



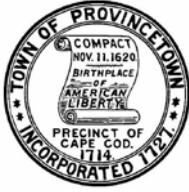
Board of Selectmen

Meeting Agenda

The Provincetown Board of Selectmen will hold a public meeting on Monday, June 08, 2015, at 5:00 p.m. in the Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.

1. Discussion and drafting of new Provincetown Public Pier Corp. contract/lease agreement. Votes may be taken.
2. Other – Other matters that may legally come before the committee not known at the time of posting. Votes may be taken.

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Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, June 08, 2015

1

PROVINCETOWN PUBLIC PIER CORP

Drafting of Contract/Lease Agreement

Requested by: Board of Selectmen

Action Sought: Discussion

Proposed Motion(s)

Discussion dependent – votes may be taken.

Additional Information

See attached Memo of Understanding and Draft of Agreement for provision of Harbormaster and Other Marine-Related Services.

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

SUMMARY OF TOWN – PIER CORP AGREEMENTS

AS OF JUNE 02, 2015

(Based on HM Agreement Draft 5 and MoU Draft 6)

- The Act and Lease remain unchanged. We've attempted to clarify how the existing agreements should be implemented and how we should work together toward common goals.
- We have rewritten the Harbormaster Services contract to replace the expired "Management Agreement"
 - We have limited the scope of the contract to the Harbormaster and harbor management functions.
 - We have intentionally separated the management of the pier from the functions of the Harbormaster's Office.
- We have developed a Memorandum of Understanding focused on pier management. This agreement should clarify how we want to implement the terms of the Act and Lease.

WHAT'S NEW? WHAT'S CHANGED IN THE HARBORMASTER SERVICES CONTRACT?

- We identify the primary rationale for having the Town contract the Harbormaster function and management of the Marine Department to Pier Corporation as being the operating synergies gained by combining the pier and harbor management activities. Specifically,
 - Financial benefits to the Town – reduced cost of having a Harbormaster/Marine Department (\$195,000 vs \$225-250,000)
 - Financial benefits to Pier Corporation -- \$195,000 additional revenues plus sharing of full time personnel across two functions (pier and harbor management)
 - Financial benefits to Pier tenants – revenues provided by Town under the terms of contract help maintain the pier. These are funds we do not need to raise from the rents we charge tenants of the pier.
- We outline a "scope of services" and outline the job description of the Harbormaster and duties Marine Department staff. The "scope" and "duties" are pretty much the same as what we have been doing the last several years. What's new is that they are now clearly spelled out.
- We fix the cost of the contract at \$195,000. The cost can be review annually and changed as needed. The mechanisms for amending the contract cost are outlined.

- We set the term of the HM agreement at three years vs five year. One year is too short – we have to rework the agreement every year. (Do we really want to go through this process every year?) Five years is too long.
- We agreed that the Town Manager shall be responsible for the day-to-day supervision of the Harbormaster in performing the duties outlined in the contract.
- We provide a mechanism for resolving conflicts that may arise from one person having two bosses. (Harbormaster reports to the Town Manager and the Pier Manager reports to the Chair of Pier Corp)
- We have agreed that Pier Corp will work with the Harbor Committee to recommend periodic changes in mooring fees and receive 25% of any increase in revenues above a benchmark amount. (FY 2015 collections?)
- We set up an annual meeting in November between BoS and Pier Corp to discuss performance under terms of the contract and for the HM to present his proposal for the Marine Department 295 Budget.

WHAT'S NEW? WHAT'S CHANGED IN THE MoU?

- The Mou is focused on clarifying and amplifying three things
 - Mission of Pier Corp
 - Governance by the Town
 - Financial Relationship between Pier Corp and the Town
- **Mission.** We have spelled out what the Town expects of Pier Corp and clarified how Pier Corp should go about the operations of the pier. Specifically,
 - Run it like a business
 - Maintain the pier from the revenues of the pier – those who use the pier should maintain the pier
 - Rely on the town's taxpayers only as last resort or in the event of an emergency
 - Maintenance standard is clarified for the first time
 - Support for the fishing industry clarified and quantified, and other economic development objectives are outlined
 - High levels of transparency required always
- **Governance.** We make no changes to the basic governance mechanisms provided by the Act and Lease, but we outline changes in practices in five areas:

- Improved communication and more frequent interactions
 - Reporting in digestible chunks of information
 - Two formal meetings per year with BoS (May and September)
 - One formal meeting with FinCom (February)
 - Greater involvement of Town in Pier Corp maintenance planning, priorities and budgets.
 - Integration of Pier Corp and Town maintenance planning processes with Town taking control of all capital items (major refurbishments, asset replacements and additions) via the CIP process. Details of exactly how this will work are yet to be fully developed.
 - Improvements in financial control and transaction processing
 - Pier Corp to move to calendar year with audited statement provided on FY basis to meet town requirements
 - Documented transaction processes to eliminate “discrepancies” in the future
 - Improvements in operational and financial reporting – a Pier Corp Annual Report to the Town
- **The Financial Relationship.** The changes in this area are intended to align incentives between Pier Corp and the Town and to put the relationship on a more economically rational / commercially sound basis.
 - Beginning in FY 2017 (or sooner if possible) the Selectmen will abate the rent to compensate Pier Corp for subsidies paid to the fishing industry. (This eliminates the need for the infamously incomprehensible “Proforma”.)
 - Passenger Embarkation Fees to be passed to Pier Corp via an annual appropriation approved by Town Meeting.
 - Clarified the division of responsibility. Town to assume control of “capital items” – e.g. major asset refurbishments, asset replacement and addition of new assets. Pier Corp to maintain all assets in place in “fully operational” condition 24/7/365
 - Pier Corp Maintenance Reserve (retained earnings) to target \$500,000 fund, with an annual contribution of \$50,000 until reserve is fully funded. Purpose of these retained earnings is to smooth year-to-year profitability by drawing on the reserve when emergency repairs are necessary but not in the annual budget.
 - Allocates any Pier Corp “operating surplus” (defined as revenues minus all costs) as follows:
 - First \$50,000 will be set aside in the Maintenance Reserve
 - Next, we will fund acquisition of new Pier Corp assets (things we need to do our job)
 - Any residual can be passed to the Town to fund its pier-related CIP projects or retained by Pier Corp as mutually agreed between Pier Corp and BoS

