

**AMENDMENT TO AGREEMENT FOR MACMILLAN PIER
MARINE MANAGEMENT SERVICES**

This Amendment of Agreement for MacMillan Pier Marine Management Services (“Amendment”) is made and entered into as of the _____ day of _____, 2009, 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;

WHEREAS, on March 29, 2005, the Town entered into a five year Agreement for MacMillan Pier Marine Management Services with the Pier Corporation for the provisions of harbormaster and other marine related services; and

WHEREAS, Exhibit C, the rent determination schedule of the lease for MacMillan Pier between the Town and Pier Corporation ends with FY 2009 and the Agreement for MacMillan Pier Marine Management Services, ends with FY 2010;

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

1. Scope of Services. Commencing on July 1, 2009, the Pier Corporation agrees to continue 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 Amendment shall be for a term of five years commencing on July 1, 2009, and ending on June 30, 2014.
3. Compensation. The Town agrees to pay the Pier Corporation the following contract amounts for the services provided herein:

<u>FY 2010:</u>	<u>\$107,140</u>
<u>FY 2011:</u>	<u>\$109,819</u>
<u>FY 2012:</u>	<u>\$112,564</u>
<u>FY 2013:</u>	<u>\$115,378</u>
<u>FY 2014</u>	<u>\$118,263</u>

Payment shall be made on a monthly basis in equal installments. The obligation of the Town under this Amendment 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 Amendment in any fiscal year, the Town shall cancel this Agreement.

4. Harbormaster. The Harbor/Pier Manager shall be an employee of the Pier Corporation, and is hereby designated by the Town Manager as the Town's harbormaster pursuant to General Laws c.102, §19 and Provincetown Charter §7-2-4. For as long as this Amendment is in effect, the Pier Corporation shall appoint the Harbor/Pier Manager, subject to approval by the Town Manager. Consistent with General Laws c. 102, sec. 19, the appointment of the Harbor/Pier Manager shall remain in force unless the Town Manager determines that the Pier/Manager should be relieved of his or her duties as the harbormaster for neglect of duty, negligence or

conduct unbecoming a harbormaster, or until this Amendment is terminated or otherwise amended. In the event that the Pier/Manager is relieved of his duties as the harbormaster by the Town Manager, this Amendment shall terminate. All harbor/pier staff shall be under the supervision of the Harbor/Pier Manager. It is expressly understood that the Harbor/Pier Manager shall perform all of the required duties of the harbormaster, in addition to the services set forth in Attachment A.

5. Termination. This Amendment may be terminated by either party for convenience after ninety (90) days written notice.
6. Successor and Assigns. This Amendment 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 Amendment without the written consent of the other.
7. 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 Amendment, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
8. Severability. If any term or condition of this Amendment 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 Amendment shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
9. Governing Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

10. Entire Agreement. This Amendment, 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, including the Agreement for MacMillan Pier Marine Management Services dated March 29, 2005, 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 Amendment to be executed on the day and year first above written.

TOWN OF PROVINCETOWN

PROVINCETOWN PUBLIC PIER CORPORATION

Armed Lynn
Town Manager/Chief Procurement Officer

Timothy Adams, Treasurer

March H. Hester
Town Accountant

John F. Adams Chairman

Board of Selectmen:

Joe Ash

Michael Carter

A. P. Adams

Sam

Frank K. C.

George Hitchcock

Anderson

ATTACHMENT A
MARINE MANAGEMENT
SCOPE OF SERVICES

This outlines the goals, organizational plans, staffing considerations, timelines, as well as the financial considerations for a streamlined, customer service driven approach to the management of Provincetown Harbor and its related public marine resources by the Provincetown Public Pier Corporation for the Town of Provincetown.

Goal

To create a straightforward and efficient framework for providing public marine services through a single service-oriented operation capable of pro-actively administering projects and grants designed to promote and protect Provincetown Harbor and the pier, increase customer satisfaction, provide economic opportunities for business and seek out additional revenue sources without unduly compromising the PPPC's existing tenants and users or the environment. The benefit of bringing the harbor—as well as pier-- management functions under the stewardship of the Provincetown Public Pier Corporation (PPPC) is the proactive approach in its statutory mandate to stimulate economic development and extends its ability to support commercial fishing and aquaculture.

