

..Title

Lease of City Dock Space to Chesapeake Marine Tours – For the purpose of authorizing for fiscal year 2021 the lease of certain municipal property located at the City Dock to Chesapeake Marine Tours, Inc. for the docking and mooring of certain boats.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 2-15

**Introduced by: Mayor Pantelides, Alderman Arnett, Alderman Budge,
Alderman Littmann, and Alderman Pfeiffer**

**Referred to
Economic Matters
Environmental Matters**

An ORDINANCE concerning

Lease of City Dock Space to Chesapeake Marine Tours

FOR the purpose of authorizing for fiscal year 2021 the lease of certain municipal property located at the City Dock to Chesapeake Marine Tours, Inc. for the docking and mooring of certain boats.

WHEREAS, the City of Annapolis and Chesapeake Marine Tours, Inc., have entered into a series of leases and amendments, the most recent being O-4-14, to lease through June 30, 2020, certain docking space at the City Dock under certain terms and conditions; and

WHEREAS, the Annapolis City Council believes that the proposed lease would benefit the City; and

WHEREAS, a lease setting forth details of the rental has been prepared and is considered satisfactory; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize a lease.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed Lease, a copy of which is attached hereto and made a part hereof, between the City of Annapolis and Chesapeake Marine Tours, Inc. d/b/a Watermark Cruises, is hereby approved, and the Mayor is hereby authorized to execute the Lease on behalf of the City. It is further expressly found by the City Council that the services to be provided as a result of the Lease will benefit visitors and residents of the City, will generate tax revenues and

1 additional rental income to the City, and will better serve the public need for which the property
2 was acquired.

3
4 **AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
5 **COUNCIL** that this Ordinance shall take effect from the date of its passage.
6

7
8 **EXPLANATION**

9 CAPITAL LETTERS indicate matter added to existing law.

10 ~~Strikethrough~~ indicates matter stricken from existing law.

11 Underlining indicates amendments.

LEASE

This Lease is made this ____ day of _____, 2015, by and between the City of Annapolis, a municipal corporation of the State of Maryland, Lessor, and Chesapeake Marine Tours, Inc., a corporation of the State of Maryland, Lessee.

Whereas, the parties have entered into a succession of leases beginning in 1972 for purposes of permitting the Lessee to lease docking spaces at the Lessor's City Dock to dock its vessels and carry on its business of operating a cruise and water taxi service on the Chesapeake Bay and its tributaries;

Whereas, the existing Lease expires June 30, 2020;

Whereas, the parties entered into a Lease dated June 25, 2014 for the same purposes to provide for an additional leasing term from July 1, 2019 to June 30, 2020;

Whereas, the parties have agreed to this Lease for the same purposes and to provide for an additional leasing term of another one year period to run from July 1, 2020 to June 30, 2021;

Whereas, the Annapolis City Council has authorized this Lease pursuant to Ordinance 2-15.

Now, therefore, in consideration of these premises and the terms stated below, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Identification of Leased Docking Spaces

a. The Lessor hereby rents and leases to the Lessee, and the Lessee hereby rents and leases from the Lessor, for the term stated in paragraph 2, at the rent and upon the other terms set forth in this Lease, the following docking spaces at the City Dock, constituting two hundred sixty (260) linear feet of City Dock docking space:

1. The two end boat slips nearest the channel of Spa Creek known as Slips 21 and 22, both of which are suitable for boats not exceeding sixty five (65) feet in length;

2. The end of the dock adjacent to Slip 22 between two dolphins for a distance of not more than eighty feet (80'); and

3. Sixty feet (60') along the boardwalk adjacent to the Harbormaster's office.

2. Term

a. The term of this Lease shall be for a period of one year beginning July 1, 2020, and ending June 30, 2021.

1 3. Rent

2
3 a. The Lessee shall pay rent to the Lessor, for the lease of two hundred sixty (260)
4 linear feet of City Dock docking space, for the FY period July 1, 2020 through June 30, 2021, at
5 a rate of \$180.45 per linear foot, for a total amount of rent of \$46,917.00. This amount is
6 determined using the same rate per linear foot, from the amount earned by the Lessor from the
7 lease of one thousand four hundred twenty three (1,423) linear feet of total rented dock space at
8 the City Dock during the 2014 calendar year. Annual rent shall be invoiced on or before June 1,
9 2020 by the City Harbormaster, which the Lessee shall pay not later than July 1, 2020. Payment
10 shall be made directly to the City Harbormaster. If the Lessee fails to pay rent by July 5, 2020,
11 the Lessor shall incur a late payment of 1% of the base rent, and an additional 1% of the base
12 rent if unpaid by the fifth day of any subsequent month.
13

