

**TOWN COUNCIL**  
**Public Hearing & Regular Meeting**  
**Cape Charles Civic Center**  
**April 20, 2023**  
**6:30 PM**

At approximately 6:30 p.m. Mayor Adam Charney, having established a quorum, called to order the Public Hearing & Regular Meeting of the Cape Charles Town Council. In addition to Mayor Charney, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Butta, Follmer and Grossman, and Councilwoman Holloway. Also, in attendance were Town Manager John Hozey, Planner/Zoning Administrator Katie Nunez, Police Chief Jim Pruitt, Assistant to the Town Manager Julie Pruitt, and Public Utilities Clerk Kathy Fraas. There were 12 members of the public physically in attendance, and 11 viewers on Facebook.

A moment of silence was observed followed by the recitation of the Pledge of Allegiance.

**PUBLIC HEARING COMMENTS: (3 MINUTES PER SPEAKER)**

- A. Proposed Amendment to the 1990 Agreement related to annexation developer liability for future expansion of the water and wastewater infrastructure:

Kathy Fraas read an email submitted by Mr. Edward Wells. (Please see attached.)

A second email was received, but pursuant to The Town of Cape Charles Guidelines for Citizen Participation that was adopted on July 22, 2021, the sender was deemed not to have standing in the Town of Cape Charles since they were not a property owner, full-time resident or business owner within the corporate boundaries of the Town of Cape Charles.

There were no comments to be heard nor any additional comments received in writing prior to the meeting.

**Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to close the public hearing. The motion was approved by unanimous vote.**

The public hearing was closed at 6:34 p.m.

**RECOGNITION OF VISITORS / PRESENTATIONS/RECOGNITIONS:**

- A. Employees Celebrating Significant Anniversaries:  
Mayor Charney recognized Public Works Crewman James Jones on his 10-year anniversary on April 29<sup>th</sup>.
- B. National Arbor Day Proclamation:  
Mayor Charney read Proclamation 20230420A for National Arbor Day

**Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Proclamation 20230420A designating April 29, 2023 as Arbor Day. The motion was approved by unanimous vote.**

- C. Tree Advisory Board Presentation – Mr. Phil Goetkin  
Mr. Goetkin provided an update of the Tree Advisory Board's (TAB) activities and announced the Town's recognition as a 2022 Tree City USA. Mr. Goetkin also invited all to come celebrate Arbor Day in Strawberry Plaza on April 29<sup>th</sup> at 9a.m. The TAB would be giving away nice trees and shrubs to the public. He also noted the Blessing of the Worms Ceremony on Sunday at 2:30 p.m. at New Roots Youth Garden.

D. Building Safety Month Proclamation:

Mayor Charney read Proclamation 20230420B for Building Safety Month.

**Motion made by Councilwoman Holloway, seconded by Councilman Buchholz, to adopt Proclamation 202300420B designating the month of May 2023 as Building Safety Month. The motion was approved by unanimous vote.**

E. National Police Week Proclamation:

Mayor Charney read Proclamation 20230420C to recognize National Peace Officers' Memorial Day and National Police Week 2023.

**Motion made by Councilman Follmer, seconded by Councilwoman Holloway, to adopt Proclamation 202300420C designating May 15, 2023 as Peace Officers' Memorial Day and the week of May 15-21, 2023 as Police Week in the Town of Cape Charles. The motion was approved by unanimous vote.**

**PUBLIC COMMENTS: (3 MINUTES PER SPEAKER)**

Kathy Frass read an email submitted by Ms. Susan Bauer. (Please see attached.)

There were no comments to be heard nor any additional comments received in writing prior to the meeting.

**CONSENT AGENDA**

A. Approval of Agenda Format

B. Approval of Minutes:

i. March 16, 2023 Town Council Regular Meeting

ii. February 9, 2023 Town Council Executive Session

iii. April 6, 2023 Town Council Work Session

C. Approval of February 28, 2023 Financial Report

**Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to approve the consent agenda items as presented.**

Councilman Follmer asked to amend the Agenda Format and pull Item 8.A.ii-Harbor Development Certificate Application for 6 Mason Avenue submitted by Cape Charles Marine Services and move it to the June agenda. Per the Weekly Report, the owner of the property had actually submitted two applications for this property, the second one for two pay-to-park lots. This second application was scheduled to be reviewed by the Planning Commission at their May 2<sup>nd</sup> meeting. Councilman Follmer felt that it would be better to review both applications during the same meeting.

**Motion made by Councilman Follmer, seconded by Councilwoman Holloway, to remove the Agenda Format from the consent agenda items. The motion was approved by unanimous vote.**

**Motion made by Councilwoman Holloway, seconded by Councilman Butta, to approve the remainder of the consent agenda items – Approval of the Minutes, and the February 28, 2023 Financial Report. The motion was approved by unanimous vote.**

**Motion made by Councilman Follmer, seconded by Councilwoman Holloway, to amend the Agenda tabling the Cape Charles Marine Services Harbor Development Application until the June meeting so both applications could be reviewed at the same time.**

There was much discussion amongst Council as follows: i) Councilman Grossman stated that he was not aware of information regarding the second application and its impact on this application; ii) Councilman Follmer explained his concern of the plans for this property with the golf cart rentals and

paid parking, especially since this would be a satellite location for a Virginia Beach business. The business was currently located in the Pearl Market, but the use at the Pearl Market was uncertain. Without having adequate information regarding what was being proposed for the two paid parking lots, he could not make an informed decision on this application; iii) Vice Mayor Bennett stated that there was no discussion about a second application during the Harbor Area Review Board meeting; iv) Mr. William “Smitty” Dize, representative for the property owner, explained that the two projects would be on two separate parcels. Councilman Follmer noted that the addresses were the same – 6 Mason Avenue, adding that it would make better sense to review both projects together; v) John Hozey stated that he did not disagree with Councilman Follmer’s reasoning. Council had two options. They could vote to postpone now or allow the applicants to explain this project tonight, then opt to postpone a decision until June’ vi) Councilman Grossman stated his preference to hear the planner/zoning administrator and applicants tonight.

Mayor Charney called for a vote.

The motion failed by majority vote: Councilman Follmer voted in favor. Vice Mayor Bennett, Councilmen Butta, Buchholz and Grossman, and Councilwoman Holloway voted against.

#### **UNFINISHED BUSINESS:**

There was no unfinished business for review.

#### **NEW BUSINESS:**

##### **A. *Harbor Development Certificates:***

##### **i. *Cape Charles Rosenwald School Building Project:***

Town Planner/Zoning Administrator Katie Nunez began with an overview of the procedures for the Harbor Area Review Board (HARB). An application was received from the Cape Charles Rosenwald School Restoration Initiative (CCRSRI) for the property located at 1500 Old Cape Charles Road (Tax Map #83A3-A-14D) which was approximately 8.796 acres within the Harbor District. The HARB met on March 28, 2023, to review the application. Katie Nunez provided an overview of the plans to repurpose the former Rosenwald School as a recreational, cultural and entertainment venue, adding that the building was erected in 1929 and had historical significance, but was not included in the Town’s Historic District. The property owners were pursuing a National Register of Historic Places nomination with the Virginia Department of Historic Resources. The HARB determined that the application was sufficient, complete and compliant with the Harbor District Regulations with the exception of the final landscaping, lighting, signage, and exterior public art/historic displays and recommended that Town Council favorably consider approval for the issuance of a Harbor Development Certificate based upon the application submitted with the condition that the final landscaping, lighting, signage and exterior public art/historic displays plans were still required to be submitted to the Town for final review and approval.

Councilman Grossman asked whether the conditioned items would come back to the board for approval. Ms. Beth Walker, representative of the CCRSRI, approached the podium to answer any questions. Ms. Walker stated that drawings would be completed mid-May and would be submitted to Code Enforcement Officer Jeb Brady for approval. CCRSRI had funds available to begin construction and once they found out about the grant, they could proceed with the electrical, etc. to complete the project.

**Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway to approve the Harbor Development Certificate as presented for the Rosenwald School Project with the condition from the Harbor Area Review Board. The motion was approved by unanimous vote.**

##### **ii. *Cape Charles Marine Services, LLC – Golf Cart Rentals & Sales:***

Katie Nunez stated that an application was received from Cape Charles Marine Services, LLC (the property owner) for Posh, Inc. dba Moke America Virginia Beach (tenant) to lease 640

square feet of the property at 6 Mason Avenue (Tax Map #83A3-A-5A) in the northeast corner to operate a Bicycle, Moped, and Street-Legal Golf Cart Sales and Rentals retail service establishment under 2,500 square feet pursuant to Cape Charles Zoning Ordinance Section 3.9 (D)(7)(b). The intent was to utilize the existing concrete pad in this corner of the property to be covered with an existing canvas tent larger than the size of the pad. The HARB met on April 10, 2023 to review the application, and recommended Town Council approval of a one-year Harbor Development Certificate through April 30, 2024, and to waive the second review meeting, recommending that the tenant attend the Council meeting to speak to Council regarding whether there would be a tent covering the leased space (40' x 16') and concrete pad, and how it would affect the viewshed to the Harbor.

There was much discussion as follows: i) Councilman Follmer stated that the Pearl Market was not zoned by Northampton County as a golf cart operation. Katie Nunez responded that the applicant informed her that he had secured warehousing space at the Oyster Farm Marina area; ii) Councilwoman Holloway asked where the sales were being conducted, and Councilman Follmer asked where the golf carts were being stored. Applicants, William "Smitty" Dize, general manager of Oasis Marinas and property manager, and Mr. Tim Posh, owner of Moke America, approached the podium. Mr. Posh stated his desire to store golf carts at 6 Mason Avenue, adding that a 20'x16' space was available to store 8 to 12 carts; iii) Councilman Grossman asked what would physically be located on the property. Mr. Posh responded that only golf carts would be stored, and all rentals would be done online, adding that all carts had trackers; iv) Council continued to ask questions to get a better understanding of this business and the dynamics of the rental process, the addressing of repairs, and whether an attendant would be onsite; v) Vice Mayor Bennett suggested that since the golf carts were currently being stored at the Oyster Farm Marina, renters should pick them up from that location as well; vi) Councilman Buchholz asked Mr. Posh if he planned to sell golf carts in the Town to which Mr. Posh responded in the negative.

**Motion made by Vice Mayor Bennett, seconded by Councilman Grossman, to approve a one-year Harbor Development Certificate through April 30, 2024 as recommended by the Harbor Area Review Board for the northeast corner of 6 Mason Avenue (Tax Map #83A3-A-5A) for Posh, Inc. dba Moke America Virginia Beach to operate a bicycle, moped, and street-legal golf cart sales and rentals retail service establishment. The motion failed by majority vote with Vice Mayor Bennett, Councilmen Butta and Follmer, and Councilwoman Holloway opposed.**

**B. *Appointment to Wetlands and Coastal Dune Board Members:***

John Hozey stated that three applications were received for three vacant positions on the Wetlands and Coastal Dune Board. The applications were provided to the Mayor and Town Council for review, and it was agreed that with three open positions, and three well-qualified applicants, the appointments would be made without the need for interviews.

**Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to appoint Ms. Patricia James, Ms. Elizabeth Pruitt, and Mr. William Robertson to the Wetlands and Coastal Dune Board. The motion was approved by unanimous vote.**

**C. *Resolution 20230420 – Approval of Amendment #3 to Agreement Between Brown & Root and the Town of Cape Charles Dated March 13, 1990:***

John Hozey stated that as part of the annexation of property into the Town of Cape Charles in 1991, several agreements were entered into by various parties for various purposes. John Hozey began by providing a detailed overview of the annexation agreement. Under consideration this evening was an amendment to one of the sub-agreements under the Annexation Agreement. This agreement was between the developer and the Town, and included language related to the growth of the town and the requirement of additional infrastructure to support the growth. John Hozey explained that this agreement detailed the developer's responsibilities to help with the

cost of the additional infrastructure after the water and wastewater plants reached their capacity. There were two parts to funding the additional infrastructure: i) The Town collected a facility fee from each connection within the Town; ii) The second part was the developer's contribution which had never been defined. Several studies were performed to determine a timeframe when our permanent capacity would be reached, the cost of the infrastructure, and the portion of the lots needing connections belonging to the developer. There were so many assumptions to be made going forward, there were numerous complex calculations involved. A scenario was reviewed where the Town collected facility fees for all undeveloped properties. The cost of the infrastructure was adjusted for inflation. The study revealed that the Fund would not be sufficient to build the necessary infrastructure. The difference between the amount collected from facility fees and the estimated cost of the infrastructure was identified as the developer's contribution. There was another provision in the annexation agreement addressing the sale of the plants, which stated that the developer would be issued a refund on any amounts paid to the Town for expansion. The developer had already paid for the existing infrastructure with the development and transferred ownership to the Town to maintain. In the calculations, the amounts of the facility fees and the amount invested by the developer were deducted from the total cost estimate. That difference needed to be captured. The next step was determination of the number of lots remaining to be developed. After more research, we believe we came up with a reasonable number of lots owned by the developer. By dividing the estimated costs by the number of potential lots, we came up with \$3,000 per lot to be paid by the developer upon sale of the lot. There were a lot of variables that could change the numbers either way, but we had to negotiate in good faith to come up with a fair amount per lot. It was felt that this determination would be beneficial to all parties. The developer would take an unknown liability off their books. The chosen mechanism was that for every sale, \$3,000 would be paid to the Town at the time of closing. This \$3,000 would be shown on the HUD statement at closing. The issuance of any permits on that lot would be contingent upon the Town receiving the \$3,000. The intent of the original agreement was to provide relief to the Town's utility rate payers. By using this method, all the Town's residents would benefit, potentially in the form of property tax relief. If the Town did not make this agreement with the developer prior to the utility sale, Virginia American Water (VAW) would have to negotiate with the developer and any revenue from that negotiation would benefit all VAW's users, not just those in Cape Charles. This would be beneficial to the Town, the developer, current residents and future lot owners. It was a win, win, win all the way around. John Hozey thanked Mr. Bobby Masters and Preserve Communities for sitting down in good faith and working this out. It was a difficult process and he felt that the outcome was the best for everyone.

**Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to adopt Resolution 20230420 Authorizing the Third Amendment to Agreement of March 13, 1990, Related to Annexation. Mayor Charney moved for adoption of Resolution 20230420 of the Governing Body of the Town of Cape Charles as noticed and forwent reading of the Resolution. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz; Butta, yes; Follmer, yes; Grossman, yes; Holloway, yes.**

**D. *Award of Grounds Maintenance Services Contract – Maintenance of Beds, Pots, & Mulching:***

John Hozey stated that an Invitation for Bids for Grounds Maintenance Services was published on March 23, 2023. Browder Hite was the sole bidder. Browder Hite had been the Town's grounds maintenance contractor for the past 15 years and had performed the duties in a professionally responsible and responsive manner. The bid package contained three parts and included watering, pruning, and weeding from April to November. John Hozey described the various areas in the base bid, bid alternate #1 and bid alternate #2, adding that there was also a current contract in place for Central Park. The cost for all areas, including Central Park, would be \$60,795.30 annually.

