet service for the SCADA system (computerized water pump computer system) along with free internet service to the Harbor.

Councilman Howard motioned, seconded by Councilwoman Richardson to approve the Colocation Agreement. Motion Carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

## COLOCATION AGREEMENT

This Colocation Agreement (“Agreement”) is entered into by and between Eastern Shore Communications (“ESC”), doing business in the Commonwealth of Virginia, with its address of post office box 615, Cape Charles, VA 23310 and the Town of Chincoteague, Virginia, a political subdivision of the Commonwealth of Virginia, with its principal place of business at 6150 Community Drive, Chincoteague, VA 23336 (“Owner or Town”), (each, a "Party"; collectively, the "Parties"), effective as of the latest date of execution set forth below (“Effective Date”). Capitalized terms shall have the meanings given them herein or in any Exhibit or Schedule attached hereto.

- 1) Background. Owner owns certain premises known as the “Water Tower and its Ground” located at, 3738 Willow Street, “Tower at the Town Complex” located at, 6150 Community Drive, and placement of a Tower located at 2246 Curtis Merritt Harbor Road, all on the Island of Chincoteague, VA (the “Premises”) in which ESC wishes to locate and operate its communications service equipment in connection with one or more of the ESC’s communication systems. For the initial term of this agreement, the Trial Agreement between the Town and Eastern Shore Broad Band Authority (**Exhibit A**) and the Proposal submitted by ESC’s to the Town of Chincoteague on December 21, 2012 (**Exhibit B**), are hereby incorporated (see attached). Accordingly, ESC wishes to obtain from Owner a license to use the Premises on the terms and conditions hereinafter set forth.
- 2) Consideration. The parties are entering into this Agreement, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.
- 3) Grant of License. Subject to the terms and conditions of this Agreement, Owner hereby grants to ESC a license to locate, install, maintain and operate its equipment at the agreed Premise. The Owner hereby grants ESC the right to install cable, connections and other communications equipment necessary to connect ESC’s equipment located at the Premises to and along the public rights-of-way. Any such cable or equipment shall be constructed and installed with Owner’s consent, which shall not be unreasonably withheld provided that the ESC constructs the equipment as described in the “Agreement for Broad Band Services Contract” executed by both Parties with an effective date of March 28, 2013.

- 4) Term and Renewal. This Agreement shall be in effect for a period of one (1) year (“Term”) from March 28, 2013 the (“Effective Date”) and shall automatically be renewed from year to year thereafter (each a “Renewal Term”), unless and until either the ESC notifies the Owner in writing at least one (1) month prior to the termination of the Initial Term or any subsequent Renewal Term that it does not desire to extend the Agreement beyond the then-current term. The Town reserves the right, after the initial term, to provide ESC with ninety (90) days notice of termination if it is necessary to temporarily or permanently relocate ESC equipment. Notwithstanding anything contained herein to the contrary, default or cessation of ownership shall be as provided for under paragraph 13 titled Events of Default; Termination.
- 5) Permitted Uses. ESC agrees to use the Premises for the purpose of operating its communication system(s). In using the Premises or in performing any work on the Premises, ESC shall at all time, observe and follow good engineering practices and industry standards. The premises will be installed in accordance with Town site approval and used as described and will not be used as a storage facility. ESC agrees to quickly repair any damage to Owners property caused by the installation or operation of the communication network.
- 6) Power Supply & Environmental Conditions.
  - a) The ESC shall be allowed to connect a dedicated 20 Amp AC power feed at its cost, with separate metering for billing purposes to ESC, from the existing electrical panel located in or on the premises. The ESC shall be allowed to install back-up power generator and any of its associated for the ESC’s Equipment.
  - b) The ESC shall be allowed to install HVAC and any other equipment that is necessary for its operations.
  - c) The ESC, in consultation with Owner and with consent of Owner, which consent shall not be unreasonably withheld, shall have the right to perform such cutting, installation, patching, repairing and modifications to the Premises as are reasonably necessary to install the power supply and HVAC called for in subparts 6(a) and (b), above. No alterations will commence without written consent by the Town of Chincoteague. Upon expiration or termination of the license, ESC shall restore all premises to their condition as they existed at the inception of the contract with reasonable wear and tear excepted.

7) Limitation and Reservation of Rights.

- a) No use of the Premises by ESC or payment of any charges required under this Agreement shall create or vest in ESC any easement or other Ownership or property right of any nature.
- b) Nothing contained in this Agreement shall be construed to limit Owner's right to maintain access and operate its own facilities located at the premises.

8) Compliance with Law. The parties shall at all times observe and comply with all laws, ordinances, rules and regulations applicable to the rights and obligations of the parties under this Agreement, and to the use and occupancy of the Premises.