Financial Implications of the Agreements

- Rent abatement reduces Town revenues by \$120,000 reduces Pier Corp costs by like amount
 - Rationale: compensates Pier Corp for past and future subsidies to fishing industry
- Pass through of Passenger Ferry Embarkation Fees reduce town revenues by ~ \$35,000 increases Pier Corp revenues by like amount
 - Rationale: Law authorizing Town to collect the fee called for proceeds to be used to offset costs associated with operating and maintaining ferry landings, which up until now have been borne solely by Pier Corp
- In future years, Pier Corp to get 25% of any increase in mooring fees approved by BoS and collected from permit holders
 - Rationale: Incentivizes Pier Corp to maximize total receipts to the Town for mooring permits

**Memorandum of Understanding
Regarding the Management, Operations and Maintenance
of MacMillan Pier**

1 **Purpose of the Memorandum.** This memorandum reflects understandings and agreements reached by
2 the Town of Provincetown (hereinafter referred to as the “Town”), acting by and through its Board of
3 Selectmen and Town Manager, and the Provincetown Public Pier Corporation (hereinafter referred to as
4 “Pier Corporation”), acting by and through its Board of Directors regarding the management, operation
5 and maintenance of MacMillan Pier.
6

7 In accordance with the requirements of Chapter 13 of the Acts of 2000 (as amended, hereinafter
8 referred to as the “Act”) the Town and the Pier Corporation entered into a twenty year lease on March
9 29, 2005, (hereinafter referred to as the “Lease”) that provides that the Pier Corporation manages,
10 operates and maintains MacMillan Pier on behalf of the Town. Both the Act and the Lease outline the
11 general responsibilities and authorities of the Town and Pier Corporation with regard to the Pier. Our
12 collective experience in the years since signing of the Lease indicates that amplification and clarification
13 of key elements of Pier Corporation’s stewardship of the Pier and the Board of Selectmen’s supervision
14 of Pier Corporation would be helpful to both parties.
15

16 The purpose of this memorandum is to provide needed clarification as well as to specify certain
17 processes by which the Town and Pier Corporation can pursue their responsibilities and mutual
18 interests. In addition, the memorandum spells out the Town’s expectations of the Pier Corporation in
19 key areas of its management of an iconic and economically vital asset of the Town.
20

21 **Mission of Pier Corporation.** The Town expects the following of the Pier Corporation:

- 22 • The pier should be managed in a business-like fashion. The directors and management of the
23 Pier Corporation are expected to use good commercial judgement in their decisions regarding
24 the generation of revenue, the deployment of financial and human resources, and the
25 protection of assets. They are to exercise prudence in assuming and managing risk.
26
- 27 • To the fullest extent possible, the Pier Corporation should maintain and operate the pier from
28 the revenues of the pier. The directors should strive to ensure that the pier is economically self-
29 sufficient and that those entities that operate for-profit businesses on the pier pay their full and
30 fair share of the costs of operation and maintenance. Taxpayers of the town should be called
31 upon to fund routine operations and maintenance of the pier only as a last resort.
32
- 33 • In addition to providing for the routine maintenance of the pier, pier revenues should also fund
34 a maintenance reserve to be used for emergency repairs due to storm damage, accidents or
35 other unforeseeable events. The primary purpose of these retained earnings is to enable rapid
36 repair of key elements of the infrastructure so as to maintain, to the fullest extent possible, the
37 continuity of operations of tenants of the pier.
38
- 39 • The pier should be operated and maintained to a standard that ensures:
 - 40 ○ safe access to the pier by the general public and tenants of the pier,
 - 41 ○ the structural integrity and functionality of the pier and related structures, and
 - 42 ○ the optimization the useful life of core elements of the pier infrastructure.
- 43
- 44 • Pier Corporation should support the local fishing industry, with special emphasis on
45 Provincetown-based vessels. Any subsidies provided to the fishing industry should be quantified
46 and reported annually to the Selectmen.
47

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- 48 • The Corporation shall attempt to expand its customer base and shall assist in the economic
49 development of the town by supporting the development and growth of marine excursion
50 industries, maritime transportation, tourism, commercial fishing, mariculture, recreational
51 boating and other marine-related activities.
- 52
- 53 • The Corporation should conduct its operations in a fully transparent manner consistent with
54 federal and state law, the Town Charter and other local regulations.
- 55

56 **Governance Structure.** The authorities and responsibilities of Pier Corporation directors are outlined in
57 the Act and the Lease. We believe the authorities granted by these governing documents are adequate
58 for the Pier Corporation directors to effectively discharge their duties.