**Motion made by Councilman Grossman, seconded by Councilman Buchholz, to award the base bid and both alternates of the Grounds Maintenance Service Contract to Browder Hite. The motion was approved by unanimous vote.**

#### **TOWN MANAGER COMMENTS**

John Hozey commented as follows: i) The concerts in the park were coming up and had been enormously popular. The Town was an enthusiastic sponsor. The Citizens for Central Park (CCP) board was looking for assistance and had reached out to Cape Charles Main Street and others to see how they could keep these events going every Saturday night. If we wanted this to continue there would be an additional cost. John Hozey offered his support to assist with hiring a paid event attendant, not a volunteer. CCP found someone they were excited about, and he would like to contribute \$3,000 to CCP for the event organizer. The funds were in his budget, so Council approval was not necessary, but he wanted the Council to be aware of it; ii) We advertised a Request for Proposals for the redevelopment of the library. Proposals needed to be evaluated closely. Typically, he would form a small committee to review the proposals and would like Council represented on this committee. Vice Mayor Bennett volunteered to serve on the committee; iii) The budget work session was scheduled for May 4<sup>th</sup>.

#### **MAYOR AND COUNCIL COMMENTS**

Councilman Grossman commented as follows: i) He saw that the Town was selling a lot on Monroe Avenue, adding that typically Council was notified of the intent to sell. John Hozey stated that this was discussed as part of Option 5 regarding the new municipal building and redevelopment of the library. This property was an L-shaped lot that went around the pump station and apologized if the parcel was not included in that discussion; ii) He saw where we hired a new public works crew member. John Hozey stated that he reported that to the Council last month; iii) He saw an advertisement for a new water plant operator and asked if an employee had left. John Hozey stated that we currently had two part-time employees and were advertising for a potential full-time person; iii) Eastern Shore Community College Rails to Trails survey responses were very positive. The Commonwealth Transportation Board authorized \$4M that would cover the first part of the \$40M project, which included: preliminary engineering to convert the 49 miles to trails; an aerial survey; and scoping documents – one for the Cape Charles segment and another for the remaining 47 miles. This was a positive step toward completion of the project.

Vice Mayor Bennett commented as follows: i) He thanked Councilman Grossman for attending and providing updates for the Board of Supervisors meetings; ii) Councilman Follmer brought up that individuals had to have standing in the Town in order to submit comments. Some of us may have forgotten that and felt this needed to be emphasized and possibly added to the top of the sign-up sheet. This was a Town policy and he wanted to remind everyone that in order to make a public comment, individuals must be residents or business owners in the Town.

Councilman Buchholz brought up the Lemon Tree events, stating that they should not be permitted to closing a street every Friday, which puts a burden on a lot of people by not allowing them to park on that street. Their events should be moved across the street to Strawberry Street Plaza, rather than taking parking away from homeowners. John Hozey stated that he was working on the situation. Councilwoman Holloway noted that Strawberry Street Plaza was built for that purpose and staff needed to remind applicants.

Councilwoman Holloway commented as follows: i) In comment to Ms. Bauer's comment regarding electric vehicle (EV) chargers, she had been thinking about this issue for some time, both as a B&B owner and member of CCMS. She felt that we needed to be running with this whether it was the Town's responsibility or not. She researched information regarding EV chargers and payments, and there were ways to manage charging stations. She knew that Northampton County was looking into this as well. This week, she received phone calls from three residents asking about the potential installation of charging stations. Councilman Grossman stated that ANEC had a grant to install two

EV charging stations in the Town. John Hozey stated that he met with representatives from ANEC this week; ii) Northampton County Grants were due next Monday and quite a few applications were being submitted from entities in Cape Charles.

Mayor Charney thanked John Hozey and Julie Pruitt for locking in a date for Dock Dogs, and he was excited to have the event on Veterans Day weekend in Central Park.

Mayor Charney read the announcements.

**Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to adjourn the Town Council Public Hearing & Regular Meeting. The motion was approved by unanimous vote.**

The Public Hearing & Regular Meeting adjourned at 8:27 p.m.

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Mayor Charney

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Town Clerk

**April 20, 2023 Town Council Public Hearing & Regular Meeting  
Comments and Information Provided in Writing**

*Edward Wells, Cape Charles resident*

Good evening, Town Council, town manager and staff. I would like to congratulate the town's efforts to finally finalize this complex annexation agreement. This has been a long time coming over 30 years. I am not going back in time to criticize or applaud the efforts of the past. The town is at a crossroads to the future, and I realize some sort of final agreement needs to be made. I have to admit I did not read and fully understand the complete history of the previous agreements. I am not sure all town council members have read through the entire history as well. With that being said I am relying on the engineering studies as well as the "reasonable assumptions" that the fee of \$3000.00 per lot is fair. I do however think that "per lot" is not accurate. I think it should be read \$3000.00 per each water and sewer line brought into the dwelling. A single-family dwelling is not the same as multi-family or a duplex. There should be a cost as per each water and sewer line brought into the property. Not as "per lot." Also, will commercial lots cost the same?

Thank you,  
Ed Wells

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*Susan Bauer, Cape Charles property owner and part-time resident*

Dear Council Members:

My husband and I have been part time residents of Cape Charles for the past 17 years. Initially, we owned a home in the historic district. Three years ago, we purchased a condo on Mason Avenue. We split our time between Cape Charles and York, Pennsylvania. We travel to Cape Charles approximately twice per month. Recently, we purchased an electric vehicle (EV). I am writing to urge the Council to work toward the installation of an EV charging station in the town of Cape Charles.

It is estimated by the year 2030 that sales of EV's will reach over 28 million - or one third of all vehicles sold in the U.S. There are, of course, many good reasons for the transition to EV's. Cleaner air, better health, less reliance on fossil fuels and the impact on climate change, are just a few of them. It is not my intention, though, to sell anyone on the benefits of EV's, but rather to express that Cape Charles should recognize that both residents and tourists will need access to EV charging stations.

Traveling the shore in an EV is a challenge. The closest EV charging stations to the north are in Salisbury, Maryland (there are a few stations closer, but they are proprietary to Tesla). Accessing a charging station to the south of Cape Charles involves not only significant distance but means paying a hefty toll to cross the bridge. Our EV has a range of 240 miles. Our trip from York, PA will require us to charge our car in Salisbury, Maryland, and then either drive to Virginia Beach to charge, or leave our car plugged into a regular outlet for approximately 5 days to fully charge. Before purchasing our EV, I had never heard of the term "range anxiety" but upon hearing it, I immediately understood the concept. It means fear of running out of power in your EV before reaching a charging station. Anyone traveling any distance to Cape Charles will no doubt experience range anxiety.

Access to an EV charging station is good for the town. Although charging stations are a significant initial investment, they do generate profit, by charging fees to EV users. Businesses, particularly restaurants and hotels benefit from increased revenue from EV drivers, who would otherwise not travel to the shore because of inaccessibility of chargers. EV chargers add to the appeal of our town. Part of the allure and the charm of our town is the natural beauty of the shore and the abundant wildlife that thrives there. Cape Charles should be a leader in sustainability and environmental responsibility. It should be a goal of the town to maintain the health of the ecosystem of the shore. Cleaner air, less noise and a smaller carbon footprint mean support of our natural surroundings, and the people who choose to drive clean energy vehicles. I hope the Council will make every effort to support this necessary improvement in our town.

Sincerely,  
Susan Bauer





## PROCLAMATION 20230420A

**WHEREAS** in 1872, the Nebraska Board of Agriculture established a special day to be set aside for the planting of trees, and

**WHEREAS** this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

**WHEREAS** Arbor Day is now observed throughout the nation and the world, and

**WHEREAS** trees can be a solution to combating climate change by reducing the erosion of our precious topsoil by wind and water, cutting heating and cooling costs, moderating the temperature, cleaning the air, producing life-giving oxygen, and providing habitat for wildlife, and

**WHEREAS** trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, and

**WHEREAS** trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

**WHEREAS** trees — wherever they are planted — are a source of joy and spiritual renewal.

**NOW, THEREFORE**, be it proclaimed that the Cape Charles Town Council hereby designates April 29, 2023 as Arbor Day in the Town of Cape Charles and urges all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

**FURTHER**, urges all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Adopted by the Town Council of Cape Charles on this 20<sup>th</sup> day of April 2023.