9) Maintenance. ESC shall at its own cost and expense maintain ESC's Equipment and work area in a safe condition in compliance with Owner's requirements and in a manner that will not physically or electrically interfere with the facilities of Owner, nor with the equipment or provided services of any other entity presently utilizing such premises under any license or lease with the owner. Likewise, Owner shall not unreasonably interfere with the operations of ESC hereunder, however, the foregoing shall not be deemed to prevent the Owner from taking action in emergency situations as provided in Paragraph 10(b), below. The Town will provide ninety days (90) notice if a physical change to the ESC installed equipment is required for a maintenance period.

10) Access to Premises.

- a) ESC shall have access to their Equipment twenty-four hours per day, seven days per week, 365 days per year (24x7x365)
- b) In the event of any emergency involving Owner's equipment or operations, Owner's work shall take precedence over any and all operations of ESC on the Premises; and Owner may rearrange ESC's Equipment to the extent reasonably necessary to respond to the emergency.

11) Owner Inspection and Remedial Rights. Owner may make periodic inspections of any part of ESC's Equipment, and ESC shall be provided with at least 10 days prior written notice of such inspections and shall have the right to be represented during such inspections; provided however, that if in the sole judgment of Owner safety considerations require an inspection

without providing such notice, Owner may make such inspection immediately, but shall thereafter promptly provide notice to ESC of such inspection.

12) License Fees and Other Charges. In exchange for the rights granted to ESC under this Agreement, the ESC shall provide Owner five (5) Mb/s of Internet access (Service) at no cost to the Town. Town's internet service shall be supplied at the Harbor, located at 2246 Curtis Merritt Harbor Road, Chincoteague, VA 23336 and at the Water Tower, located 3738 Willow Street. These Services shall be supplied by ESC for the Term of the Agreement unless terminated prior to expiration thereof as provided for herein, and for as long after the expiration of the Term as the ESC or assigns continues to use the Premises. The ESC shall provide the Service at a demarcation point and shall be installed within sixty (60) days of network completion. The Owner shall provide the required path to install the ESC's fiber and equipment, including but not limited to, conduits, poles, chases, or core boring required to provision Service.

13) Events of Default; Termination. This Agreement may be terminated as a result of a final determination by any court of competent jurisdiction that the license granted herein is contrary to law or otherwise wholly void or unenforceable.

Further any of the following events shall constitute a default under this Agreement by ESC or Owner, as the case may be:

- a) The failure of ESC to provide the Service called for herein, provided that in the event of such failure, ESC shall be provided written notice of such failure and shall be afforded a period of thirty (30) days in which to effect cure of same. Notwithstanding the foregoing, minor or intermittent disruptions in the Internet access services to be provided hereunder shall not be considered an event of default of this Agreement, nor shall interruptions in service due to periodic scheduled maintenance or system upgrades be deemed an event of default.
- b) The failure of any Party to perform any non-monetary covenant or condition contained in this Agreement within thirty days after receipt of written notice from the other Party detailing such failure and requesting cure of same.

- c) The cessation of ESC's or its successors', ownership of the system shall terminate this Agreement.
- d) Upon the happening of any such default, as aforesaid agreement shall be deemed to be terminated and ESC shall remove its equipment within 30 days, restoring the premises to their respective condition as they existed at the inception of the contract with reasonable wear and tear accepted.

14) Insurance. ESC shall at its own expense procure and maintain throughout the Term, the following insurance coverage from one or more insurance companies:

- a) Commercial general liability insurance, including insurance against contractual liability and liability for personal injury or death, property damage or other loss in an amount of not less than \$500,000 combined single limit with respect to any occurrence and \$3,000,000 in the aggregate.
- b) Worker's compensation insurance, including employer's liability within standard limits.
- c) At Owner's request from time to time, ESC shall deliver to Owner a certificate of insurance evidencing all of the above insurance coverage and with Town of Chincoteague, Inc. listed as additional named insured.

15) Limitation of Liability. Except as otherwise expressly provided herein, neither Party shall be liable to the other Party for any indirect, consequential, punitive or incidental damages, including loss of revenue, loss of business, loss of goodwill or loss of profits, arising from this Agreement and the performance or nonperformance of any obligation hereunder. In no event shall Owner be liable to ESC for any damages, direct or indirect, to ESC's equipment, unless such damage is caused by Owner's negligence or intentional misconduct.

16) Force Majeure. Neither Party shall be liable to the other for any delay or failure to perform its obligations hereunder to the extent such delay or failure is due to causes beyond the control of said Party, including acts of God, acts of the public enemy, acts of any government or agency thereof having jurisdiction over the Parties or the activities set forth in this Agreement, materially adverse weather conditions, shortages of labor or materials, manufacturer delays, labor or transportation difficulties, cable cut, acts or omissions of transportation common carriers, strikes, or similar circumstances (each a "Force Majeure

Condition”). Notwithstanding the foregoing, neither Party hereto shall be deemed a “government or agency thereof” whose actions may constitute force majeure.