Organizational Plan

The parties anticipate that, in many respects, the department will look and feel like a traditional Harbormaster department. In order to accomplish a responsive, dedicated team approach, job descriptions will have added responsibilities as described below. Added responsibility requires commensurate compensation for line staff based on ability, and is reflected in the PPPC's financial proforma.

Oversight control by the Town over the PPPC is already well defined within the enabling legislation. That legislation affords the Board of Selectmen all appropriate means to insure that the PPPC is fulfilling its responsibilities. The required annual joint meeting of the boards should be considered a minimum with additional meetings to address specific issues as needed. An annual audit is also a requirement; this critical tool provides financial oversight and recommendations on better accounting controls to be incorporated into the management structure. Public participation is ensured by the requirement that the Pier Corp hold an annual hearing for public comment on its operations.

The Chairman of the PPPC Board of Directors is the direct supervisor for the Harbor/Pier Manager ("the Department Head") who handles day-to-day operations including supervision of the staff.

Deployment

The organizational chart within the department is straightforward; one department head, one office worker, and line staff to facilitate and support the department goals and responsibilities. Within the business model is flexibility. The abilities of the available staff will dictate to some extent the assignments of individuals to utilize the strengths of team members with an expectation that they must cover each other's weaknesses as well.

Deployment of the staff may include one on the pier, one in the office and one on the water (seasonally) with a floater for busy times. When emergency response, weather conditions, visitor

To keep the staff engaged and productive, project assignments will be made based on employee strengths and interests in keeping with the needs of the organization. Progress will be monitored and ideas exchanged in weekly staff meetings where everyone will be updated with the week's events as well.

Finally, the variety of tools available for the staff to accomplish the parties' goals will be expanded; not just physical tools needed for maintenance, but heightened training in boat handling, rescue response, equipment repair and customer service as well. Of course, enforcement tools available to Harbormasters will continue to be used as needed to achieve compliance with regulations. Training will be through the Harbormasters Academy for key employees.

Financial Considerations

Exhibit C of the March 29, 2005 MacMillan Pier Lease Agreement remains the vehicle used to manage the financial relationship between the PPPC and the Town, including management of the harbor. As a five-year proforma, said Exhibit C is an illustrative tool for mid-range analysis, rent projections and the relative health of the venture. The mechanisms for reviewing and updating each five-year period are built into that lease. This amendment will provide that both mechanisms run concurrently. This plan creates an efficient means for the delivery of services to the pier and harbor with the removal of unproductive duplication, accompanied by enhanced flexibility for staff response and improved customer service. The PPPC intends to accomplish this task through dedicated and professional management, always understanding that it is the Town's interests that it represents.

Job Classification Descriptions

Harbor/Pier Manager

Manages, schedules and supervises staff, provides staff training, development, and employee policies, procedural and financial controls. Ensures consistent, professional service from all staff. Manages volunteer efforts such as beach clean up and Americorps projects.

Manages tenant relations.

Promotes marketing, new business development, public relations, and works with local events.

Develops budgets and financial reports. Prepares for Board meetings and follows through with Board decisions and projects.

Pursues grant funding for capital improvements and services.

Oversees maintenance and seasonal requirements of pier facilities, town owned floats and patrol boats. Schedules and supervises contracted trade services.

Coordinates and supports interactions with Town departments.

Serves as Town's harbormaster.

Dispatch & Administrative Position

Provides radio, phone and customer counter service response. Dispatches all staff to service and emergency calls. Provides regular office hours for walk-ins. Assists manager.

Provides bookkeeping functions for mooring, dockage and commercial support service, excursion licenses and dinghy dock billing, prepares expense vouchers, payroll warrants and reconciliation reports for processing by Accounting Department. Prepares delinquent accounts for collection.

Maintains database logs, files, communications and office equipment.