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Mayor Adam Charney

ATTEST:

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Town Clerk



**PROCLAMATION 20230420B**  
**BUILDING SAFETY MONTH — MAY 2023**

**WHEREAS** the Town of Cape Charles is committed to recognizing that our growth and strength depends on the safety and essential role our homes, buildings and infrastructure play, both in everyday life and when disasters strike; and

**WHEREAS** our confidence in the resilience of these buildings that make up our community is achieved through the devotion of vigilant guardians--building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers and others in the construction industry--who work year-round to ensure the safe construction of buildings; and

**WHEREAS** these guardians are dedicated members of the International Code Council, a nonprofit that brings together local, state, territorial, tribal and federal officials who are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work and play; and

**WHEREAS** these modern building codes include safeguards to protect the public from hazards such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquakes; and

**WHEREAS** Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities' largely unknown protectors of public safety--our local code officials--who assure us of safe, sustainable and affordable buildings that are essential to our prosperity; and

**WHEREAS** "It Starts with You," The theme for Building Safety Month 2023, encourages us all to raise awareness about building safety on a personal, local and global scale; and

**WHEREAS** each year, in observance of Building Safety Month, people all over the world are asked to consider the commitment to improve building safety, resilience and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

**NOW, THEREFORE**, the Cape Charles Town Council does hereby proclaim the month of May 2023 as Building Safety Month. Accordingly, citizens are encouraged to join with the community in participation in Building Safety Month activities.

Adopted by the Town Council of Cape Charles on this 20<sup>th</sup> day of April 2023

\_\_\_\_\_  
Mayor Adam Charney

ATTEST:

\_\_\_\_\_  
Town Clerk



**TOWN OF CAPE CHARLES  
PROCLAMATION #20230420C**

**TO RECOGNIZE NATIONAL PEACE OFFICERS' MEMORIAL DAY  
AND NATIONAL POLICE WEEK 2023**

To honor the service and sacrifice of those law enforcement officers killed in the line of duty while protecting our communities and safeguarding our democracy.

**WHEREAS**, in 1962, President John F. Kennedy signed a proclamation which designated May 15 as Peace Officers' Memorial Day and the week in which that date falls as Police Week; and

**WHEREAS**, May 15, 2023 has been designated as National Police Officers' Memorial Day and May 15-21, 2023 as National Police Week; and

**WHEREAS**, there are more than 800,000 sworn law enforcement officers serving in communities across the United States, including the dedicated members of the Town of Cape Charles Police Department; and

**WHEREAS**, the members of the Cape Charles Police Department play an essential role in safeguarding the rights and freedoms of the citizens of the Town of Cape Charles and provide vital public service; and

**WHEREAS**, since the first recorded death in 1786, more than 23,785 law enforcement officers in the United States have made the ultimate sacrifice and have been killed in the line of duty; and

**WHEREAS**, each year, hundreds of names of officers killed in the line of duty are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, DC; and

**WHEREAS**, the National Law Enforcement Officers Memorial Fund will host their 35<sup>th</sup> Candlelight Vigil on May 13, 2023 at 8:00 p.m. and the names of the 224 officers lost during 2022 will be read aloud to memorialize them for making the ultimate sacrifice for their communities; now

**THEREFORE, BE IT PROCLAIMED** that the Cape Charles Town Council formally designates May 15, 2023 as Peace Officers' Memorial Day in honor of all fallen officers and their families and U.S. flags should be flown at half-staff; and

**BE IT FURTHER PROCLAIMED** that the Cape Charles Town Council formally designates May 15-21, 2023 as Police Week in the Town of Cape Charles and publicly salutes the service of law enforcement officers in our community and in communities across the nation.

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Adopted by the Town Council of Cape Charles on this 20<sup>th</sup> day of April 2023.

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Mayor Adam Charney

ATTEST:

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Town Clerk

## **February 2023 Treasurer's Report**

### **Page 1 – Cash Position**

- This sheet was reworked to better reflect the difference between the unassigned cash and generally and specifically assigned cash. Note that the Virginia Investment Pool 1-3 year fund has been added (new.)
- Total long-term debt at the end of February is \$5,325,148.
- The balance in the utility facility fees reserved account is \$2,922,828.

### **Page 2 – Revenue vs. Expenditures**

- No comments.

### **Page 3 – Capital Projects**

- \$282,496 has been paid to HBA for work done on the plans for the Municipal Center and Library projects, and \$723 for an E & S review of the site as of the end of February.
- \$7,622 was expended on the Keck Well project in February.

### **Page 4 – Tax Collection Rate**

- Real property tax collection is at 99.73% of budget and 97% of what was billed.

### **Page 5 – Tax Revenue Trends**

- Sales and Use Tax has decreased 8% from fiscal year to date February 2022.
- Transient Occupancy Tax is 50% greater than last year.
- Meals tax has increased by 16.6%.

**MUNICIPAL CORPORATION OF CAPE CHARLES**  
**TREASURER'S REPORT**  
**February 28, 2023**

| <b><u>Cash on Hand</u></b>                    | <b><u>1/31/2023</u></b> | <b><u>2/28/2023</u></b> | <b><u>Increase/<br/>(Decrease)</u></b> |
|-----------------------------------------------|-------------------------|-------------------------|----------------------------------------|
| Atlantic Union Bank Checking Account          | \$437,484               | \$441,143               | \$3,659                                |
| Atlantic Union Bank Money Market Account      | \$661,664               | \$476,894               | -\$184,770                             |
| LGIP Account 1 - Unrestricted                 | \$106,454               | \$106,838               | \$384                                  |
| LGIP Account 2 - Unrestricted                 | \$308,329               | \$309,550               | \$1,221                                |
| Virginia Investment Pool Liquidity Unassigned | \$2,516,468             | \$2,525,612             | \$9,144                                |
| Virginia Investment Pool 1-3 Year Unassigned  | \$1,000,000             | \$997,724               | -\$2,276                               |
| <b>Total Cash On Hand</b>                     | <b>\$5,030,398</b>      | <b>\$4,857,760</b>      | <b>-\$172,638</b>                      |

| <b><u>Restricted and Reserved Cash Balances</u></b>                       | <b><u>1/31/2023</u></b> | <b><u>2/28/2023</u></b> | <b><u>Increase/<br/>(Decrease)</u></b> |
|---------------------------------------------------------------------------|-------------------------|-------------------------|----------------------------------------|
| Atlantic Union Bank Checking Account - Police Funds                       | \$431                   | \$431                   | \$0                                    |
| LGIP Account 2 - Restricted for USDA loan covenant                        | \$30,033                | \$30,033                | \$0                                    |
| Atlantic Union checking Acct Library CD converted to cash                 | \$11,131                | \$11,131                | \$0                                    |
| Atlantic Union Bank Checking Acct - E-Summons Revenue Rsrvd               | \$10,010                | \$10,250                | \$240                                  |
| US Bank - Reserved per VRA Interest Free Loan Requirements                | \$259,623               | \$260,462               | \$839                                  |
| Wells Fargo 2010 Debt Service pass through account #300                   | \$26,478                | \$2,980                 | -\$23,499                              |
| Wells Fargo 2010 Debt Service pass through account #308                   | \$145,773               | \$858                   | -\$144,916                             |
| Atlantic Union Money Market # ARPA CRF #5847                              | \$885,168               | \$885,508               | \$340                                  |
| Virginia Investment Pool Liquidity Acct#1 Facility Fees Rsrvd (Utilities) | \$2,853,998             | \$2,922,828             | \$68,830                               |
| Virginia Investment Pool Liquidity Acct#2, Surety Bond Escrow Rsrvd       | \$105,612               | \$105,996               | \$384                                  |
| <b>Total Cash Held in Reserve</b>                                         | <b>\$4,328,258</b>      | <b>\$4,230,476</b>      | <b>-\$97,781</b>                       |
| <b>Total Cash - All Accounts</b>                                          | <b>\$9,358,656</b>      | <b>\$9,088,236</b>      | <b>-\$270,419</b>                      |