17) Severability. If any provision or part of a provision of this Agreement is finally declared to be invalid by any tribunal of competent jurisdiction, such part or provision shall be deemed automatically adjusted, if possible, to conform to the requirements for validity, but, if such adjustment is not possible, it shall be deemed deleted from this Agreement as though it had never been included herein. In either case, the balance of any such provision and of this Agreement shall remain in full force and effect.

18) Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed given to a Party either (a) when hand delivered to such Party against a receipt there for; (b) when deposited with a nationally-recognized delivery service with instructions to provide next-business-day delivery and proof of delivery to such Party; or (c) when sent to such Party by facsimile transmission to Owner's original address or ESC's original address, as the case may be or to such other address of a Party as such Party may by written notice hereunder designate to the other Party.

If to Owner:

Town Manager  
6150 Community Dr,  
Chincoteague, VA 23336

If to the ESC:

Executive Director / President  
Eastern Shore Communications  
P. O. Box 615  
Cape Charles, VA 23310

19) Miscellaneous.

- a) Entire Agreement. This Agreement contains the entire understanding of the parties on the subject matter hereof; shall not be amended except by written agreement of the parties signed by each of them; shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns; and may be executed in one or more counterparts each of which shall be deemed an original hereof, but all of which shall constitute but one and the same agreement.
- b) Assignment. This Agreement shall not be assigned in whole or in part by ESC without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Notwithstanding any such consent by Owner, ESC shall nevertheless remain fully and primarily liable for all of ESC's obligations under this Agreement.
- c) Construction. The words "herein," "hereof," "hereunder," "hereby," "herewith" and words of similar import when used in this Agreement shall be construed to refer to this Agreement as a whole. The words "include" "includes" "including" and words of similar import shall mean considered as part of a larger group and not limited to any one or more enumerated items. "Shall" and "will" means, "is obligated to," and "may" means "is permitted to". The necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships or individuals, men or women, as the case may be, shall in all cases be assumed as though in each case fully expressed. Each provision of this Agreement shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the Party drafting or causing the drafting of such provision.
- d) The service provider shall recommend guidelines to prevent users from identity theft, hackers, fraud artists and viruses.
- e) The Town requires that State and Federal regulations govern for the protection of customer data.
- f) The service provider shall comply with all applicable local, state and federal laws and regulations
- g) Make a diligent effort to provide affordable wireless service to all areas of the Town.

- h) Provide a price schedule to the Town that is agreed upon by the two parties.
- i) Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Virginia.
- j) Authorization. The execution of this Agreement has been duly authorized by resolution of the governing bodies of the Owner and the ESC, and the signatories hereto have been duly authorized to execute this Agreement on behalf of their respective Parties.

**IN WITNESS WHEREOF**, the following signatures of the Parties by their duly authorized agents.

**Town of Chincoteague**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA, AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to wit

I hereby certify that the foregoing document was executed by the said Derek S. Hurdle, in my presence who after being duly sworn made oath that the document is truthful.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

(SEAL)

\_\_\_\_\_

Notary Public

My commission expires on \_\_\_\_\_

Eastern Shore Communications

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA, AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to wit

I hereby certify that the foregoing document was executed by the said Derek S. Hurdle, in my presence who after being duly sworn made oath that the document is truthful.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

(SEAL)

\_\_\_\_\_

Notary Public

My commission expires on \_\_\_\_\_

See attached:

Exhibit A: Trial Agreement between the Town and Eastern Shore Broad Band Authority

Exhibit B: Proposal submitted by ESC to the Town of Chincoteague on December 21, 2012.

**8. Mayor & Council Announcements or Comments**

Councilman Howard commended the Planning Commission, Town Planner Neville and Town Manager Ritter as they do a wonderful job doing what is right for the community.

Councilman Jester also wanted to commend the Police, Fire Department and EMS personnel for their quick response and job well done for the seaman that was airlifted from Memorial Park. He added that it was all very professional.

Councilman Taylor commended the Police Department for their Senior Luncheon. He added that seniors are the backbone of our community and it was very well done.

**9. Closed Meeting in Accordance with Section 2.2-3711(A)(7) of the Code of Virginia**

**• Legal Matters**

Councilman Howard moved, seconded by Councilwoman Richardson to convene a closed meeting under Section 2.2-3711(A)(7) of the Code of Virginia to discuss legal matters. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

Councilman Muth moved, seconded by Councilman Jester to reconvene in regular session. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

Councilman Muth moved, seconded by Councilwoman Richardson to adopt a resolution of certification of the closed meeting. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

WHEREAS, the Chincoteague Town Council has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711(A)(7) of the Code of Virginia requires a certification by this Town Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Chincoteague Town Council hereby certifies that to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Town Council.

VOTE: Ayes- Jester, Howard, Richardson, Muth, Taylor

Nays- None

Absent- Leonard

**Adjourn**

Councilwoman Richardson motioned, seconded by Councilman Jester to adjourn. Motion carried.

Ayes: Howard, Richardson, Muth, Jester, Taylor

Nays: None

Absent: Leonard

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Mayor

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Town Manager