59

60 The Town also has responsibilities and authorities under the Act, which principally involve the oversight
61 of the activities of the Pier Corporation. Key elements of the governance structure enabling the Town to
62 supervise and control the actions of the Pier Corporation are the following:

- 63
- 64 • The Selectmen appoint the Directors of Pier Corporation and have power remove them for
65 cause.
- 66
- 67 • The Selectmen and Town Manager have power to initiate the process by which Pier Corporation
68 is dissolved.
- 69
- 70 • Prior approval by the Board of Selectmen and/or Town Meeting is required for large
71 expenditures and capital transactions by Pier Corporation.
- 72
- 73 • Town government holds Pier Corporation funds, bank accounts and reviews all financial
74 transactions with third parties.
- 75
- 76 • The Act requires annual independent audits of Pier Corporation financial statements.
- 77
- 78 • Selectmen have total control over terms of the Lease.
- 79
- 80 • Requirements for financial reporting and public disclosure ensure transparency of Pier
81 Corporation operations and finances.
- 82

83 We have agreed that no changes are required in the overall governance structure outlined in the Act
84 and Lease. Rather, we believe that certain changes in the governance processes and methods are
85 appropriate in light of past operating experience. These modifications to past practices are premised on
86 the belief that a partnership exists between the Town and Pier Corporation that is based on mutual
87 goals, objectives and interests. This partnership was implied in Section C of the Lease where it states:

88

89 *“...There exists a unique relationship between Landlord (the Town) and Tenant (Pier
90 Corporation), whose interests, by statute (and) by using simple common sense, are directly
91 aligned.”*

92

93 Changes in governance practice have been agreed in five areas:

- 94 A. The need for improved communications and more frequent formal interactions between the
95 Town and Pier Corporation
- 96 B. Greater involvement of town government in maintenance planning and budgeting
- 97 C. Integration of Pier Corporation maintenance and asset management planning with the Town’s
98 CIP processes

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June 2015**

- 99 D. Improvements in financial control and transaction processing
100 E. Improvements in operational and financial reporting
101

102 **A. *Improved Communications and Regular Formal Interactions.***
103

- 104 1. We have agreed that the Board of Selectmen and the Directors of Pier Corporation should meet
105 in formal joint sessions at least twice times a year, in May and September, for review of Pier
106 Corporation performance and future plans relative to operations and maintenance of the pier.
107
- 108 • The agenda of the first joint meeting in May will focus on a review of Pier Corporation’s
109 financial statements and the operating results of the prior year ended December 31st, and
110 on the maintenance plan and budgets for the current year. This meeting will also review the
111 status of the Maintenance Reserves and any other issues related to Pier Corporations
112 operational planning for the summer season just ahead.
113
 - 114 • The agenda of the September joint meeting will focus on reporting of operations and events
115 of the prior summer season. At this meeting Pier Corporation will present its forecasts of
116 the financial results for the year ending in December, and present for review a preliminary
117 forecast of revenues and costs for the operating year beginning in January. Another key
118 aspect of this meeting will be an in-depth review of Pier Corporation’s long range (3-5 year)
119 Facilities Maintenance Plan. The objective of this review is to align Pier Corporation’s
120 maintenance activities and plans with the Town’s CIP program for pier-related capital
121 projects, and major asset replacement or refurbishment programs. Finally, at this meeting
122 plans for pier maintenance operations for the operating year beginning on January 1st will
123 also be reviewed.

124 **(NOTE: the Third meeting in November is now required by the HM Agreement.**

- 125 2. In recent years the Board of Selectmen has appointed one of their members to act as the liaison
126 to Pier Corporation. We agree that this practice should continue and that it be viewed as a
127 relatively “long term” assignment so that the person acting as liaison can become familiar with
128 Pier Corporations operations, accounts, business practices, customer segments and the
129 challenges and issues that are coming before the Pier Corporation board.
130
- 131 3. We have agreed that from time-to-time informal “round table” discussions should be held to
132 discuss major issues and the strategy of Pier Corporation for dealing with them. These meetings
133 could focus on specific topics of concern and importance to either the Town or the Pier
134 Corporation and provide guidance to Pier Corporation in setting priorities and in developing
135 plans.
136
- 137 4. **We have agreed that the Pier Corporation should meet annually with the Town’s Finance
138 Committee in February (or at another mutually convenient time). This meeting is intended to
139 give the Finance Committee an opportunity to review the Harbormasters 295 Budget for the
140 coming fiscal year, the Pier Corporation’s financial and operating performance for its prior
141 financial year, and its budgets for the current financial year.**
142

143 **B. *Town Involvement in Pier Corporation’s Maintenance Planning and Budgeting.***
144

- 145 1. MacMillan Pier is of significant economic and cultural importance to the Town. It is vital to the
146 Town’s economic wellbeing in that it supports key elements of the local economy, specifically
147 tourism and, to a lesser extent, the fishing industry. The pier serves as a major transportation

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148 hub and is one of the gateways to the Town.

149
150 It is critically important to the Town, its citizens and to the businesses that operate from the pier
151 that it be kept in a fully operational and functional condition at all times. Effective maintenance
152 programs and capabilities, and in particular preventative maintenance, is vital in this regard.

153
154 Overall, the Pier Corporation has done an excellent job of maintaining this Town asset. But as
155 the pier ages, the costs of maintenance will escalate and we must be certain that our spending
156 has been appropriately directed and prioritized. To that end, we have agreed that it would be
157 appropriate for the Town to increase its involvement in the planning and budgeting of future
158 pier maintenance activities. We have agreed that the Pier Corporation staff will review the
159 annual engineer's reports on the facility with the Director or the Deputy Director of Public
160 Works Department and consult them on the long range planning and budgeting of maintenance
161 activities on the pier.

