

**MINUTES OF THE NOVEMBER 7<sup>TH</sup>, 2022**  
**CHINCOTEAGUE TOWN COUNCIL MEETING**  
**Council Chambers**

**Council Members Present:**

J. Arthur Leonard, Mayor  
Christopher D. Bott, Vice Mayor  
Denise P. Bowden, Councilwoman  
William T. McComb, Jr., Councilman  
Ellen W. Richardson, Councilwoman  
K. Jay Savage, Councilman  
Gene W. Taylor, Councilman

**Council Members Absent:**

**Staff Present:**

Mr. Michael T. Tolbert, Town Manager  
Mr. Robby Fisher, Chief of Police  
Mr. E. Bryan Rush, Director of Emergency Services

**Call to Order**

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

**Invocation**

Councilman Taylor offered the invocation.

**Pledge of Allegiance**

Mayor Leonard led in the Pledge of Allegiance.

**Consider Remote Participation**

Mayor Leonard advised that Councilman McComb and Councilman Taylor are attending the meeting by phone.

**Councilwoman Bowden, seconded by Vice Mayor Bott to allow remote participation by Councilman McComb and Councilman Taylor. Unanimously approved.**

**Public Comment**

Mayor Leonard opened the floor for public comment.

- Mrs. Louisa Flaningham, 5122 Main Street, advised that it is election time and she thanked the Town for allowing them to set up their tents during daylight instead of waiting until after the Council meeting. She commented that someone set up tents early as they were allowed and carved out their spaces as well. She added that they have respect for one another. She stated that this was why she is here. She asked Council to come up with rules for setting up for elections.
  
- Mrs. Cindy Faith, Director of the Museum of Chincoteague, came before Council to give

a 2022 recap and inform of the upcoming events along with the programs at the Museum. She reported that this was a banner year for visitation. She advised that the Museum is open Friday and Saturday from 11:00a.m. – 5:00p.m. in November and December. She stated that this Saturday will be a joint event with the Town to celebrate “Bridging a Century” the 100<sup>th</sup> anniversary of the Causeway and a bridge coming to the Island. Saturday at 2:00p.m. the Town will have a ribbon cutting ceremony at Bridge Street. She added that at 3:00p.m. there will be a presentation at the Legacy Pavilion at the museum along with a cast of characters, exhibit, and a reception. She announced that in December there will be a Christmas Tree Village fundraiser event on Fridays and Saturdays where you can vote for your favorite tree. She added that there will be a kid’s craft for free.

Mrs. Faith also reported on the Road Scholar program which will be going into their 30<sup>th</sup> year. She explained that people travel in groups of 30 to the Island for a week. This helps financially support the museum. She gave statistics of the revenue that this program has brought to the Island. She expressed how grateful the museum is to the Town for all of their support over the years. She also thanked Ms. Peggy Nelson for compiling the statistics.

- Mr. Mike Elmquist, Ridge Road Pit Stop, addressed the Cigarette Tax that will be implemented in January 2023. He feels they should have advertised it in the Chincoteague Beacon. He commented further giving statistics of his business’ cigarette sales. He asked if Council was willing to discuss this further before implementation.
- Mrs. Evelyn Shotwell, Executive Director of the Chincoteague Chamber of Commerce thanked Council and the Police Department for all their help with the Oyster Festival on October 8<sup>th</sup>.
- Mrs. Julie Brommer, President of the Chincoteague Island Cats, reported that last weekend they conducted a TNR where they rounded up, spayed or neutered, and vaccinated 50 cats. She thanked Council for allowing the CIC to use the ambulance bay at the old firehouse. She also thanked the businesses for discounts.

### **Agenda Adoption**

**Vice Mayor Bott motioned, seconded by Councilwoman Bowden to adopt the agenda as presented. Unanimously approved.**

### **Staff Reports**

#### **General Government**

Town Manager Tolbert reported for September and October. He advised that Municode is up and running on the website. It is a helpful tool to search Town Codes and other codes from municipalities. The Town has been using Municode for meetings and agendas for about a year. He reported on the well relocation project, the Center rentals, and the Center HVAC system. He also reviewed the Financial Report for September and October. He advised that they are pursuing a couple of grants with ARPA funds and the DEQ. It is a Septic and Local Partnership Program. HRSD is assisting the Town with quotes and estimates for this opportunity. He continued to review the cigarette tax information advising that if they were collecting the cigarette tax in July the Town would have received \$27,000.

Town Manager Tolbert gave a report on the Building and Zoning Department for September and October, he listed the Public Works projects and equipment, and the installation of the floating dock at the Harbor. He then introduced Mr. Wes Parks as the new Public Works Director who will begin Monday, November 14<sup>th</sup>.

Council welcomed Mr. Parks.