Assistant Harbormaster Position

Provides on-the-water presence. Responds to emergencies on the water and pier.
Provides information and hospitality for mariners. Promotes and assists with safety, education, clean harbor and environmental programs. Back up to physical plant positions.
Patrols the harbor, launching ramp, mooring and anchorage fields. Issues warnings or citations for violations when necessary.
Provides pump out services, maintains buoys and channels.
Provides maintenance and seasonal duties for facility- 3 jib cranes, ice machine, two marine patrol vessels, electrical pedestals, heat trace units, roadway and industrial lighting, piling caps, Town owned gangways and floats, canvas awnings, signage, etc.
Provides services to commercial, excursion and transient fleets. Includes; ice sales, coordinates permitted use of offloading stations and assistance with docking etc. when needed.
Monitors and enforces parking, vehicular and pedestrian flow. Makes regular pier patrols.
Provides weekend office coverage. Maintains a clean facility and buildings sweeping areas not covered by street sweeper, picking up garbage, painting and keeping equipment in good repair.

End of Attachment A- Marine Management Scope of Services



Proforma

BoS Approved June 29, 2009

	FY 2006 Actual	FY 2007 Actual	FY 2008 Actual	FY 2009 Revised (3)	
Operating Revenues					
4002	PPPC Management Contract (1)	135,000	137,000	139,000	140,000
4010	Docks				
	Commercial Fisheries (2)	126,376	129,511	122,866	123,750
	Excursion Floats (3)	126,280	152,940	146,205	134,093
	Transportation (4)	32,480	33,683	69,982	72,781
	All Other Dock (Transient Non-Comm, Dinghy and ETC)	13,889	24,332	18,645	16,945
4070	Permits	3,850	4,950	2,500	2,500
4077	Ice Sales (5)	15,076	19,635	16,767	16,000
4080	Events	8,681	17,600	10,200	10,200
4700*	Grant Revenue (6)	16,586	20,947		0
4866	Trap Shed Rental (7)			7,700	21,000
4800	Other Income (1,8)	0	22,071	25,589	18,064
Total Income		478,219	562,669	559,454	555,333
Gross Profit		478,219	562,669	559,454	555,333
Operating Expenses					
A Budget					
5000	Wages				
	Salaries & Wages (9)	193,470	209,837	197,811	206,942
	Benefits (Health, Medicare, Retirement) (10)	43,062	48,985	46,232	48,543
A Budget Total		236,533	258,822	244,043	255,485
B Budget					
6001	Office Expenses (1)	6,909	6,730	12,415	8,800
6010	Administrative Expenses				
	Insurance (Liability & D&O) (1)	21,090	32,814	29,638	30,050
	Accounting/Legal and Other Various Expenses	11,236	8,426	14,679	15,000
6120	Harbor Expenses	19,592	19,579	15,894	15,000
6121	Pier Expenses	63,458	24,971	24,498	31,500
6128	Utilities Expenses (11)	43,229	50,825	49,296	51,761
6899	Bad Debt (12)	11,320	4,137	9,589	2,475
6900	Capital Budget Expenses Or Accrued	0	2,651	0	50,000
6904	Trap Shed Expense			677	16,000
B Budget Total		176,832	150,132	156,686	170,586
Total Operating Expense		413,365	408,954	400,729	426,072
Net Income		64,854	153,714	158,725	129,261
6300	Lease/Rental Payment (13)	79,000	92,000	106,000	120,000
Net Income After Rent Payment		-27,639	42,786	28,383	9,261
Capital Asset Reserve Fund (14)		73,103	84,206	102,402	152,402
Grant Monies Received		9,947	577,730	246,200	47,000
CPI % (Northeast Urban Less Food & Fuel)		2.20%	2.50%	2.30%	2.30%
Mooring Fees (Pass Through to Town)		75,507	89,029	84,525	85,000
6350	Depreciation Expense (15)	13,493	18,928	24,342	