14 b. As additional rent for electricity service, the Lessee may, at its option and at its
15 expense, arrange with Baltimore Gas & Electric to have its electric service separately metered
16 and billed directly to the Lessee, or may pay monthly, by the first day of each month to the City
17 Harbormaster the appropriate monthly winter electric rate, as set by the City Council in the
18 Annual Fee Resolution applicable to the term of this Lease which, as it pertains to this Lease, for
19 a one hundred amp outlet, shall be twice the rate set in the Annual Fee Resolution for a fifty amp
20 outlet. If the Lessee chooses to pay pursuant to the monthly winter electric rate, the City
21 Harbormaster shall invoice the Lessee and payment shall be due on the first day of the month
22 after invoicing. If the Lessee fails to pay by the fifth day of any month, the Lessee shall incur a
23 late payment calculated in accordance with the Annual Fee Resolution applicable to the term of
24 this Lease.
25

26 c. As additional rent for refuse collection, the Lessee shall pay \$250.00 per month.
27 by the first day of each month. The City Harbormaster shall invoice the Lessee and payment
28 shall be due on the first day of the month after invoicing. If the Lessee fails to pay by the fifth
29 day of any month, the Lessee shall incur a late payment calculated in accordance with the
30 Annual Fee Resolution applicable to the term of this Lease.
31

32 d. As additional rent, the Lessee shall also pay from time to time all taxes and other
33 charges or fees required by law.
34

35 4. Vessels Authorized at Docking Spaces

36
37 a. The Lessee shall have authority to dock an office barge at the leased docking
38 spaces plus the passenger vessels Harbor Queen, No. 539448; Annapolitan II, No. 544467;
39 Cabaret II, No. 1039051; Lady Sarah, No. 1160977; Miss Anne, No. 635636; Miss Anne II, No.
40 672686; Catherine Marie, No. 1082215; Severn Exposure, No. 1146892; Raven, No. 1239100;
41 and four water taxi launches.
42

43 b. The Lessee may replace any vessel referenced above, provided that all
44 replacement vessels are of the same size, or substantially the same size, and of the use, as Coast
45 Guard certified passenger vessels. All replacement vessels shall be subject to the Lessor's final

1 approval, which shall not be unreasonably withheld as long as all replacement vessels meet the
2 standards of Coast Guard certified passenger vessels.

3
4 5. Use of Docking Spaces

5
6 a. The Lessee shall use the leased docking spaces solely as passenger vessels for
7 sightseeing, boat charter and water taxi operations and for office space from which to conduct
8 the business which this Lease authorizes at the Lessor's City Dock.

9
10 b. The Lessee shall notify the City Harbormaster whenever any of its vessels will be
11 absent from any portion of the leased docking spaces for more than seventy-two (72) hours,
12 during which time the Lessor may utilize any portion of the docking spaces so vacated for any
13 lawful purpose whatsoever without any abatement of the rent due pursuant to this Lease.
14 Whenever the Lessee vacates any portion of the leased space for more than seventy-two (72)
15 hours, the Lessee shall give the Harbormaster twenty-four (24) hours written notice of the
16 intended return to the docking spaces vacated.

17
18 c. The Lessee shall not discharge or board passengers at the plaza located at that
19 portion of the City Dock closest to the Markethouse commonly known as the end of Ego Alley.

20
21 d. The Lessor shall attempt to keep the leased docking spaces free and clear of
22 unauthorized vessels when the Lessee's vessels are away from the leased docking spaces, but
23 shall be under no obligation or responsibility to do so, nor shall the Lessor assume or incur any
24 liability for failing to do so, and the Lessee hereby unconditionally and completely waives and
25 releases all complaints, claims, suits and actions of all types, both administrative and judicial,
26 against the Lessor in connection therewith.

27
28 e. The Lessor shall have the right to remove from the leased docking spaces, without
29 any liability whatsoever for so doing, and without prior or subsequent notice to the Lessee, any
30 alterations made by the Lessee which are made without the express consent of the City
31 Harbormaster. The cost of removal and/or repairs associated with the removal of any such
32 unauthorized alterations, including any administrative costs incurred by the Lessor, shall be
33 billed to the Lessee, and shall be due and payable by the Lessee promptly upon the Lessee's
34 receipt of the invoice.