162
163 **C. *Integration of Maintenance and Asset Management with Town's CIP Processes.***

164
165 Pier Corporation employs a process for maintenance planning and asset refurbishment /
166 replacement that is based on the Town's CIP process. We have agreed to align Pier Corporation
167 and Town long range facilities planning processes. The agreed division of responsibilities and
168 processes to be employed are outlined in Appendix A in this memorandum.

169
170 **D. *Improved Financial Accounting, Control and Transaction Processing.***

171
172 The Pier Corporation is required by the Act to maintain records and accounts of its financial
173 activities. The nature of Pier Corporation's business is not conducive to reporting its financial
174 activities using the Town's fiscal year (01 Jul – 30 Jun) because the start and end of the town's
175 fiscal year falls in the middle of Pier Corporation's normal business cycle. Pier Corporation
176 revenues and costs are best understood and evaluated, and comparisons from year-to-year are
177 facilitated when Pier Corporation financial results are reported on a calendar year basis (Jan 01-
178 Dec 31).

179
180 We have agreed that henceforth, Pier Corporation will use a calendar year accounting for its
181 internal management controls and budgeting and for report financial results. In addition, Pier
182 Corporation will provide the Town with audited financial statements using the Town's fiscal year
183 for integration of Pier Corporation results with the Town's accounts.

184
185 Pier Corporation uses a small business accounting software package (QuickBooks) to record its
186 financial transactions and to prepare its accounts. The software is relatively simple, economical
187 to own and operate and entirely adequate for a business the size and complexity of the Pier
188 Corporation. The Town uses a municipal government accounting package (Munis) that is
189 appropriate for an entity of its size and complexity. Because the Town acts as Pier Corporation's
190 financial agent in controlling all of the Corporation's bank accounts and in making payments to
191 third parties, there is a periodic need to reconcile the two accounting systems. In the past
192 attempts to reconcile the two systems has been difficult and disputes between the parties have
193 arisen as to the size of cash balances held by the Town on Pier Corporation's behalf. The
194 inability of Pier Corporation's auditors to reconcile differing reports of cash balances has led
195 them to conclude that changes must be made before they can issue an opinion on Pier
196 Corporation's financial statements.

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197
198 We have agreed that Pier Corporation shall continue to keep its own financial records, as it is
199 required to do by the Act. Further, we have agreed recent revisions to the account
200 reconciliation processes seem to have eliminated discrepancies between the QuickBooks and
201 Munis accounting systems. We have agreed to submit the revised practices and the results of
202 recent accounts reconciliations to Pier Corporation's auditors for review and approval. We have
203 agreed to document these improved processes so that they may be correctly followed in the
204 future.

205
206 **E. Improved Operational and Financial Reporting.**

207
208 Pier Corporation agrees to develop and publish an annual report in April of each year covering
209 its activities and results from the prior calendar year. This report will be made in addition to the
210 reporting Pier Corporation now provides to the Town for inclusion in the Town's Annual Report.
211 The purpose of this annual report is to inform the public of Pier Corporation's activities and
212 plans for the future as well as report its financial results at a greater level of detail than is
213 possible in the Town's annual reporting.

214
215 **The Financial Relationship between the Town and Pier Corporation.** We have agreed to the following
216 changes in the financial relationship between the Town and Pier Corporation. We note that these
217 changes are consistent with terms of the Lease and require only changes in how we implement the
218 terms of the Lease.

219
220 1. Section 3 of the Lease permits the BoS, at their discretion, to abate all or part of the rent Pier
221 Corporation is required to pay the Town for the purpose of compensating Pier Corporation for
222 subsidies it grants to the fishing industry in the form of lower-than-market dockage fees.

223
224 Since the Lease was signed in 2005, Pier Corporation has kept dockage rates to the fishing
225 industry below the fair market value. The value of this subsidy is estimated to have been
226 between \$50,000 and \$100,000 per year over the last 10 years. It should be noted that in the
227 years since 2005 the Pier Corporation has never asked for, nor received any abatement in the
228 rent. Even in years when Pier Corporation sustained financial losses, it provided subsidies to the
229 fishing industry and it paid the rent required by the Lease -- in full, on time, every year.

230
231 The initial logic of a rent payment was that the pier revenues should be used to fund the
232 repayment of the debt the Town incurred to finance its share of the cost of rebuilding the Pier in
233 2002-2003. Because there are now very few debt payments remaining and because the Pier
234 Corporation has been subsidizing the fishing industry for many years without any compensation
235 from the Town, we have agreed that the rent should be abated in the future, but only at the
236 discretion of the Board of Selectmen as provided in Section 3 of the Lease.

237
238 As the FY 2016 Town budget was finalized at the Town Meeting prior to the signing of this
239 agreement, the abatement of rent will start in FY 2017, or sooner if funding allows.

240
241 2. In 2003, the Legislature passed the Passenger Ferry Embarkation Fee Law (Chapter 55 of the
242 Acts of 2003) which permitted towns in the Commonwealth to levy a fee on ferry passengers
243 boarding passenger ferry vessels in their harbors. Provincetown approved the fee and has been
244 collecting these fees from ferry companies embarking passengers in Provincetown for many

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245 years. In recent years the fees collected has been approximately \$30-35,000 per year.

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Passenger ferries operating from Provincetown embark their passengers from the Ferry Terminal on MacMillan Pier. The terminal was built with grant funding and is operated and maintained by the Pier Corporation at its expense. In recent years the cost associated with the Ferry Terminal has risen significantly.

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We have agreed that in the future the fees collected by the Town from passenger ferry operators should be passed through to Pier Corporation to offset the costs of operating and maintaining the Ferry Terminal. Town By-laws require that the assignment of Ferry Passenger Fee revenue to the Pier Corporation be approved annually by Town Meeting.

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3. The Act charges Pier Corporation with maintaining the pier in “a fully operational state”. While it leaves this term undefined, the Act does indicate the scope of Pier Corporation’s maintenance activities should include both “routine and non-routine maintenance and the maintenance of any and all improvements”. It is clear from the language of the Act that the Legislature intended Pier Corporation to be responsible for all routine maintenance, and that it should build reserves to permit timely execution of unusual or emergency (or “non-routine”) maintenance activities.

264

265

266

267

What is not entirely clear is whether Pier Corporation or the Town should be responsible for refurbishment of capital assets should they be severely damaged by accident or storm, or who should fund the replacement of assets at the end of their useful life.

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271

In the past the Pier Corporation has assumed responsibility for all maintenance and asset refurbishment on the MacMillan Pier. It wasn’t until a winter storm in 2012 almost totally destroyed the floating docks that the issue of who should fund capital asset replacement arose.

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276

We have agreed that the Town, as owner of the pier, should be financially responsible for all major capital projects undertaken to either refurbish pier infrastructure or to replace pier assets at the end of their useful life. Likewise, we agree that any major capital expansions or the purchase of additional infrastructure in the harbor should be financed by the Town.

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280

We agree that it will be Pier Corporation’s responsibility to maintain the assets of the Pier in a “fully operational state”. A working definition of this term can be found in lines 30-42 on page 1 (Mission of Pier Corporation).

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We have agreed that the implication of this division of responsibilities is that the Pier Corporation should set aside maintenance reserve funds that will be adequate to fund both “routine” maintenance activities, including preventative maintenance, and “non-routine” or emergency repairs to elements of the pier infrastructure pursuant to the Act and the Lease. It is agreed that the Town will seek appropriations from Town Meeting for major foreseeable pier infrastructure refurbishment projects, asset replacement and new capital additions to the pier.

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293

4. We have agreed that the Pier Corporation should seek to build Maintenance Reserve of at least \$500,000 and that annual contribution to the reserve should be at least \$50,000 until the reserve is fully funded.

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294 5. We have agreed the first \$50,000 of any operating surpluses earned by Pier Corporation be set
295 aside in a restricted use account for the Maintenance Reserve. (We define "operating surplus"
296 as pier revenues minus operating costs and cost accruals).
297

298 Further, we have agreed that the use of any annual operating surplus remaining after funding of
299 Pier Corporation's Maintenance Reserve shall be for the acquisition of new assets Pier
300 Corporation may require to fulfill its mission. Any amounts remaining after fully funding the
301 Maintenance Reserve and the acquisition of new assets will accrue to the Pier Corporation
302 Maintenance Reserve. When the reserve has been fully funded, any excess operating surplus
303 will accrue to the Town.
304

305 **Conclusion.** Hopefully, the agreements outlined herein will clarify how the Town and Pier Corporation
306 will work together and how we can align the incentives of the parties to pursue our common goals with
307 a renewed sense of partnership.
308

309 Agreed this the _____ day of June, 2015:
310

311 312 TOWN OF PROVINCETOWN 313	311 312 PROVINCETOWN PUBLIC PIER CORPORATION 313
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314 315 _____ 316	314 315 _____ 316
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316 <i>Chair</i>	316 <i>Chair</i>
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317 _____ 318	317 _____ 318
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318 <i>Vice-chair</i>	318 <i>Vice-chair</i>
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319 _____ 320	319 _____ 320
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321 _____ 322	321 _____ 322
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325 _____ 326	325 _____ 326
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326 <i>Town Manager</i>	326 _____
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APPENDIX A

Integration of Town and Pier Corporation CIP and Maintenance Planning Processes

We agree that procedures for integrating Town and Pier Corporation CIP / Maintenance Planning processes will be developed by staff for review by our respective boards by September 1, 2015. The processes will be based on the principles outlined in the Memorandum and on additional guidance provided by the Selectmen and Directors of Pier Corporation. Our intent is that the Pier Corporation's initial inputs to the Town's CIP are to be included in the Selectmens' CIP Review in September, 2015.

(DETAILS TO FOLLOW. THIS IS A WORK IN PROGRESS)

Some working definitions / ideas for this section of the MoU are provided below.

Pier Corp Plans and Budgets

- Annual Maintenance Plan – the schedule of maintenance projects and activities to be undertaken in the next operating year along with their timing and resource requirements. Normally limited to routine and preventative maintenance of existing assets.
- Annual Maintenance Budget – a line item in the annual financial plan/budget to fund the coming year's maintenance plan. Consolidates the cost of all planned maintenance projects.
- Capital Budget – prepared annually to plan, justify and fund the acquisition of new assets by Pier Corp that are required in the conduct of its business (e.g. a new hydraulic pack for the barge, new ice machine compressor), or to fund small asset/facilities additions to the Pier (e.g. building new Trap Sheds, radar speed display, security cameras). Normally, individual items in the capital budget will be less than \$XX,000.
- Facilities Maintenance Plan (FMP) – Developed annually, the FMP is based on the annual surveys of our consulting engineers and is the long-range maintenance plan of Pier Corp. The FMP is developed using a five-year planning horizon (rolling forward each year) and identifies the maintenance required for individual elements of the pier infrastructure, classifies and prioritizes them and provides an estimate of the timing and resources required for completion. Examples of projects: fender pile replacement, upkeep of floating docks and minor repairs to pier structures, replacement of the board walk, replacement of electrical outlets on docks, painting trap sheds and the HM office.