### Police Department

Chief Fisher reviewed the report for September and October. He reported on the stalker radar training, the 18<sup>th</sup> Annual Poker Run, officer and dispatcher training and recertification, Operation Blue Wave traffic check, mock audit for accreditation, Officer Stevens' MADD award, traffic control for CVFC clam fritter fund raiser, officer coverage of the Oyster Festival and Trick-or-Treating.

### Emergency Services

Director of Emergency Services Rush reported for September and October. He gave statistics. He reported on a shortage of part-time EMS personnel, training, and staffing the launch. He also advised of a 115' trawler that sank offshore. He also reported that they conducted CPR certification and recertification for the Police and new Public Works staff.

Director of Emergency Services Rush also reported on Hurricane Ian, the local Emergency Planning Grant for \$15,000. This is a 50/50 grant, and the Town has the match in the budget to upgrade the EOC. A draft after-action report has been completed from the launch today. He announced that Rocket Lab has a launch scheduled for December 1<sup>st</sup>. He reported on the tropics with Tropical Storm Nicole in view that should be a hurricane by Wednesday. It should slip past the Eastern Shore on Friday to Saturday. He also gave COVID stats.

There was a discussion about ambulance logistics iPads that can be used for documenting fires as well as patients, AED training for the churches, and possibly purchasing a high-water vehicle for emergencies.

### **Committee Reports:**

#### **Public Safety**

Councilwoman Bowden advised they met on October 4<sup>th</sup>. They discussed the purchase of license plate readers (LPR) and the cost per year to maintain. She stated that the Committee voted to send this to Council and will be paid for out of the Public Safety fund.

#### **Cemetery Committee Meeting**

Councilwoman Richardson reported that they met on October 13<sup>th</sup>. They discussed the things that needed to be done at the cemeteries. She advised that the Town does not own the cemeteries, they are private property, but the Town takes care of them. She announced that Cemetery Cleanup Week is November 6<sup>th</sup> – 12<sup>th</sup>. She reported that the Public Works staff cleared the bamboo from one of the cemeteries. She also stated that she asked Councilman Savage if the Ordinance Committee would revisit the Bamboo Ordinance and adopt the State

Ordinance into the Local Ordinance. She explained that Cemetery Cleanup Week is for people to check around their family's graves and clean them.

### **Harbor Committee Meeting**

Mayor Leonard stated that a lot of things that happened in September have been updated since then. They had an update on the Memorial Park boat ramp.

Town Manager Tolbert advised that they are advertised on Friday, November 11<sup>th</sup> with a bid date of the 30<sup>th</sup>.

Mayor Leonard advised that the new slips at the Harbor are great, they're doing well with fuel sales, and the new floating dock that has been installed looks good.

### **Public Works Committee**

Councilwoman Richardson reported that they met on September 9<sup>th</sup> and discussed ARPA funds. They reviewed the Cropper Street project with costs. She added that they also need to complete the spring paving list. She welcomed Mr. Parks to the Town.

### **Budget & Personnel Committee**

Vice Mayor Bott advised they discussed the allocation of the surplus that was dealt with at the September workshop. He listed that the 1<sup>st</sup> was the Cropper Street sidewalks, the 2<sup>nd</sup> was the 2<sup>nd</sup> phase of the Center's HVAC, and the 3<sup>rd</sup> was installation of a new gym floor at the Amrien Rec. Center.

### **Ordinance Committee**

Councilman Savage reported the Ordinance Committee met on September 8<sup>th</sup> and discussed the Open Burning Ordinance. He stated that on October 20<sup>th</sup> Council approved the proposed changes and additions to the Ordinance.

### **Recreation and Community Enhancement Committee**

Councilman Taylor advised they met on September 27<sup>th</sup>. They recommended purchasing a spinner to replace the pirate ship at Memorial Park. They discussed the placement of 2 chess tables at Brianna's Kindness Park. They also decided on the site of the beach volleyball court at Memorial Park. They would like to have Council's approval.

### **Adoption of the Minutes of the September 5<sup>th</sup>, September 15<sup>th</sup>, and October 20<sup>th</sup>, 2022, Council Meetings**

**Councilman Savage motioned, seconded by Councilwoman Richardson to adopt the minutes of the September 5<sup>th</sup>, September 15<sup>th</sup>, and October 20<sup>th</sup>, 2022, Council meetings as presented. Unanimously approved.**

### **Consider Tax Delay**

Town Manager Tolbert stated that the County advised that the Town's tax data will be delayed due to the issues from hurricane Ian. The Town then turns the data over to the software company who converts it to the billing software. Staff prints and prepares them for mail. This will take a few weeks. He is requesting that Council extend the due date this year to December 31<sup>st</sup>.

**Vice Mayor Bott motioned, seconded by Councilwoman Bowden to approve the due date for the 2022 real estate and personal property taxes for December 31<sup>st</sup>, 2022. Unanimously approved.**

**Consider Deed of Gift**

Town Manager Tolbert advised that Racing Moon, LLC, Mr. David Landsberger, is giving surplus property on the south side of Assateague West to the Town. The lots are mostly wetlands. Mr. Landsberger would like the Town to retain the lots and not sell or develop them. This would benefit the Town with more open space causing the Town to have a better CRS rating and lower flood insurance rates.

**Vice Mayor Bott motioned, seconded by Councilman Savage to approve the resolution for the Deed of Gift. Unanimously approved.**

**RESOLUTION**

**AUTHORIZING THE ACCEPTANCE OF LAND DONATION WITH RESTRICTIONS  
ON PERMITTED USES FOR TAX MAP # 31-A-16 AND 31-A-16A FROM RACING  
MOON LLC**

**Date: November 7, 2022**

**WHEREAS**, Racing Moon, LLC (the “Landowner”), desires to donate to the Town of Chincoteague two parcels of unimproved land composed of a 3.303 acre parcel located on or near the Oyster Bay, identified as Tax Map Number 31-A-16, and a second adjacent 2.237 acre parcel identified as Tax Map Number 31-A-16A, said parcels collectively referred to herein as the “Racing Moon Property” and further described on the draft deed of gift attached as “**Exhibit A**”;

**WHEREAS**, it is the intent of the Town Council to provide relief to existing homes or businesses from the threat of flooding and to preserve open space when beneficial to the Town of Chincoteague;

**WHEREAS**, the Town Council has determined that the acceptance of the Racing Moon Property would benefit the inhabitants of the Town of Chincoteague by adding certain flood control and open-space benefits to the Town of Chincoteague;

**WHEREAS**, the Landowner is proposing that the deed of gift contain certain reasonable restrictions on permitted uses and activities on the Racing Moon Property;

**WHEREAS**, Mayor J. Arthur Leonard has received a proposed form of a deed of gift, a draft of which is attached hereto as **Exhibit A**, to effectuate the donation of the Racing Moon Property to

the Town; said form of deed of gift contains certain restrictions requiring that the Racing Moon Property be used for flood control or open space purposes;

**WHEREAS**, the Town Council has determined that certain reasonable restrictions requiring the Town of Chincoteague to use the Racing Moon Property for open space and/or flood control purposes would benefit the inhabitants of the Town of Chincoteague;

**WHEREAS**, Va. Code Ann. §§ 15.2-1800 and 15.2-1803, as amended, require that a qualified attorney-at-law selected by the Town Council approve the form of the deed conveying property to the Town of Chincoteague; and

**WHEREAS**, the Town Council selects Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to perform said act on behalf of the Town of Chincoteague, and Mr. Sterling has agreed to perform such act.

**IT IS NOW, THEREFORE, RESOLVED** that, in response to the Landowner's written request for the proposed donation of the Racing Moon Property to the Town of Chincoteague, the Town Council hereby:

Selects and authorizes Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, to approve the form of the deed of gift, including the proposed language regarding the Restrictions contained within the deed of gift; and

Authorizes the Mayor to accept the Racing Moon Property on behalf of the Town of Chincoteague, Virginia.

**SIGNATURE PAGE TO  
RESOLUTION AUTHORIZING THE ACCEPTANCE OF  
A LAND DONATION WITH RESTRICTIONS ON PERMITTED USES  
FOR TAX MAP # 31-A-16 AND 31-A-16A  
FROM RACING MOON LLC**

Adopted: November 7, 2022

-----  
J. Arthur Leonard, Town Mayor

Attest -----  
Michael T. Tolbert, Town Manager

**EXHIBIT A**

**Form of Deed of Gift**

NOTE TO TITLE EXAMINERS: This Deed contains restrictions on permitted uses and activities on the property described below.

**PREPARED BY:**

Christopher Ambrosio, Esq. (VSB 41251)  
WOODS ROGERS VANDEVENTER BLACK PLC  
101 W. Main Street  
500 World Trade Center  
Norfolk, VA 23510

**Tax Map Nos:** 31-A-16 and 31-A-16A  
**Consideration:** \$0.00

**RETURN TO:**

Michael Tolbert, Town Manager  
TOWN OF CHINCOTEAGUE  
6150 Community Drive  
Chincoteague, VA 23336

**EXEMPT FROM RECORDATION TAX PURSUANT TO  
SECTION 58.1-811(D) OF THE CODE OF VIRGINIA, 1950 AS AMENDED.**

**THIS DEED OF GIFT**, (hereinafter referred to as this “Deed”) is made as of the 7<sup>th</sup> day of November, 2022, by **RACING MOON, L.L.C.**, a Maryland limited liability company, hereinafter referred to as “Grantor”, and **THE TOWN OF CHINCOTEAGUE**, a municipal corporation of the Commonwealth of Virginia, whose address is 6150 Community Drive, Chincoteague, Virginia 23336, hereafter referred to as the “Town of Chincoteague” and “Grantee” for purposes of indexing.