35
36 f. The Lessor shall have the right and privilege, with the consent of the Lessee, which
37 consent shall not be unreasonably withheld, on not less than seven (7) days notice from the
38 Lessor to the Lessee, to reclaim and use all or some of the leased docking spaces in order to meet
39 prior contractual obligations relating to the annual sailboat and/or powerboat shows at or on the
40 City Dock, and to accommodate certain special events, shows or programs conducted from time
41 to time at or on the City Dock. In such event, the Lessee shall vacate designated leased docking
42 spaces to which the consent applies and remove all of its vessels from the designated leased
43 docking spaces during the period specified in the Lessor's notice.

44
45 g. If the Lessee vacates any of the leased docking spaces due to any events, shows or
46 programs other than the annual sailboat and/or powerboat shows conducted at or on the City

1 Dock, the Lessee shall be entitled to a pro rata abatement of the rent due pursuant to this Lease
2 based on the ratio which the number of days of vacancy specified in the Lessor's notice to the
3 Lessee bears to the total annual rent, and based on the docking spaces vacated.
4

5 h. The Lessee shall conduct its business in and about the City Dock in an orderly
6 manner and shall keep its vessels neat and clean and shall maintain the area immediately
7 adjacent to its mooring area and the leased spaces in a neat and clean manner.
8

9 6. Default, Breach and Termination
10

11 a. The Lessee shall be deemed to be in breach and default of this Lease if, within ten
12 (10) days of the due date, the Lessee fails to pay the rent, the additional rent, or any other charges
13 due under the terms of this Lease. In such event, the Lessor may declare this Lease immediately
14 terminated and the Lessor shall be entitled to all unpaid rent, additional rent and other charges
15 due pursuant to this Lease, and to the immediate and exclusive use and possession of each of the
16 leased docking spaces, without any notice or further demand for rent, additional rent and other
17 charges due pursuant to this Lease, and without any notice to quit or vacate or other demand to
18 recover use and possession of the leased docking spaces, or notice of intention to exercise its
19 rights pursuant to this Lease, and the Lessee hereby expressly and unconditionally waives all
20 such notice. In such event, the Lessee shall be responsible for all reasonable attorney fees and
21 costs incurred by the Lessor to obtain eviction.
22

23 b. If the Lessee shall be in breach or default in the performance of any of the other
24 terms of this Lease and fails to cure or remedy the breach or default within thirty days after the
25 Lessor gives written notice to the Lessee of the breach or default, the Lessor may declare this
26 Lease immediately terminated and the Lessor shall be entitled to all unpaid rent, additional rent
27 and other charges due pursuant to this Lease, and to the immediate and exclusive use and
28 possession of each of the leased docking spaces, without any notice or further demand for rent,
29 additional rent and other charges due pursuant to this Lease, and without any notice to quit or
30 vacate or other demand to recover use and possession of the leased docking spaces, or notice of
31 intention to exercise its rights pursuant to this Lease, and the Lessee hereby expressly and
32 unconditionally waives all such notice. In such event, the Lessee shall be responsible for all
33 reasonable attorney fees and costs incurred by the Lessor to obtain eviction.
34

35 7. Signs
36

37 a. All signs which the Lessee desires to post must be approved by the Lessor and the
38 Historic Preservation Commission of the City of Annapolis and any other agency if required by
39 law.
40

41 8. Compliance with Law
42

43 a. The Lessee shall comply with all federal, state and municipal licensing laws and
44 regulations to insure that the Lessee's vessels and crews are certified as appropriate and that the
45 Lessee's operations are conducted in a safe and non-hazardous and lawful manner.
46

1 9. Insurance
2

3 a. The Lessee shall for the duration of this Lease maintain and pay the premiums for a
4 policy of insurance covering liability for personal injury and property damage arising out of its
5 business and operations pursuant to this Lease in the amount of no less than One Million Dollars
6 (\$1,000,000.00) per person for bodily injury and property damage and Three Million Dollars
7 (\$3,000,000.00) for each occurrence in the aggregate. The Lessee shall specifically name City of
8 Annapolis and its Mayor, Aldermen and Alderwomen, employees, contractors and other agents
9 as an additional insureds, and shall deliver a copy of such insurance policy and a certificate of
10 insurance to the City Attorney at least ten days prior to the commencement of the lease term.
11