The FMP also identifies the major capital asset / facilities refurbishment and replacement projects Pier Corp believes will be required over the five-year planning horizon. These capital projects will normally be larger in scope and will entail higher levels of expenditures. Pier Corp will identify and recommend capital projects to be included in the Town's CIP planning process. Implementation of these projects or acquisition of new pier infrastructure valued at more than

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371 \$XX,000 will be funded by the Town.

372

373 The role of Pier Corp and its consulting engineers in these capital projects will be to identify the
374 need, scope the required actions, estimate the timing of the projects and work with the Town to
375 develop project / program priorities. Where grant funding of capital projects may be available,
376 Pier Corp will assist the Town in grant applications. Pier Corp may also be asked to implement
377 or supervise the implementation of individual capital project plans.

378

379 - Facilities Maintenance Reserve – a restricted asset account created by Pier Corp to fund “non-
380 routine” maintenance / emergency maintenance of existing assets owned or leased by the
381 Corporation

382 o Reserve target – \$500,000

383 o Annual funding target -- \$50,000

384 Town CIP Plans

385 - Pier CIP Projects – Major asset refurbishment efforts, the replacement of assets at the end of
386 their useful life, and new asset acquisitions may, from time-to-time, be recommended to the
387 Town by Pier Corp. The Town will fund all the refurbishment and replacement projects will have
388 budgets in excess of \$XX,000. Examples of projects of this nature are the replacement of the
389 floating docks, the acquisition and installation of wave attenuators, and the building of new
390 structures on the Pier.

391

392 - Pier Reserve Fund – fund created by the Town to accept operating surpluses of Pier
393 Corporation in excess of funds needed by Pier Corporation to fund its Facilities Maintenance
394 Reserve, annual Capital Budget and cash needs. Contributions to this fund will be allowed to
395 accumulate to fund pier CIP projects and new pier or marine-related asset acquisition programs.
396 These funds will be expended by vote of Town Meeting for the purposes stated above.

397

398 **PROCESS**

399

400 Pier Corporation uses the processes now in place and under development to generate maintenance
401 projects and priorities to be consolidated in the Facilities Maintenance Plans. (Engineers survey,
402 classification of needed repairs, development of priorities and timing/sequencing of individual repair
403 /maintenance projects, budget estimates for each project spread over time). These plans are to be
404 prepared and approved by Directors before the beginning of each operating year – i.e. completed by
405 staff before 15 November). In these plans Pier Corp identifies discrete maintenance projects (with
406 budgets of manpower and materials required for completion) for the coming year and for three
407 years into the future. The FMP also identifies capital projects (major asset refurbishments and
408 replacements) required for inclusion in the Town’s CIP Program using the time horizon of the town’s
409 choosing.

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411 The inputs required for the town’s CIP will be updated as the year progresses and will be formally
412 recommended to the Selectmen at their annual CIP Review in September.

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AGREEMENT FOR PROVISION OF HARBORMASTER AND OTHER MARINE-RELATED SERVICES

This agreement is made and entered into as of the ___ day of June, 2015, by and between the Town of Provincetown (hereinafter referred to as the “Town”), acting by and through its Board of Selectmen and Town Manager, and the Provincetown Public Pier Corporation (hereinafter referred to as “Pier Corporation”), acting by and through its Board of Directors.

WHEREAS, the Pier Corporation is a public entity established in accordance with Chapter 13 of the Acts of 2000, as amended by Chapter 260 of the Acts of 2002, for the purpose of, among other things, managing MacMillan Pier, and

WHEREAS, sections 5(d) and 5(n) of Chapter 13 of the Acts of 2000 authorize the Pier Corporation to enter into contracts with the Town for the furnishing of services; and

WHEREAS, the Town desires to contract with the Pier Corporation for the provisions of harbormaster and other marine-related services; and

WHEREAS, the Town and the Pier Corporation have determined that there are real cost savings to be derived from operational synergies between the Pier Corporation’s pier management operations and the functions of the Town’s Marine Department that will benefit both parties should these activities be managed by a single entity;

NOW, THEREFORE, the Town and the Pier Corporation agree as follows:

1. *Scope of Services.* Commencing on July 1, 2015, the Pier Corporation agrees to provide to the Town harbormaster and marine management services in accordance with the scope of services set forth in Attachment A.
2. *Term.* This Agreement shall be for a term of three years unless otherwise terminated by the parties. The Agreement shall be automatically extended for an additional three year period unless actions are taken by either of the Parties to amend the term or cancel the agreement.
3. *Compensation.* The Town agrees to pay the Pier Corporation the amount appropriated to fund the 295 (Harbormasters) budget each year for the services provided herein. For FY 2016, this amount is \$195,000. The compensation amount may be adjusted from year to year based on changes in the average cost of operations of other Town departments, the Town’s annual appropriation process, and by any mutually agreed changes to the scope of services and/or staffing levels of the Harbormaster’s Office as outlined in attachments hereto.