Proforma

BoS Approved June 29, 2009

	FY 2010 Approved	FY 2011 Approved	FY 2012 Approved	FY 2013 Approved	FY 2014 Approved
Operating Revenues					
4002	PPPC Management Contract (1)	107,140	109,819	112,564	115,378
4010	Docks				118,263
	Commercial Fisheries (2)	130,843	138,114	145,567	153,207
	Excursion Floats (3)	136,418	138,801	141,244	143,748
	Transportation (4)	74,717	76,705	78,745	80,840
	All Other Dock (Transient Non-Comm, Dinghy and ETC)	17,369	17,803	18,248	18,704
4070	Permits	2,500	2,500	2,500	2,500
4077	Ice Sales (5)	16,000	16,000	16,000	16,000
4080	Events	10,200	10,200	10,200	10,200
4700*	Grant Revenue (6)	0	0	0	0
4866	Trap Shed Rental (7)	28,000	35,000	35,875	36,772
4800	Other Income (1,8)	18,515	18,978	19,453	19,939
Total Income		541,702	563,920	580,396	597,287
Gross Profit		541,702	563,920	580,396	597,287
Operating Expenses					
A Budget					
5000	Wages				
	Salaries & Wages (9)	195,082	203,861	213,034	222,621
	Benefits (Health, Medicare, Retirement) (10)	33,970	36,688	39,623	42,792
A Budget Total		229,052	240,548	252,657	265,413
B Budget					
6001	Office Expenses (1)	9,020	9,260	9,506	9,759
6010	Administrative Expenses				10,019
	Insurance (Liability & D&O) (1)	30,801	31,571	32,361	33,170
	Accounting/Legal and Other Various Expenses	15,399	15,809	16,229	16,661
6120	Harbor Expenses	5,000	5,000	5,000	5,000
6121	Pier Expenses	31,500	31,500	31,500	31,500
6128	Utilities Expenses (11)	54,349	57,067	59,920	62,916
6899	Bad Debt (12)	2,617	2,762	2,911	3,064
6900	Capital Budget Expenses Or Accrued	50,000	50,000	50,000	50,000
6904	Trap Shed Expense				50,000
B Budget Total		198,686	202,969	207,427	212,070
Total Operating Expense		427,738	443,517	460,084	477,483
Net Income		113,964	120,403	120,311	119,804
6300	Lease/Rental Payment (13)	120,000			
Net Income After Rent Payment		-6,036			
Capital Asset Reserve Fund (14)		202,402	252,402	302,402	352,402
Grant Monies Received					
CPI % (Northeast Urban Less Food & Fuel)		2.25% (Estimated)	2.25% (Estimated)	2.25% (Estimated)	2.25% (Estimated)
Mooring Fees (Pass Through to Town)		85,000	85,000	85,000	85,000
6350	Depreciation Expense (15)				

Assumptions

- 1** Assume an increase of 2.5 % CPI.
Includes annual increase of CPI @ 2.3 % for 2009 and a CPI of 2.5 % moving forward plus additional revenue from changes to the floating docks anticipated to begin in 2010 and expand in 2012.
- 3** Reflects loss of one whale watch boat with it's associated per passenger fee of \$21,900.
The CPI of 2.5 % is not added to the existing per passenger seat charge for the remaining 3 whale watch boats.
- 4** Transportation contracts are at normal CPI *not less food and fuel*. 12 Month average for 2008 = 2.66%
- 5** Level funded due to uncertainty of fishing regs.
- 6** Grant Revenue is now passed through Town Hall and not PPPC Books-Grant awards are listed as a separate item at the bottom of the proforma.
- 7** Trap shed rental increase for 2010 is \$4000 and followed by that the original price of \$5000. CPI thereafter.
- 8** Other Income- interest income projected to drop with timely transfers by town
- 9** Wages level funded through 2010 and projected union contract % thereafter. Revised with Town Meeting 295 budget.
- 10** Projected increases of 8% annually for employee benefits; health insurance, etc.
- 11** Projected increases of 5% annually for utility costs.
- 12** Annual bad debt projected at 2% of commercial dock revenue.
- 13** 2010 based on Town level funding of local receipts prior to Town Meeting.
- 14** 6900 Capital budget expense accrues funds moved to Capital asset reserve.
- 15** Depreciation expense is a non cash item. It is provided here to reconcile with our audited books.