**DEBT SERVICE**

Net Debt as of Current Reporting Month End  
(Excludes USDA vehicle and equipment loans)

\$5,325,148

MUNICIPAL CORPORATION OF CAPE CHARLES

TREASURER'S REPORT

February 28, 2023

## REVENUE VS. EXPENDITURES

| <u>FUND</u>                       | <u>CURRENT<br/>MONTH</u> | <u>PRIOR<br/>YEAR-TO-DATE</u> | <u>CURRENT<br/>YEAR-TO-DATE</u> | <u>INCREASE/<br/>(DECREASE) YTD</u> | <u>ANNUAL<br/>BUDGET</u> | <u>% REALIZED/<br/>EXPENDED FY23</u> |
|-----------------------------------|--------------------------|-------------------------------|---------------------------------|-------------------------------------|--------------------------|--------------------------------------|
| -                                 |                          |                               |                                 |                                     |                          |                                      |
| REVENUE                           | \$191,943                | \$3,119,936                   | \$3,490,753                     | \$370,817                           | \$4,545,819              | 76.79%                               |
| EXPENDITURES                      | \$203,463                | \$2,012,337                   | \$2,630,224                     | \$617,887                           | \$4,545,819              | 57.86%                               |
| <b>NET</b>                        | <b>(\$11,520)</b>        | <b>\$1,107,599</b>            | <b>\$860,529</b>                | <b>(\$247,070)</b>                  | <b>\$0</b>               |                                      |
| <b>GENERAL Capital</b>            |                          |                               |                                 |                                     |                          |                                      |
| REVENUE                           | \$2,320                  | \$47,100                      | \$430,835                       | \$383,736                           | \$2,213,543              | 19.46%                               |
| EXPENDITURES                      | \$85,936                 | \$36,371                      | \$356,944                       | \$320,573                           | \$2,213,543              | 16.13%                               |
| <b>NET</b>                        | <b>(\$83,616)</b>        | <b>\$10,729</b>               | <b>\$73,892</b>                 | <b>\$63,163</b>                     | <b>\$0</b>               |                                      |
| <b>GENERAL Debt Service</b>       |                          |                               |                                 |                                     |                          |                                      |
| REVENUE                           | \$0                      | \$222,069                     | \$222,440                       | \$371                               | \$249,571                | 89.13%                               |
| EXPENDITURES                      | \$0                      | \$222,069                     | \$222,440                       | \$371                               | \$249,571                | 89.13%                               |
| <b>NET</b>                        | <b>\$0</b>               | <b>\$0</b>                    | <b>\$0</b>                      | <b>\$0</b>                          | <b>\$0</b>               |                                      |
| <b>GENERAL Special Activities</b> |                          |                               |                                 |                                     |                          |                                      |
| REVENUE                           | \$0                      | \$359,480                     | \$576,253                       | \$216,773                           | \$950,727                | 60.61%                               |
| EXPENDITURES                      | \$0                      | \$342,875                     | \$61,460                        | -\$281,415                          | \$950,727                | 6.46%                                |
| <b>NET</b>                        | <b>\$0</b>               | <b>\$16,605</b>               | <b>\$514,793</b>                | <b>\$498,187</b>                    | <b>\$0</b>               |                                      |

## MUNICIPAL CORPORATION OF CAPE CHARLES

## TREASURER'S REPORT

February 28, 2023

## REVENUE VS. EXPENDITURES

| <u>FUND</u>                                         | <u>CURRENT<br/>MONTH</u> | <u>PRIOR<br/>YEAR-TO-DATE</u> | <u>CURRENT<br/>YEAR-TO-DATE</u> | <u>INCREASE/<br/>(DECREASE) YTD</u> | <u>ANNUAL<br/>BUDGET</u> | <u>% REALIZED/<br/>EXPENDED FY23</u> |
|-----------------------------------------------------|--------------------------|-------------------------------|---------------------------------|-------------------------------------|--------------------------|--------------------------------------|
| <b>PUBLIC UTILITIES</b>                             |                          |                               |                                 |                                     |                          |                                      |
| REVENUE - Operating                                 | \$159,914                | \$1,276,942                   | \$1,372,624                     | \$95,682                            | \$2,709,736              | 50.66%                               |
| EXPENDITURES - Operating                            | \$175,745                | \$790,230                     | \$1,392,613                     | \$602,383                           | \$1,692,817              | 82.27%                               |
| <b>NET</b>                                          | <b>(\$15,831)</b>        | <b>\$486,712</b>              | <b>(\$19,988)</b>               | <b>(\$506,701)</b>                  | <b>\$1,016,919</b>       |                                      |
| REVENUE - CAPITAL GRANTS, LOANS                     | \$0                      | \$0                           | \$0                             | \$0                                 | \$0                      | #DIV/0!                              |
| REVENUE - FACILITY FEES                             | \$0                      | \$389,952                     | \$379,014                       | -\$10,938                           | \$466,400                | 81.26%                               |
| EXPENDED - FACIL FEES, CAPITAL<br>PROJECTS,DEBT SVC | \$0                      | \$348,480                     | \$349,011                       | \$530                               | \$1,016,919              | 34.32%                               |
| <b>TOWN CONTRIB. &amp; PENDING GRANTS</b>           | <b>\$0</b>               | <b>\$41,472</b>               | <b>\$30,003</b>                 | <b>(\$11,469)</b>                   | <b>(\$1,016,919)</b>     |                                      |
| <b>HARBOR</b>                                       |                          |                               |                                 |                                     |                          |                                      |
| REVENUE - Operating                                 | \$16,047                 | \$491,409                     | \$601,050                       | \$109,640                           | \$1,042,545              | 57.65%                               |
| EXPENDITURES - Operating                            | \$24,964                 | \$394,691                     | \$529,453                       | \$134,762                           | \$992,438                | 53.35%                               |
| <b>NET</b>                                          | <b>(\$8,917)</b>         | <b>\$96,718</b>               | <b>\$71,597</b>                 | <b>(\$25,121)</b>                   | <b>\$50,107</b>          |                                      |
| REVENUE - GRANTS & LOANS                            | \$0                      | \$30,754                      | \$0                             | -\$30,754                           | \$41,893                 | 0.00%                                |
| TRANSFERRED FM GEN FUND FOR DEBT<br>SERVICE         | \$0                      | \$102,954                     | \$103,499                       | \$546                               | \$104,950                | 98.62%                               |
| EXPENDED - Capital Projects, Debt Svc               | \$0                      | \$143,054                     | \$103,499                       | -\$39,554                           | \$196,950                | 52.55%                               |
| <b>TOWN CONTRIB. &amp; PENDING GRANTS</b>           | <b>\$0</b>               | <b>(\$9,346)</b>              | <b>\$0</b>                      | <b>\$9,346</b>                      | <b>(\$50,107)</b>        |                                      |
| <b>SANITATION</b>                                   |                          |                               |                                 |                                     |                          |                                      |
| REVENUE                                             | \$24,103                 | \$163,257                     | \$188,161                       | \$24,904                            | \$457,258                | 41.15%                               |
| EXPENDITURES                                        | \$23,984                 | \$133,661                     | \$336,200                       | \$202,539                           | \$457,258                | 73.53%                               |
| <b>NET</b>                                          | <b>\$119</b>             | <b>\$29,597</b>               | <b>(\$148,039)</b>              | <b>(\$177,635)</b>                  | <b>\$0</b>               |                                      |