Payment of the annual compensation amount shall be made on a monthly basis in equal installments. The obligation of the Town under this Agreement shall be subject to annual appropriation. In the event that sufficient funds are not appropriated or otherwise made available to support the continuation of this Agreement in any fiscal year, the Town shall cancel this Agreement.

4. *Duties of the Harbormaster.* The duties of the Harbormaster and of the staff of the Harbormaster Office staff are outlined in Appendix B of this agreement. The day-to-day supervision of the Harbormaster in the performance of these duties shall be the responsibility of the Town Manager.

5. *Appointment and Replacement of the Harbormaster.* Consistent with General Laws c. 102, sec. 19, the appointment of the current Harbormaster shall remain in force unless the Town Manager determines that the Harbormaster should be relieved of his duties for neglect of duty, negligence or conduct unbecoming a harbormaster, or until this Agreement is terminated or otherwise amended, or until the person currently serving as Harbormaster ceases to be employed by the Pier Corporation as Pier Manager.

When and if the position of Harbormaster becomes vacant, the Pier Corporation shall solicit candidates for the position pursuant to General By-law 6-2 (Employment) and in accordance with Pier Corporation Personnel Policy Chapter 3, Articles 1 and 2. The Personnel Subcommittee of the Pier Corporation board shall nominate one or more candidates of the Pier Corporation who is/are qualified to serve as the Town Harbormaster. The Town Manager may approve or reject any of the persons nominated. If the nomination is approved, the Town Manager shall designate the person as the Town's Harbormaster pursuant to General Laws c.102, §19 and Provincetown Charter §7-2-4. If the nomination is rejected, the Pier Corporation shall provide a suitable replacement that is acceptable to the Town Manager. If no suitable replacement can be found, this agreement will terminate.

6. *Harbormaster Office Department Staff.* The staff of the Harbormaster's Office shall be employees of the Pier Corporation and shall serve under the direction and supervision of the Harbormaster. Personnel employed by Pier Corporation and working under the terms of this agreement shall be designated as Special Municipal Employees and shall be allowed to participate in the Town's employment benefit programs under the same terms and conditions of other town employees. The salary and employment benefits of the Harbormaster and staff of the Harbormaster's Office shall be determined and paid for by the Pier Corporation.
7. *Resolution of Conflicts Arising from the Dual Reporting Relationships.* It is agreed that the person nominated by the Pier Corporation to be Harbormaster will also serve as the Pier Manager of MacMillan Pier and that the staff of the Harbormaster's Office will be directly involved in activities related to Pier operations and maintenance in addition to performing functions and duties outlined in Appendix B.

The parties understand that from time to time conflicts may arise between the operational priorities and requirements of the Town relative to the functions of the Harbormaster's Office and those of the Pier Corporation relative to its functions of pier operations and maintenance. Employment of managerial best practices for work planning and personnel scheduling and timely and effective communications between Harbormaster, the Town Manager and the Chair of Pier Corporation will hopefully eliminate most conflicts of this nature, but should conflicts arise, it is agreed that they will be resolved by the Town Manager and the Chairman of Pier Corporation. If the Town Manager and Chair of Pier Corporation cannot arrive at a mutually agreed resolution, this agreement may be terminated by either the Board of Selectmen or the Directors of Pier Corporation.

Conflicts regarding tasking, scheduling and/or deployment of the staff of the Harbormaster's Office shall be resolved by the Harbormaster.

8. *Communications and Accountability.* The Chair of Pier Corporation shall be accountable to the Board of Selectmen for the overall performance of all Pier Corporation employees working under this Agreement. The Pier Corporation shall meet with the Board of Selectmen for a performance review in November of each year. The agenda of this joint meeting will be Pier Corporation's report on the management of the Marine Department for the prior year and plans for the coming year. At this meeting the Harbormaster will provide a budget request for the Harbormaster's 295 Budget for the Town's next fiscal year.
9. *Mooring Fees.* As noted in Appendix A, Scope of Services, paragraph 6, Pier Corporation will administer mooring fields within the harbor and will collect fees for mooring permits. All fees collected are to be passed to the Town. Pier Corporation agrees to conduct periodic surveys of the mooring fees levied in other harbors on Cape Cod and adjacent waters and, working with the Harbor Committee of the Town, they agree to recommend to the Board of Selectmen changes in rates for mooring permits. The Town agrees to augment Pier Corporation's annual compensation outlined in paragraph 3 above by an amount equal to 25% of the increase in mooring fees collected above the total fees collected in FY2015. The Pier Corporation also agrees to reduce the annual compensation outlined in paragraph 3 by an amount equal to 50% of any decrease in mooring fees below the amount collected in FY2015.
10. *Termination.* This Agreement may be terminated by either party for convenience after ninety (90) days written notice.
11. *Successor and Assigns.* This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Pier Corporation shall assign or transfer any interest in the Agreement without the written consent of the other.
12. *Compliance with Laws.* The Pier Corporation shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference. The Pier Corporation shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
13. *Severability.* If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
14. *Governing Law.* This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.
15. *Entire Agreement.* This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

TOWN OF PROVINCETOWN

PROVINCETOWN PUBLIC PIER CORPORATION

Chair

Chair

Vice-chair

Vice-chair

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ATTACHMENT A

Scope of Services.