**WITNESSETH:**

Grantor, subject to any limitation set forth hereinafter, does hereby gift, grant and convey with General Warranty and English Covenants of Title unto the said Town of Chincoteague, in fee simple, the following described real estate, to wit:

**SEE EXHIBIT “A” ATTACHED HERETO AND MADE A PART HEREOF**

**TOGETHER WITH** all the rights, easements, buildings, privileges and appurtenances thereunto belonging or in anywise appertaining (said real estate and its improvements hereinafter referred to as the "Property").

**SUBJECT TO** valid recorded easements, covenants, reservations and restrictions in the chain of title to the Property herein described, which have not expired or otherwise become ineffective, if any, affecting the Property; and

**FURTHER SUBJECT TO** the restriction that the Property shall be used for open space and/or flood control purposes. This restriction shall run with the land.

This Deed shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of the Town of Chincoteague or any subsequent owner to comply with this requirement shall not impair the validity of the Deed and its Restrictions or limit its enforceability in any way.

In compliance with the provisions of Va. Code Ann. §§ 15.2-1800 and 15.2-1803, as amended, this Deed is in form approved by Michael L. Sterling, Esq., of the law firm Woods Rogers Vandeventer Black PLC, who is a qualified attorney-at-law selected by the Town Council of the Town of Chincoteague, Virginia, and is accepted by J. Arthur Leonard, Mayor for the Town of Chincoteague on behalf of the Town of Chincoteague, Virginia, having been authorized to perform said act on behalf of said Town by a resolution duly adopted by the Town Council at a meeting held on November 7, 2022, which approval and acceptance is evidenced by their signatures hereto.

**PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION.  
NO WARRANTY OR OPINION IS GIVEN CONCERNING THE STATUS OF TITLE.  
THE EXISTENCE OF TITLE INSURANCE IS UNKNOWN TO THE PREPARER.**



WITNESS the following signatures and seals:

RACING MOON, L.L.C.

a Maryland limited liability company

Date: November 7, 2022

By: \_\_\_\_\_(SEAL)

David I. Landsberger, Managing Member

COMMONWEALTH OF VIRGINIA )

) SS.

CITY/COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, personally appeared David I. Landsberger, who acknowledged himself to be the Managing Member of Racing Moon, L.L.C., and executed the foregoing instrument by his free act and deed. Said person is \_\_\_\_ personally known to me or \_\_\_\_ has provided the following form(s) of identification: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_

(SEAL/STAMP)

The Town of Chincoteague accepts this Deed and the real estate hereby conveyed, effective as of the date written on the first page of this Deed. The undersigned Mayor certifies that he is authorized to act on behalf of the Town of Chincoteague for the purposes of accepting the Deed and the real estate hereby conveyed.

Town of Chincoteague, Inc.

a Virginia municipal corporation

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

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

Name: J. Arthur Leonard  
Title: Mayor

COMMONWEALTH OF VIRGINIA )

) SS.

CITY/COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, personally appeared J. Arthur Leonard, who acknowledged himself to be the Mayor of the Town of Chincoteague, Inc., a municipal corporation of the Commonwealth of Virginia, and that he, as Mayor, executed the foregoing instrument by his free act and deed and the free act and deed of said municipal corporation. This person is \_\_\_\_ personally known to me or \_\_\_\_ has provided the following form(s) of identification: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

(SEAL/STAMP)

My Commission Expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_

The foregoing Deed is approved as to form by the undersigned, who is a qualified attorney-at-law selected by the Town Council of the Town of Chincoteague, Virginia for such purpose.

WOODS ROGERS VANDEVENTER  
BLACK PLC

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

By: \_\_\_\_\_  
Name: Michael L. Sterling, Esq.  
Title: Principal

COMMONWEALTH OF VIRGINIA)  
) SS.  
CITY/COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, personally appeared Michael L. Sterling, Esq., who acknowledged himself to be the qualified attorney-at-law selected by the Town Council of the Town of Chincoteague, a municipal corporation of the Commonwealth of Virginia, for purposes of approving the foregoing Deed, and that he, in such capacity, executed the foregoing instrument by his free act and deed and the free act and deed of said municipal corporation. This person is \_\_\_\_ personally known to me or \_\_\_\_ has provided the following form(s) of identification: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_

(SEAL/STAMP)