## FY 2023 Capital Improvement Project Tracking Report

As of:  
2/28/2023

|                                                   | FY23<br>Status or Start Date | Percent of<br>Completion | FY23<br>Budgeted    | QTR 1<br>Expended | QTR 2<br>Expended | QTR 3<br>Expended | QTR 4<br>Expended | FY23 YTD<br>Expended | (Over)/Under<br>Budget |
|---------------------------------------------------|------------------------------|--------------------------|---------------------|-------------------|-------------------|-------------------|-------------------|----------------------|------------------------|
| <b><u>General Capital Fund</u></b>                |                              |                          |                     |                   |                   |                   |                   |                      |                        |
| Multi-Use Trails, Phase 3 Construction            | <u>Pending</u>               | 1%                       | \$ 929,922          | \$ 12,070         | \$ -              | \$ 813            | \$ -              | \$ 12,883            | \$ 917,040             |
| Municipal Space Replacement Planning (ARPA)       | <u>In process</u>            | 51%                      | \$ 550,000          | \$ -              | \$ 101,211        | \$ 182,008        | \$ -              | \$ 283,219           | \$ 266,781             |
| Library Upgrade & Condo-ization                   | <u>In process</u>            | 0%                       | \$ 34,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 34,000              |
| Mason Avenue Parking Lot Improvement              | <u>Pending</u>               | 0%                       | \$ 20,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 20,000              |
| Mason Avenue Restroom                             | <u>Pending</u>               | 0%                       | \$ 110,000          | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 110,000             |
| South Beach Restroom Renovation                   | <u>Pending</u>               | 0%                       | \$ 40,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 40,000              |
| Gator for Public Works Staff                      | <u>Pending</u>               | 0%                       | \$ 26,500           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 26,500              |
| Grounds Maintenance Equipment for PW              | <u>In process</u>            | 73%                      | \$ 33,270           | \$ 24,228         | \$ -              | \$ -              | \$ -              | \$ 24,228            | \$ 9,042               |
| Central Park Game Area for Adults (CCP)           | <u>Pending</u>               | 40%                      | \$ 29,000           | \$ -              | \$ 11,614         | \$ -              | \$ -              | \$ 11,614            | \$ 17,386              |
| Storage Facility (3 x conexes + roofing)          | <u>In process</u>            | 0%                       | \$ 20,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 20,000              |
| Capital Project Contingency                       |                              | 0%                       | \$ 75,040           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 75,040              |
| Public Trash Can Replacements, late FY22 project  | <u>completed</u>             | 100%                     | \$ 25,000           | \$ 25,000         | \$ -              | \$ -              | \$ -              | \$ 25,000            | \$ -                   |
| <b>subtotal</b>                                   | <b>\$ -</b>                  |                          | <b>\$ 1,892,732</b> | <b>\$ 61,298</b>  | <b>\$ 112,825</b> | <b>\$ 182,820</b> | <b>\$ -</b>       | <b>\$ 356,944</b>    | <b>\$ 1,535,788</b>    |
| <b><u>Utility Fund -Water</u></b>                 |                              |                          |                     |                   |                   |                   |                   |                      |                        |
| Keck Well Connection (Engineering)                | <u>Pending</u>               | 70%                      | \$ 60,000           | \$ 2,286          | \$ 32,010         | \$ 7,622          | \$ -              | \$ 41,918            | \$ 18,082              |
| <b><u>Utility Fund - Wastewater</u></b>           |                              |                          |                     |                   |                   |                   |                   |                      |                        |
| Sewer Pod Controller Upgrades Phase 2 of 5        | <u>Pending</u>               | 0%                       | \$ 14,500           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 14,500              |
| <b>subtotal</b>                                   | <b>\$ -</b>                  |                          | <b>\$ 74,500</b>    | <b>\$ 2,286</b>   | <b>\$ 32,010</b>  | <b>\$ 7,622</b>   | <b>\$ -</b>       | <b>\$ 41,918</b>     | <b>\$ 32,582</b>       |
| <b><u>Harbor Fund</u></b>                         |                              |                          |                     |                   |                   |                   |                   |                      |                        |
| Fuel System-Relocate Emergency Stop Switches      | <u>Pending</u>               | 0%                       | \$ 10,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 10,000              |
| Fuel Management System Replacement                | <u>Pending</u>               | 0%                       | \$ 42,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 42,000              |
| Inner Harbor King Pile & Waler Replacement Design | <u>Pending</u>               | 0%                       | \$ 40,000           | \$ -              | \$ -              | \$ -              | \$ -              | \$ -                 | \$ 40,000              |
| <b>subtotal</b>                                   | <b>\$ -</b>                  |                          | <b>\$ 92,000</b>    | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ -</b>          | <b>\$ 92,000</b>       |
| <b>TOTAL</b>                                      | <b>\$ -</b>                  |                          | <b>\$ 2,059,232</b> | <b>\$ 63,585</b>  | <b>\$ 144,835</b> | <b>\$ 190,442</b> | <b>\$ -</b>       | <b>\$ 398,862</b>    | <b>\$ 1,660,370</b>    |

\*ITEMS WITH CURRENT MONTH ACTIVITY ARE IN BOLD PRINT



**MUNICIPAL CORPORATION OF CAPE CHARLES**

**February 28, 2023**

**YTD 2022 Real Estate Tax Collections**

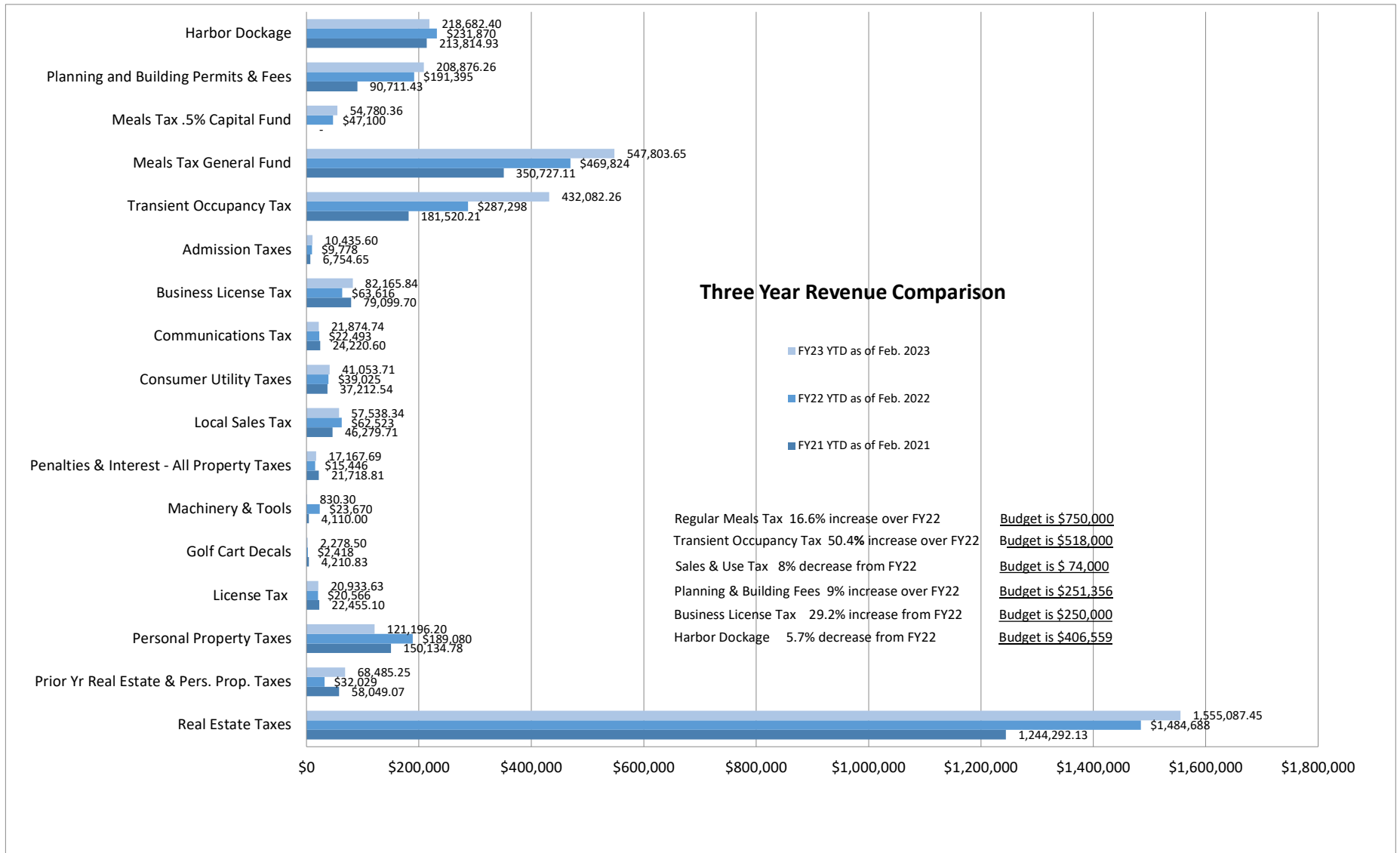
|                                           |                    |     |
|-------------------------------------------|--------------------|-----|
| Total Taxable Land Value                  | 302,643,900        |     |
| Total Improvement Value                   | 447,005,000        |     |
| Exemptions                                | (9,455,398)        |     |
| Additional Assessments (SCC Utility)      | 4,074,010          |     |
| <b>Total Real Estate Value (taxable)</b>  | <b>744,267,512</b> |     |
| <br>Total Budgeted                        | <br>1,559,242      |     |
| Total Tax Billed                          | 1,606,830          |     |
| Total Adjustments                         | (149)              |     |
| Total Collected YTD (percent of billed)   | <u>1,555,087</u>   | 97% |
| <b>Amount Due per Accounts Receivable</b> | <b>51,594</b>      |     |