In fulfillment of its obligations under this Agreement, the Pier Corporation shall provide:

1. A professionally-qualified and suitably experienced person to act as the Town's Harbormaster working under the day-to-day supervision of the Town Manager to perform the duties normally associated with a harbormaster as outlined in law and common practice. The specific responsibilities of the Harbormaster are outlined in Attachment B below.
2. Professionally-qualified personnel to support the Harbormaster in the performance of his or her duties. At the commencement of this Agreement, the organization and staffing levels of the staff of the Harbormaster's Office shall be as follows:
 - **Assistant Harbormaster** - provide line staffing for patrol, enforcement, service and emergency response, seasonal staff training and supervision of maintenance of facilities and vessels.
 - **Seasonal Assistant Harbormaster** - provide line staffing for patrol of beaches, harbor and pier, enforcement, public safety, pump-out service and emergency response, maintain facilities and vessels. It is anticipated that seasonal staff will be employed from April to November with staggered starts with second and third shifts as needed.
 - **Radio Dispatch & Office Administration** – Year-round bonded position, to provide internal transaction control, bookkeeping, monthly reconciliation with Town Finance Dept., mooring field administration, grant administration, radio dispatch and coordination of service calls, and staff normal business hours. Assistant harbormasters will cover radio dispatch and service call coordination after normal business hours.
3. Office and work spaces for the Harbormaster's Office on MacMillan Pier. The Pier Corporation shall pay for the utilities, maintenance and upkeep of these facilities.
4. Funds and personnel to operate, and maintain the Harbormaster's vessels, which are to be provided by the Town. At the commencement of this agreement there are three vessels in the Harbormaster's fleet, and a fourth vessel which is owned by Pier Corporation and used periodically in harbor operations.¹
5. Funds and personnel to operate and maintain the Pump-out Facility adjacent to the Courtesy Float.

1. At the time of signing of this agreement, the vessels maintained and operated by the Harbormaster consisted of:

- Marine One – a 2003 twin 130 hp. Evinrude 24-foot center console vessel for patrol;
- Marine Two – a 1994 20-foot former pump-out vessel now used for maintenance of the pier and harbor with 150 hp Evinrude;
- Marine Three – a 2014 Alcar Environmental 24-foot center console pump-out boat with additional emergency response capabilities;
- Also in the fleet, is the 30-foot hydraulic crane barge built and owned by the Pier Corporation for use in service to the pier and harbor.

6. Administration of the town's mooring fields and the collection of mooring fees. (It is noted that the mooring fees collected are used to offset partially the cost of this Agreement.)

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ATTACHMENT B

Duties and Responsibilities of the Harbormaster

The Harbormaster:

- Performs tasks outlined in Massachusetts statutes (Chapters 90b, 91, 102 and elsewhere in the Acts of the Legislature) regarding duties and authorities of harbormasters
- Maintains buoys and channels, directs vessel traffic, lightering, loading and berthing within the Harbor
- Enforces the Town's Harbor Regulations
- Enforces Federal, State and Local Environmental Regulations
- Coordinates harbor operations and emergency response with other Law Enforcement agencies and the U.S. Coast Guard
- Educates public on boating safety and environmental issues
- Coordinates and supports interactions with Town departments as directed by the Town Manager
- Provides staff liaison to Harbor Committee, Conservation Commission and other town boards, as required
- Provides operational support and supervisory assistance to the Shellfish Constable, as required
- Pursues grants funding in support of Town objectives for the harbor and the water space under the jurisdiction of the Town
- Ensures staff are current in all required professional development training and qualifications
- Assists in planning and coordinating joint operational training with Coast Guard Station Provincetown, and the Town's Police and Fire Departments
- Develops budgets and financial reports related to harbor management as required by the Town Manager
- Manages Harbormaster Office, and directs and supervises staff in performance of the functions outlined below
- Provides harbor-related inputs to the Town's CIP Program prior to the Selectmen's annual CIP reviews in September (e.g replacement of a patrol vessel with upgrades for CBRNE detection, fire-fighting, and search & rescue/mass casualty support capabilities .

Functions of the Harbormaster Office and Staff

The Harbormaster Office staff:

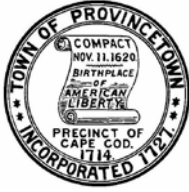
- Provides radio, phone and customer counter service response to tenants of the Pier, mooring and other permit holders, the general public and crews of fishing vessels
- Dispatches all staff to service and emergency calls

- Maintains records and accounts for mooring, dockage and commercial support service, excursion licenses, dinghy dock billing and grant administration
- Prepares expense vouchers, payroll warrants and reconciliation reports for processing by the Town's Finance Department
- Prepares delinquent accounts for collection
- Maintains and backs up database logs, files, communications and office equipment.

Duties of Assistant Harbormasters:

- Provide on-the-water presence for routine patrols and emergency response on the water, beaches and pier
- Conduct patrols of the harbor, launching ramp, mooring and anchorage fields. Issue warnings or citations for violations as necessary
- Provide information and hospitality for local and visiting mariners
- Promote and assist in implementation of public safety, education, clean harbor and environmental programs
- Operates pump-out services
- Maintain buoys and channels within the harbor
- Provide after-hours and weekend coverage of the Harbormaster's Office
- Coordinate permitted use of off-loading stations
- Provide vessels with assistance with docking, when required
- Monitor and enforce parking, vehicular and pedestrian flow on the pier
- Perform regular pier patrols
- Maintain a clean facility sweeping areas not covered by street sweeper, picking up garbage, painting and keeping equipment in good repair

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Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, June 08, 2015

2

OTHER

Requested by: Acting Town Manager David Gardner

Action Sought: Discussion

Proposed Motion(s)

Discussion Dependent – votes may be taken.

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>