## EXHIBIT A

### PARCEL I:

ALL THAT certain tract or parcel of land situate on Chincoteague Island, Islands Magisterial District, Accomack County, Virginia, designated Parcel B, containing 3.303 Acres as shown on a certain plat of survey captioned "Boundary Survey of Parcel B Property of Heirs of Daniel Bowden Tax Parcel #03100A000001600 Town of Chincoteague Accomack County, Virginia for Patricia Taylor", dated March 27, 2013 and made by Shoreline Surveyors, which plat is attached to that certain Deed dated March 3, 2016 from Patricia C. Taylor, Trustee to Racing Moon, L.L.C. and recorded March 9, 2016 in the Clerk's Office of the Circuit Court of the County of Accomack, Virginia, as Instrument No. 160000982, which said plat is incorporated by reference herein and made a part hereof, said parcel being bounded generally as follows, to-wit: on the Southeast, by Assateague Channel; on the Northeast, by the land of Andrew K. Linton, the land of Robert J. and Doreen T. Nestorick, the land of William P. Reuter and Karen E. Berg and the land of Joel and Janice H. Vanderhoff; on the Northwest, by the land of Dennis B. and Judy A. Kurtz and the land of now or formerly owned by Franklin D. and Lois Anne Young; and on the Southwest, by the land of Dennis B. and Judy A. Kurtz;

IT BEING the same property conveyed unto the Grantor herein by Deed from Patricia C. Taylor, Trustee to Racing Moon, L.L.C. dated March 3, 2016 and recorded in the Clerk's Office of the Circuit Court for the County of Accomack, Virginia, as Instrument No. 160000982.

### PARCEL II:

ALL THAT certain tract or parcel of land situate in the Town of Chincoteague, Island Magisterial District, Accomack County, Virginia, designated as N/F FRANKLIN D. & LOIS ANNE YOUNG [D.B. 578, PG. 236] T.P.# 31-A-16A Area = 97,436 SF or 2.237 AC on a plat of survey entitled "Boundary Survey of Tax Parcel 31-A-16A & Boundary Line Agreement of Line "C" to "D" between Tax Parcel 31-A-16A & 31BA-A-82 & Boundary Line Agreement of Line "A" to "B" between Tax Parcel 31-A-16A & 31-A-16 Chincoteague, This Island District, Accomack County, Virginia for Franklin D. & Lois Anne Young" dated March 8, 2011, made by MSA, P.C., recorded in the Clerk's Office for the Circuit Court of Accomack County, Virginia, as Instrument No. 201101277 and reference to which is hereby made for a particular description of the tract or parcel herein conveyed. TOGETHER WITH all buildings and improvements thereon and all rights, privileges and appurtenances thereunto belonging or in anywise appertaining.

IT BEING the same property conveyed unto the Grantor herein by Deed from Jo Anne DeBusk dated March 8, 2016 and recorded in the Clerk's Office of the Circuit Court for the County of Accomack, Virginia, as Instrument No. 160001145.

**Consider USF&W Mutual Aid Agreement**

Town Manager Tolbert advised that this is an ongoing agreement between the Town and the USF&W. It has been reviewed and updated.

There was discussion about the changes, and what the USF&W pays to the Town.

**Councilwoman Bowden motioned, seconded by Councilwoman Richardson to approve the Mutual Aid Agreement as presented. Unanimously approved.**

**MUTUAL AID AGREEMENT**

**U.S. Department of the Interior  
Fish and Wildlife Service:**

**Chincoteague National Wildlife Refuge**

and

**County/City of:  
Town of Chincoteague**

This Mutual Aid Agreement is entered into by and between all Parties:

**SECTION 1: Recitals**

**WHEREAS**, the State and local jurisdictions have the primary responsibility for its Citizens and will coordinate first response during a natural or man-caused disaster; AND

**WHEREAS**, the Parties recognize natural or man-caused disasters can and do threaten the people and communities located within the Region to damage, injury, and loss of life and property resulting from a disaster event, and recognize that these events may present equipment and manpower requirements beyond the capacity of each individual Party; AND

**WHEREAS**, these natural or man-caused disasters often strike with little or no advanced warning requiring advance planning to reduce lag time in emergency response and aid in recovery operations; AND

**WHEREAS**, the Parties recognize that in the past, mutual aid has been provided between or among the Parties have a long history of positive cooperation in the form of personnel, supplies and equipment during disasters and/or civil emergencies and during cleanup periods; AND

**WHEREAS**, the governing officials of the Parties desire to secure for each Party the benefits of mutual aid and protection of life and property in the event of a disaster and/or civil emergency; AND

**WHEREAS**, the Service administers lands and waters located within the administrative jurisdiction of the cooperating agency; the Service has employees that are trained in water craft operations, heavy equipment operations, chain saw operation, wild-land fire control, and other specialized operations or services, AND

**WHEREAS**, immediate action is often required to protect and/or secure the safety of citizen life and property, and/or wildlife and its habitat; AND

**WHEREAS**, the Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, ensure that adequate equipment is available, and ensure that mutual aid is accomplished in the minimum time possible; AND

**NOW, THEREFORE**, the Parties hereto agree as follows:

## **SECTION 2: Agreement**

The Parties hereby mutually agree to assist each other in the event of a natural or man-caused disaster that is beyond their respective ability to alleviate the result of the disaster on their own.

This Agreement may be activated in the event of a natural or man-caused disaster and in the event of either:

- (a) a Presidential, State, or other local emergency declaration; or
- (b) the finding of an emergency by the Emergency Management Coordinator or other duly authorized agent of the State or County/City governing body of a Party; or
- (c) a significant event impacting Homeland Security.

Upon activation of the Agreement, the Fish and Wildlife Service agrees to respond as delineated in the Department of the Interior, Departmental Manual - 900 DM 1.1 - 1.11, (see Attachment 1), and shall continue, whether or not the disaster event is still active, until the services of the Party rendering aid are no longer required or when the officer in charge of the forces of the Party rendering aid determines, in his/her sole discretion, that further assistance should not be provided.

## **SECTION 3: Requests for Mutual Aid**

(A) Local Disaster. In the event of a local disaster declaration, the Emergency

Management Coordinator or other duly authorized agent of the Party seeking mutual aid shall make the request directly to the Authorized Representative of the Assisting Party from whom aid is sought. A Party from whom mutual aid is sought shall furnish mutual aid to cope with the disaster to the requesting Party, subject to the terms of this Agreement. In the event of a widespread disaster affecting more than one Party, each affected Party shall utilize its respective coordinating group for the provision of mutual aid.

(B) DISASTER THREAT. In the event of an imminent threat of an emergency such that local capabilities are or are predicted to be exceeded, the Emergency Management Coordinator or other duly authorized agent of the Party seeking mutual aid shall make the request directly to the Authorized Representative of the Assisting Party from which assistance is sought. As all Parties will likely be involved in preparations for a known disaster, requests for mutual aid of this type are optional and it is inherent that the requesting Party will have exhausted all local capabilities prior to making a request from the Assisting Party.

(C) CONDITIONS. The furnishing of resources under this Agreement is subject to the following conditions:

- (a) Requests for assistance must be made in writing;
- (b) A request for aid shall specify the amount and type of resources being requested, the location where the resources are to be dispatched, and the specific time such resources are needed;
- (c) The Assisting Party shall take such action as is necessary to provide and make available the resources requested, provided however, that the Assisting Party, in its sole discretion, shall determine what resources, if any, it has available to respond to the request; and
- (d) The Assisting Party shall report to the officer in charge of the Requesting Party's forces at the location to which the resources are dispatched.
- (e) When providing assistance under the terms of this Agreement, the personnel, equipment, and resources of any Assisting Party will be under the operational control of the Requesting Party, the response effort to which SHALL be organized and functioning within an Incident Command System (ICS) or Unified Command System (UCS). Direct supervision and control of personnel, equipment and resources shall remain with the designated supervisory personnel of the Assisting Party. The designated supervisory personnel of the Assisting Party shall maintain daily personnel time records, material records, and a log of equipment hours; be responsible for the operation and maintenance of the equipment and other resources furnished by the Assisting Party; and shall report work progress to the Requesting Party. The Assisting Party's personnel and other

resources shall remain subject to recall by the Assisting Party at any time, upon reasonable notice to the Requesting Party.

(f) At least twenty-four hour advance notification of intent to withdraw personnel or resources shall be provided to the Requesting Party unless such notice is not practicable, in which case such notice as is reasonable shall be provided;

(g) Unless specifically instructed otherwise, the Requesting Party shall have the responsibility of providing food and housing for the personnel of the Assisting Party from the time of their arrival at the designated location to the time of their departure. However, Assisting Party personnel and equipment should be, to the greatest extent possible, self-sufficient while working in the emergency or disaster area. The Requesting Party may specify only self-sufficient personnel and resources in its request for assistance;

(h) Unless specifically instructed otherwise, the Requesting Party shall have the responsibility for coordinating communications between the personnel of the Assisting Party and the Requesting Party. Assisting Party personnel should be prepared to furnish communications equipment sufficient to maintain communications among their respective operating units;

(i) Whenever the officials, employees and volunteers of the Assisting Party are rendering aid pursuant to this Agreement, such persons shall have the powers, duties, rights, privileges, and immunities, and shall receive the compensation, incidental to their employment or position;

G) The initial duration of a request for assistance will be specified by the Requesting Party, to the extent possible by the situation.

(k) Within ten (10) days of the return of all personnel deployed under this Regional Mutual Aid Agreement, the Requesting Party will prepare a Summary Report of the event, and provide copies to each Assisting Party. The report shall include a chronology of events and description of personnel, equipment and materials provided by one party to the other.

#### **SECTION 4. Reimbursable Expenses**

The terms and conditions governing reimbursement for any assistance provided pursuant to this Agreement shall be in accordance with the following provisions, unless otherwise agreed upon by the Requesting and Assisting Parties and specified in the Event Agreement.

A. PERSONNEL: During the period of assistance, the Assisting Party shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. The



Requesting Party shall reimburse the Assisting Party for all direct and indirect payroll costs and expenses (including travel expenses, benefits, workers' compensation claims and expenses) incurred during the period of assistance, unless agreed to otherwise by the parties in the Event Agreement.

**B. EQUIPMENT:** The Assisting Party shall be reimbursed by the Requesting Party for the use of its equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which some costs may be reimbursed by the Federal Emergency Management Agency, the eligible direct costs shall be determined in accordance with 44 CFR 206.228, or other regulations in effect at the time of the Disaster Event.

(a) Each Party shall maintain its own equipment in safe and operational condition.

(b) At the request of the Assisting Party, fuels, miscellaneous supplies, and minor repairs may be provided by the Requesting Party, if practical. If the equipment charges are based on a pre-established local or state hourly rate, then these charges to the Requesting Party shall be reduced by the total value of the fuels, supplies, and repairs furnished by the Requesting Party and by the amount of any insurance proceeds received by the Assisting Party.

**C. MATERIALS AND SUPPLIES.** The Assisting Party shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel, maintenance materials, labor and supplies, which shall be included in the equipment rate established above, unless such damage is caused by gross negligence, or willful and wanton misconduct of the Assisting Party's personnel. The measure of reimbursement shall be determined in accordance with 44 CFR 206.228 or other regulations in effect at the time of the disaster. In the alternative, the Parties may agree that the Requesting Party will replace, with like kind and quality as determined by the Assisting Party, the materials and supplies used or damaged.

**D. RECORD KEEPING.** The Assisting Party shall maintain records and submit invoices for reimbursement by the Requesting Party in accordance with existing policies and practices. Upon the declaration of a state or federal disaster, the Requesting Party and Division of Emergency Management personnel shall provide information, directions, and assistance for record keeping to Assisting Party personnel.

**E. PAYMENT.** Unless otherwise mutually agreed, the Assisting Party shall bill the Requesting Party for all reimbursable expenses with an itemized statement as soon as practicable after the expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with applicable federal or State regulations. The Requesting Party shall pay the bill, or

advise of any disputed items, not later than sixty (60) days following receipt of the statement, unless otherwise agreed upon.

### **SECTION 5: Term**

This Agreement will be effective upon the day each party signs the agreement. Upon date of last signature, the Agreement shall remain in effect for five calendar years (January 1 -December 31).

### **SECTION 6: Modification Procedures**

This Agreement may be revised and/or modified as necessary, by mutual consent of both parties, by written amendment signed and dated by both Parties.

### **SECTION 7: Resolving Disagreements**

If a dispute should arise between the parties that cannot be settled by the designated project managers, then it will be referred first to the level of the appropriate Assistant Regional Director for the Fish and Wildlife Service and to the appropriate supervisor within the State or local government, for further fact-finding and efforts at resolution. If those efforts should also fail, then the dispute will be referred to the Regional Director or Deputy Regional Director of the Fish and Wildlife Service and to the appropriate elected or appointed official for State or local government. At any stage, third party mediators or arbitrators may be brought in if agreed by both Parties. The parties may also decide to terminate the agreement at any stage of the dispute in accordance with the Termination clause herein.

### **SECTION 8: Termination Provisions**

This agreement may be terminated by either party by giving notification in writing thirty (30) days in advance. Termination of the agreement will then occur after all debts (if any) which have been identified by either Party are paid and/or resolved. Both parties will sign a Termination Agreement that is acceptable to both parties before the agreement is fully terminated.

### **SECTION 9: Expending Funds**

Each Party that performs services or furnishes aid pursuant to this Agreement shall do so with funds available from current revenues of the Party. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

In addition, nothing contained in this Agreement shall be construed as binding the Fish and Wildlife Service to expend in any one fiscal year any sum in excess of appropriation made by Congress, for the purpose of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations. Nor does anything contained in this Agreement obligate the State or County/City to expend funds not appropriated and administratively allocated to support the purposes of this agreement.

### **Section 10: Required Clauses**

A. During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

B. No member or delegate to Congress, or resident Commissioner shall be admitted to any share or part of this Agreement, or any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

### **Section 11: Liability Clause**

Pursuant to 42 U.S.C. 5148 the Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal Agency or an employee of the Federal Government in carrying out the activities authorized hereunder. The extent of any nonfederal liability shall be governed by the laws of State government.

### **SECTION 16: Other Mutual Aid Agreements**

It is understood and agreed that certain signatory Parties may have heretofore contracted or may hereafter contract with each other for mutual aid in civil emergency and/or disaster situations, and it is agreed that, to the extent there is a conflict between this Agreement and any other such Mutual Aid agreement, the provisions this Agreement shall be superior to any such individual contract.

Specifically, the existence of this Agreement shall not prevent a municipality, county, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity from providing mutual aid assistance on request from another municipality, county, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity.

Additionally, the existence of this Agreement shall not prevent any Party hereto from providing immediate emergency assistance.

**MUTUAL AID AUTHORIZATION AGREEMENT**

EXECUTED by the Parties hereto, each respective entity acting by and through its duly authorized official as required by law, on multiple counterparts each of which shall be deemed to be an original, on the date specified on the multiple counterpart executed by such entity.

Town of Chincoteague Island, Inc.

By: \_\_\_\_\_  
Mayor Arthur Leonard Date

Chincoteague National Wildlife Refuge:

By: \_\_\_\_\_  
John Kasbohm, Project Leader Date

Contact Information

**Chincoteague NWR Primary:**

Contact Name: John Kasbohm  
Office Number: 757-336-6122 ext. 2328  
24 Hour Contact No.: 541-219-1044  
E-mail address: [john\\_kasbohm@fws.gov](mailto:john_kasbohm@fws.gov)

**Chincoteague NWR 1<sup>st</sup> Alternate:**

Contact Name: Robert (Bob) Leffel  
Office Number: 757-336-5445 ext. 2330  
24 Hour Contact No.: 757-710-5257  
E-mail address: [robert\\_leffel@fws.gov](mailto:robert_leffel@fws.gov)

**Chincoteague NWR 2<sup>nd</sup> Alternate:**

Contact Name: Casey Custer  
Office Number: 757-336-6122 ext. 2301 24  
Hour Contact No.: 757-894-4305

E-mail address: [casey\\_custer@fws.gov](mailto:casey_custer@fws.gov)

**Town of Chincoteague Primary:**

Contact Name: Michael Tolbert  
Office Number: 757-336-6519  
24 Hour Contact No.: 757-894-2785  
E-mail address: [mtolbert@chincoteague-va.gov](mailto:mtolbert@chincoteague-va.gov)

**Town of Chincoteague 1<sup>st</sup> Alternate:**

Contact Name: Bryan Rush  
Office Number: 757 336-6519  
24 Hour Contact No: (757) 894-3552  
E-mail address: [brush@chincoteague-va.gov](mailto:brush@chincoteague-va.gov)

**Town of Chincoteague 2<sup>nd</sup> Alternate:**

Contact Name: Chief Robby Fisher  
Office Number: 757-336-3155  
24 Hour Contact No.: 757-710-2896  
E-mail address: [rfisher@chincoteague-va.gov](mailto:rfisher@chincoteague-va.gov)

**Mayor and Council Comments**

Councilwoman Bowden, responding to the public participation of the cigarette tax, stated that she used to work for the Beacon and the Eastern Shore News before they were bought out by mega newspapers and television stations. She stated that earlier when she was in the Shore Stop there were stacks of Beacons. The Beacon is owned by a national newspaper. She stated that the Eastern Shore Post is local. She commented that she doesn't believe that the cigarette tax is targeted to tourism. She also advised that the purchase of the LPRs was referred to Council. She concluded that tomorrow is Election Day and she wished everyone luck. She added that she has been on Council for 6 years and is still learning. She appreciated what Mrs. Flanningam stated about everyone having to come together.

Mayor Leonard urged everyone to use their democratic rights and vote tomorrow.

Councilman Taylor stated that they should pray for the Town and Country and that they all get along. He hopes the rest of the country can too.

Councilman McComb stated that if you don't vote you can't complain. He wished everyone the best of luck.

Mayor Leonard concluded with "Roll Tide".

**Closed Meeting in Accordance with §2.2-3711 (A) (5) of the Code of Virginia for discussion and review of potential business opportunities.**

**Councilman Savage motioned, seconded by Councilwoman Bowden to go into a closed meeting in accordance with §2.2-3711 (A) (5) for discussion and consideration of the acquisition of real property for a public purpose and consultation with staff pertaining to probable litigation.**

**Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor**

**Nays: None**

**Absent: None**

**Certification of Closed Meeting in Accordance with §2.2-3712 (D) of the Code of Virginia: Councilman Savage motioned, seconded by Councilwoman Bowden in accordance with §2.2-372 (D) of the Code of Virginia that the Council certify that to the best of each Council Member's knowledge.**

**(1) only public business matters lawfully exempted from opening meeting requirements under this chapter and only such public business matters were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered. All present were in favor and the motion was carried.**

**Ayes: Bott, Bowden, McComb, Richardson, Savage, Taylor**

**Nays: None**

**Absent: None**

**Adjourn**

**Councilman Savage motioned, seconded by Councilwoman Bowden to adjourn.**

**Unanimously approved.**

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J. Arthur Leonard, Mayor

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Michael T. Tolbert, Town Manager