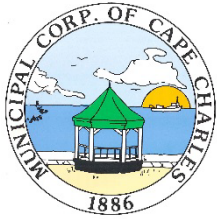
**YTD 2022 Personal Property Tax, Machinery and Tools Tax & 2021 License Tax Collections**

|                                                     |                   |     |
|-----------------------------------------------------|-------------------|-----|
| Total Personal Property Value                       | 23,243,305        |     |
| 2022 Reduction Due to Proration                     | (879,146)         |     |
| Personal Property Billable Valuation                | 22,364,159        |     |
| 2022 PPTRA Valuation Reduction                      | (9,568,117)       |     |
| <br>2022 Supplemental Assessments                   | <br>-             |     |
| 2022 Supplemental PPTRA & Exonerations              | -                 |     |
| Personal Property Value, billed                     | -                 |     |
| <b>Total Value for 2022 &amp; 2022 Supplemental</b> | <b>22,364,159</b> |     |
| <br>Total Budgeted                                  | <br>140,000       |     |
| Total Tax Billed less PPTRA                         | 204,003           |     |
| 2022 Supplemental Tax Billing                       | -                 |     |
| Total Adjustments & Additional Exonerations         | 7,162             |     |
| Total Collected YTD (percent of billed)             | <u>142,960</u>    | 68% |
| <b>Amount Due per Accounts Receivable</b>           | <b>53,880</b>     |     |

**YTD Prior Year Real Estate Tax, Personal Property Tax, Interest and Penalty Collections**

|                                     |                |      |
|-------------------------------------|----------------|------|
| Total Budgeted                      | 76,462         |      |
| Total Collected (percent of budget) | <u>85,653</u>  | 112% |
| <b>Amount Due Per Budget</b>        | <b>(9,191)</b> |      |





*Municipal Corp. of  
Cape Charles*

The undersigned Clerk of the Council of the Town of Cape Charles, Virginia (the “Town”), hereby certifies that:

1. A meeting of the Council of the Town (the “Council”) was duly called and held on April 20, 2023 (the “Meeting”).
2. Attached hereto is a true, correct and complete copy of Resolution 20230420 (the “Resolution”) of the Town entitled as recorded in full in the minutes of the Meeting, duly adopted by a majority of the members of the Council present and voting during the Meeting.
3. A summary of the members of the Council participating at the Meeting and the recorded vote with respect to the foregoing Resolution as set forth below:

| <u>Member Name</u>  | <u>Present</u> | <u>Absent</u> | <u>Voting</u> |           |                   |
|---------------------|----------------|---------------|---------------|-----------|-------------------|
|                     |                |               | <u>Yes</u>    | <u>No</u> | <u>Abstaining</u> |
| Adam Charney, Mayor | X              |               |               |           |                   |
| Steve Bennett       | X              |               | X             |           |                   |
| Andy Buchholz       | X              |               | X             |           |                   |
| Ken Butta           | X              |               | X             |           |                   |
| Andrew Follmer      | X              |               | X             |           |                   |
| Paul Grossman       | X              |               | X             |           |                   |
| Tammy Holloway      | X              |               | X             |           |                   |

4. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

Witness my signature and the seal of the Town of Cape Charles, Virginia this 20<sup>th</sup> day of April 2023.

---

Clerk of the Council  
Town of Cape Charles, Virginia

(Seal)

**TOWN OF CAPE CHARLES, VIRGINIA**

**RESOLUTION 20230420**

**AUTHORIZATION OF THIRD AMENDMENT TO AGREEMENT  
OF MARCH 13, 1990, RELATED TO ANNEXATION**

**WHEREAS**, Brown & Root I, Inc. (“Brown and Root”), entered into an Agreement dated March 13, 1990, in contemplation of the annexation of certain property owned by Brown & Root (the “Agreement”); and

**WHEREAS**, Brown & Root and the Town agreed on a first amendment of the Agreement on November 25, 1991 (the “First Amendment to Agreement”); and

**WHEREAS**, the property was annexed by the Town; and

**WHEREAS**, Brown & Root and the Town agreed on a second amendment of the Agreement on July 14, 1992 (the “Second Amendment to Agreement”); and

**WHEREAS**, Bay Creek South, LLC, Bay Creek Development, LLC and Bay Creek Resort, LLC (collectively the “Developer”) are successors in interest to Bay Creek LLC which was a successor in interest to Brown & Root; and

**WHEREAS**, the Town has previously expended funds to upgrade its water and wastewater facilities, including the water and wastewater plants (the “Facilities”), and further upgrades to increase capacity and comply with laws and regulations will be required; and

**WHEREAS**, the Town is in the process of entering into a franchise with the Virginia-American Water Company to operate the Town’s water and wastewater Facilities (the “Franchise Agreement”); and

**WHEREAS**, the Parties have been working cooperatively to comply with the Agreement, as amended; and

**WHEREAS**, the Parties desire to further amend the Agreement to account for changed circumstances; and

**WHEREAS**, the Town held a public hearing regarding the proposed Third Amendment to Agreement;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council hereby finds that it is in the public interest to enter the Third Amendment to Agreement;

**BE IT FURTHER RESOLVED** that the Town Council hereby authorizes Town Manager to enter into the Third Amendment to Agreement with the Developer, in substantial conformance with the draft attached hereto as Exhibit A, and

**BE IT FURTHER RESOLVED** that the Town Council hereby authorizes the Town Manager, or his designee, to execute such documents that are necessary to affect the intent of the Resolution and institute procedures as necessary to implement the terms of the Third Amendment to Agreement.

Adopted this 20<sup>th</sup> day of April 2023

TOWN OF CAPE CHARLES

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

ATTEST:

\_\_\_\_\_  
Town Clerk

ATTACHMENT: Exhibit A, Third Amendment to Agreement

### **THIRD AMENDMENT TO AGREEMENT OF MARCH 13, 1990**

**THIS THIRD AMENDMENT TO AGREEMENT** is made this 21<sup>st</sup> day of April 2023, by and between Bay Creek South, LLC, Bay Creek Development, LLC and Bay Creek Resort, LLC (collectively the "Developer"), and the Town of Cape Charles (the "Town") (jointly the "Parties").

**WHEREAS**, Brown & Root I, Inc. ("Brown and Root"), entered into an Agreement dated March 13, 1990, in contemplation of the annexation of certain property owned by Brown & Root (the "Agreement");

**WHEREAS**, Brown & Root and the Town agreed on a first amendment of the Agreement on November 25, 1991 (the "First Amendment to Agreement");

**WHEREAS**, the property was annexed by the Town;

**WHEREAS**, Brown & Root and the Town agreed on a second amendment of the Agreement on July 14, 1992 (the "Second Amendment to Agreement");

**WHEREAS**, Bay Creek South, LLC, Bay Creek Development, LLC and Bay Creek Resort, LLC are successors in interest to Baycreek LLC which was a successor in interest to Brown & Root;

**WHEREAS**, the Town has previously expended funds to upgrade its water and wastewater facilities, including the water and wastewater plants (the "Facilities"), and further upgrades to increase capacity and comply with laws and regulations will be required;

**WHEREAS**, the Town is in the process of entering into a franchise with the Virginia-American Water Company to operate the Town's water and wastewater Facilities (the "Franchise Agreement");

**WHEREAS**, the Parties have been working cooperatively to comply with the Agreement, as amended;

**WHEREAS**, the Parties desire to further amend the Agreement to account for changed circumstances;

**WHEREAS**, the Town finds that it is in the public interest to enter this Third Amendment to Agreement;

**WHEREAS**, the Town Council approved this Third Amendment to Agreement by Resolution dated April 20, 2023;

**WHEREAS**, the Town Council authorized the Town Manager to enter into this Third Amendment to Agreement, and to adopt and institute procedures as necessary to implement the terms of the Third Amendment to Agreement;

**THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual promises and recitals contained herein which form a part hereof, the Parties agree to amend and modify the provisions of the Agreement and First Amendment to Agreement as follows:

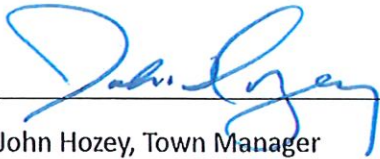
1. Paragraph 10 of the Agreement is further amended by adding paragraph 10 (e):  
e. In satisfaction of its obligations under paragraph 10 related to expansions and improvements to the Town's Facilities, when the Franchise Agreement goes into effect and utilities are charged at standard tariff rates approved by the Virginia State Corporation Commission (the "Tariff"), the Developer shall also pay a municipal impact fee to the Town as each lot owned by the Developer is conveyed to a third party. The impact fee shall be \$3000 per lot. The fee will be disbursed to the Town at the conveyance of each lot to a third-party, and payment of the fee will be a condition precedent to granting a building permit for the lot.
2. So long as the Tariff is in effect, compliance with the Tariff and the payment of the impact fees will satisfy the remaining obligations of the Developer to the Town for expansions and improvements to the Town's Facilities under paragraph 10 of the Agreement as previously and herein amended. Notwithstanding the forgoing, Developer will continue to be responsible to construct the necessary physical improvements within its property to accommodate the water and sewer services and to dedicate such improvements to the Town or its successors.
3. The Parties further agree that the provision of water and wastewater services through the Franchise Agreement fulfills the Town's obligations under paragraph 10 of the Agreement, as previously and herein amended.
4. Except as modified herein all the other terms and conditions of the Agreement, First Amendment of Agreement, and Second Amendment of Agreement, are ratified, and incorporated herein by reference.
5. This amendment becomes effective when the Franchise Agreement goes into effect.

**IN WITNESS HEREOF**, and intending to be legal bound hereby, the Parties have signed this Third Amendment to Agreement under seal effective the day and year first above written, and that it may be executed in one or more counterparts, each of which shall be deemed to be an original.

[Signatures on following pages]

THE TOWN OF CAPE CHARLES, a Virginia municipal corporation

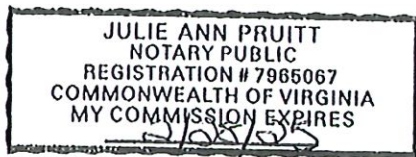
By:

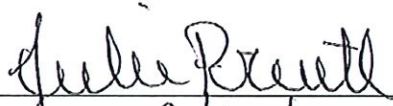
  
John Hozey, Town Manager

4/21/23  
Date

COMMONWEALTH OF VIRGINIA           )  
\_\_\_\_\_) SS  
COUNTY OF NORTHAMPTON           )

On this 21<sup>st</sup> day of April 2023, before me, the undersigned Notary Public, personally appeared John Hozey, Town Manager of the Town of Cape Charles, a Virginia Municipal Corporation and known to be an authorized agent of the Town that executed the foregoing Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the Town, by authority of a Resolution passed by the Town Council, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement in fact executed the Agreement on behalf of the Town.



Notary Public   
My Commission Expires 2/28/25  
Registration Number 7965067

Bay Creek South, LLC, a Virginia Limited Liability Company

By: Robert F. Masters

4/25/23

Date

Name: Robert F. Masters

Title: President / Manager

COMMONWEALTH OF Virginia )

\_\_\_\_\_ ) SS

COUNTY OF NORTHAMPTON )

On this 25 day of April, 2023, before me, the undersigned Notary Public, personally appeared Robert F. Masters president of the Bay Creek South, LLC, a Virginia Limited Liability Company and known to be an authorized agent of the company that executed the foregoing Agreement, and acknowledged the Agreement to be the free and voluntary act and deed of the company, by authority of its Articles and Bylaws or Operating Agreement as applicable, for the uses and purposes therein mentioned, and on oath stated that he or he is authorized to execute this Agreement in fact executed the Agreement for the company.



Notary Public

[Signature]

My Commission Expires

10/31/2026

Registration Number

7612661



Bay Creek Development, LLC, a Virginia Limited Liability Company

By: Robert F. Masters

4/25/23  
Date

Name: Robert F. Masters  
Title: President/Manager

COMMONWEALTH OF Virginia )  
\_\_\_\_\_) SS  
COUNTY OF NORTHAMPTON )

On this 25 day of April, 2023, before me, the undersigned Notary Public, personally appeared Robert F. Masters President of the Bay Creek Development, LLC, a Virginia Limited Liability Company, and known to be an authorized agent of the company that executed the foregoing Agreement, and acknowledged the Agreement to be the free and voluntary act and deed of the company, by authority of its Articles and Bylaws or Operating Agreement as applicable, for the uses and purposes therein mentioned, and on oath stated that he or he is authorized to execute this Agreement in fact executed the Agreement for the company.



Notary Public Shan'Telle Latrease Stratton  
My Commission Expires 10/31/2026  
Registration Number 7612661

Bay Creek Resort, LLC, a Virginia Limited Liability Company

By: Robert F. Masters

7/25/23

Date

Name: Robert F. Masters

Title: President / Manager

COMMONWEALTH OF Virginia )

\_\_\_\_\_ ) SS

COUNTY OF NORTHAMPTON )

On this 25 day of April, 2023, before me, the undersigned Notary Public, personally appeared Robert F. Masters President of the Bay Creek Resort, LLC, a Virginia Limited Liability Company, and known to be an authorized agent of the company that executed the foregoing Agreement, and acknowledged the Agreement to be the free and voluntary act and deed of the company, by authority of its Articles and Bylaws or Operating Agreement as applicable, for the uses and purposes therein mentioned, and on oath stated that he or he is authorized to execute this Agreement in fact executed the Agreement for the company.



Notary Public Shantelle Latrease Stratton  
My Commission Expires 10/31/2026  
Registration Number 7612661