12 b. The Lessee shall have adequate workers' compensation insurance covering its
13 employees who enter upon the access road leading to the Rental Area and the Rental Area itself
14 and in no event shall the coverage in such policy be less than One Million Dollars
15 (\$1,000,000.00) per person for accidental bodily injury and occupational disease. The Lessee
16 shall specifically name City of Annapolis and its Mayor, Aldermen and Alderwomen,
17 employees, contractors and other agents as an additional insureds. The Lessee shall deliver a
18 copy of its Worker's Compensation insurance policy and a certificate of insurance to the City
19 Attorney at the time of the execution of this Lease and an updated certificate of insurance on the
20 commencement date of each renewal term.
21

22 10. Indemnification
23

24 a. The Lessee shall indemnify, defend, and hold the City of Annapolis, its Mayor,
25 Aldermen and Alderwomen, employees, contractors and other agents, harmless from all actions,
26 causes of action, complaints, claims or demands, and all liability for injuries or damages to
27 person or property, arising or alleged to arise as a result of any act or omission of the Lessee, its
28 employees, contractors or other agents, whether or not the result of negligence or other fault,
29 during the term of this Lease.
30

31 b. In the event the Lessee is required to defend any such actions, causes of action,
32 complaints, claims or demands, the Lessee shall be entitled to participate in its defense, either in
33 whole or in part as it so deems, and to select its own attorneys to provide a defense at the sole
34 expense, for purposes of attorney fees and litigation costs, of the Lessee.
35

36 11. Immunities
37

38 a. The Lessor reserves and shall be entitled to enforce any and all immunities, partial
39 or total, statutory or common law, in any proceeding that is initiated as a result of this Lease,
40 whether initiated by the Lessor, the Lessee or any third party.
41

42 12. Assignment
43

44 a. The Lessee shall be entitled to assign its Lease obligations with the prior written
45 consent of the Lessor, which the Lessor shall not unreasonably withhold, but any assignee, to the
46 reasonable satisfaction of the Lessor, shall be financially able to meet the obligations of the

1 Lease, including the payment of all rent due timely and the maintenance of the minimum
2 insurance coverage required by this Lease, have the overall capability, expertise and resources to
3 operate a waterfront tour and cruise business of a scale and quality comparable to that of the
4 Lessee, or, in the alternative, to operate a maritime business that qualifies as an "amusement"
5 under the Maryland State tax laws, and to otherwise perform the obligations of the Lease at the
6 same level as the Lessee.

7
8 13. Absence of Agency
9

10 a. The Lessee acknowledges that it is an independent contracting party and not the
11 agent or employee of the Lessor.
12

13 14. Notice
14

15 a. All notices pursuant to this Lease shall be by regular mail, fax or email, except
16 notice of termination, which shall be by certified mail, return receipt requested.
17

18 b. Notice to the Lessor shall be to the City Attorney, 160 Duke of Gloucester Street,
19 Annapolis, Maryland 21401.
20

21 c. Notice to the Lessee shall be to Debbie Gosselin at PO Box 3350, Annapolis, MD
22 21403.

23 d. The parties shall timely advise each other in writing of any change of address.
24

25 15. Venue, Waiver of Jury Trial and Governing Law
26

27 a. Venue for all judicial proceedings which result from this Lease shall be the courts
28 of Anne Arundel County, Maryland.
29

30 b. The parties hereby expressly waive trial by jury in any such judicial proceeding.
31

32 c. The laws of the State of Maryland shall govern all matters relating to this Lease.
33

34 16. Modification or Amendment
35

36 a. This Agreement may not be modified or amended except in a writing signed by the
37 parties and witnessed. No waiver of any provision of this Agreement shall be construed as a
38 modification or amendment of this Agreement or valid unless in writing and signed by the
39 parties and witnessed.

40 17. Integration
41

42 a. This Lease constitutes the entire agreement between the parties regarding the
43 Lessee's lease of the Lessor's docking spaces. There are no other terms or understandings, oral
44 or written, between the parties with respect thereto.
45

18. Binding Effect

a. The terms of this Lease shall be binding upon and shall be for the benefit of the parties and their successors and assigns.

Witness the signatures and seals of the parties.

Attest:

CITY OF ANNAPOLIS

Lessor

Regina C. Watkins-Eldridge, MMC

By: _____
Michael J. Pantelides, Mayor (Seal)

CHESAPEAKE MARINE TOURS, INC. Lessee

Witness

By: _____
Debbie Gosselin, President (Seal)

Approved for form and Legal Sufficiency:

Michael G. Leahy, City Attorney

Date: