



Sussex County Council Public/Media Packet

**MEETING:
January 29, 2019**

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**Sussex County Council
2 The Circle | PO Box 589
Georgetown, DE 19947
(302) 855-7743**

COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
IRWIN G. BURTON III, VICE PRESIDENT
DOUGLAS B. HUDSON
JOHN L. RIELEY
SAMUEL R. WILSON JR.



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743 T
(302) 855-7749 F

SUSSEX COUNTY COUNCIL

AGENDA

JANUARY 29, 2019

10:00 A.M.

****AMENDED on January 24, 2019 at 10:30 A.M.¹**

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Presentation – Mark Isaacs, Director, Carvel Research and Education Center

Todd Lawson, County Administrator

- 1. Wastewater Agreement No. 1027-4
Sussex County Project No. 81-04
Silver Woods – Phase 5A
Miller Creek Sanitary Sewer District**
- 2. Public Interview for Planning and Zoning Commission Nominee Bruce Mears**
- 3. Appointments to Advisory Committee for the Aging and Adults with Physical Disabilities**
- 4. Administrator’s Report**

**** 10:15 a.m. Public Hearing**

Lakeside Annexation



Michael Costello, Government Affairs Manager

1. Update - Memorandum of Understanding with Department of Corrections and DelDOT for Litter Collection

Jim Hickin, Airport Manager

1. T-Hangar Lease

Hans Medlarz, County Engineer

1. Delaware Center for the Inland Bays
 - A. Sussex County Landfill #3 Buffer Site - Reforestation & Meadow Creation
2. Delaware Department of Natural Resources
 - A. Wolfe Neck Spray Irrigation Site & Agricultural/Silviculture Lease Agreement
 - B. Hunting Program Agreement
 - C. CIB Memorandum of Understanding
3. Ellendale Water District Agreement
4. Delaware Coastal Airport & Business Park
 - A. Bulk Wastewater Services Agreement
5. 2016 Bulk Services Agreement with Artesian Wastewater Management, Inc.
 - A. Amendment No. 1

John Ashman, Director of Utility Planning

1. Infrastructure Use Agreement – Home 2 Suites by Hilton

Grant Requests

1. Delaware 4-H Association for Sussex County 4-H Interstate Exchange Program
2. Veterans of Foreign Wars of the United States Auxiliary for the Department of DE VFW Auxiliary Convention Year Book
3. Trinity Foundation for the Annual Heart & Sole 5K Fundraiser

Introduction of Proposed Zoning Ordinances

Council Members' Comments

Executive Session – Potential/Pending Litigation pursuant to 29 Del.C.§10004(b)

Possible Action on Executive Session Items

Adjourn

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on January 22, 2019 at 4:30 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items may be considered out of sequence.

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¹ Per 29 Del. C. § 10004(e)(5) and Attorney General Opinion No. 13-IB02, this agenda was amended to correct an oversight, to include the Public Hearing on Lakeside Annexation.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 15, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 15, 2019, at 1:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	Councilman
Samuel R. Wilson Jr.	Councilman
Gina A. Jennings	Finance Director
J. Everett Moore Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 030 19
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of January 8, 2019 were approved by consent.

**Public
Comments**

Public Comments

Dan Kramer commented on: (1) building permits for sheds / portable buildings, (2) the delay in the availability of the audio of the Planning and Zoning Commission's recent meeting, and (3) the availability and cost of high speed internet.

Rocco Maiellano commented on Change of Zone No. 1862 filed on behalf of Old Orchard Ventures, LLC but was advised by Mr. Moore that the record was closed on this matter on January 8, 2019.

**Corre-
spondence**

Correspondence

SURVIVORS OF ABUSE IN RECOVERY, WILMINGTON, DELAWARE.

RE: Letter in appreciation of grant.

(continued) **BARBARA K. BROOKS, TRANSITION HOUSE, INC., GEORGETOWN, DELAWARE.**

RE: Letter in appreciation of grant.

P&Z

Appointment

Mrs. Jennings reported that Mr. Wilson has a recommendation for an appointment to the Planning and Zoning Commission.

M 031 19

Appointment to

P&Z

Commission

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, that the Sussex County Council appoints Keller Hopkins to the Planning and Zoning Commission for a term to end June 2020.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Wastewater Agreement

Mrs. Jennings presented a wastewater agreement for the Council's consideration.

M 032 19

Execute Wastewater Agreement/ Coastal Club

A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, for Sussex County Project No. 81-04, Agreement No. 984-20, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Coastal Club, LLC for wastewater facilities to be constructed in "Coastal Club – Land Bay 7 – Phase B (Construction Record)", located in the Goslee Creek Planning Area.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Administrator's Report

Mrs. Jennings read the following information in the County Administrator's Report:

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for December 2018 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of December.

Administrator's Report (continued)

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Carillon Woods and Marsh Farm Estates – Phase 2 received Substantial Completion effective January 8th and January 10th, respectively.

(Attachments to the Administrator's Report are not attachments to the minutes.)

Delaware Coastal Airport Advisory Committee/ By-Laws Revisions/ Committee Members

Jim Hickin, Airport Manager, reported that the Delaware Coastal Airport Advisory Committee approved recommending a tourism representative be added to the Committee. The Committee believes the number of tourism related users of the Airport warrants the addition of a tourism representative. The Committee is requesting that the County Council approve a By-Laws change that will permit the additional Committee member. The Committee is also recommending an amendment to the By-Laws to change the words "Industrial Park" to "Business Park" to reflect the current name of the industrial/business area of the Airport.

M 033 19 Amend By-Laws of the Delaware Coastal Airport Advisory Committee

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Delaware Coastal Airport Advisory Committee, that the Sussex County Council amends the By-Laws for the Delaware Coastal Airport Advisory Committee, as presented.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

Delaware Coastal Airport Advisory Committee/ By-Laws Revision/ Committee Appointments

Jim Hickin, Airport Manager, advised that the terms of the members of the Airport Advisory Committee expire every year at the end of December. Mr. Hickin recommended that the Council reappoint the current Committee members. Mr. Hickin noted that Councilman Doug Hudson's appointment to the Committee was approved on January 8, 2019.

A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the Sussex County Council appoints Gus Croll, Garrett Dernoga, Rick Garner, Larry Kelley, Jeffrey Reed, Mark Ryan, Ray Hopkins and Scott Thomas to the Delaware Coastal Airport Advisory Committee for 2019.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

Council Member Recusal

Mr. Hudson recused himself from the Old Business matter (Change of Zone No. 1862) and left the meeting.

**Old
Business/
CZ 1862**

The Council considered Change of Zone No. 1862 filed on behalf of Old Orchard Ventures, LLC c/o Barry J. Baker.

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2018 at which time action was deferred. On November 29, 2018, the Commission recommended denial.

The Council held a Public Hearing on this application on January 8, 2019 at which time action was deferred.

**M 034 19
Adopt
Proposed
Ordinance/
CZ 1862
/
Denied**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.82 ACRES, MORE OR LESS” (Change of Zone No. 1862) filed on behalf of Old Orchard Ventures, LLC c/o Barry J. Baker.

Motion Denied: 3 Nays, 1 Yea, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Nay;
Mr. Wilson, Yea; Mr. Burton, Nay;
Mr. Vincent, Nay**

Mr. Hudson rejoined the meeting.

**Introduction
of Proposed
Ordinances**

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.113 ACRE, MORE OR LESS” (Conditional Use No. 2169) filed on behalf of Robert M. and Deborah Reed (Tax I.D. No. 335-12.06-1.00) (911 Address: 1525 Savannah Road, Lewes).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.317 ACRES, MORE OR LESS” (Change of Zone No. 1875) filed on behalf of L. W. & J. T. Mitchell Family, LP ((Tax I.D. No. 335-8.00-37.00 (portion of) (911 Address: None Available).

Introduction of Proposed Ordinances (continued)

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.113 ACRES, MORE OR LESS” (Change of Zone No. 1876) was filed on behalf of Robert M. and Deborah A. Reed (Tax I.D. No. 335-12.06-1.00) (911 Address: 1525 Savannah Road, Lewes).

The Proposed Ordinances will be advertised for Public Hearing.

Council Members’ Comments

Council Members’ Comments

Mr. Burton questioned if zoning packets for public hearings will be available digitally to Council and to the public via the website. Ms. Cornwell reported that staff is currently working on making this information available digitally.

M 035 19 Recess

At 1:21 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson, to recess until 1:30 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 036 19 Reconvene

At 1:30 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Burton, to reconvene.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Rules

Mr. Moore read the rules of procedure for public hearings.

**Public Hearing/
CZ 1865**

A combined Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.59 ACRES, MORE OR LESS” (Change of Zone No. 1865) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (22 UNITS) TO BE LOCATED ON A

**Public
Hearing/
CZ 1865
(continued)**

CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.59 ACRES, MORE OR LESS” (Conditional Use No. 2151) filed on behalf of Francis C. Warrington III (Tax I.D. No. 334-19.00-1.00) (911 Address: 20873 Old Landing Road, Rehoboth Beach).

The Planning and Zoning Commission held a combined Public Hearing on these applications on November 29, 2018 at which time action was deferred. On December 13, 2018, the Commission recommended approval of the Change of Zone and the Conditional Use, with the following conditions:

- A. The maximum number of residential units shall be 22.**
- B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- C. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- D. The project shall be served by central water to provide drinking water and fire protection.**
- E. Interior street design shall meet or exceed the Sussex County street design requirements.**
- F. With the exception of the entrance road, there shall be sidewalks on both sides of the roadway. The entrance area may have a sidewalk on just one side of the road.**
- G. Section 115-218 of the Zoning Code allows the County to require a 20-foot forested buffer around multi-family developments. There shall be a vegetated or forested buffer of at least 20-feet in width around the entire perimeter of the project, with the exception of the 50-foot wide entrance road area to the project. There shall be landscaping provided on the north side of this entrance road area to screen it from adjacent properties. To the extent feasible, utilities shall be located within the paved area or the south side of the entrance area to avoid interference with this landscaping.**
- H. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas.**
- I. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- J. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- K. The Applicant shall form a homeowners’ association responsible for the perpetual maintenance, repair and replacement of the roads, buffers and landscaping, stormwater management facilities, erosion**

**Public
Hearing/
CZ 1865
(continued)**

- and sediment control facilities and other common elements.**
- L. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management area and erosion and sedimentation control facilities.**
 - N. As stated by the Applicant, there shall be a swimming pool and small pool house installed on the premises. The swimming pool shall be at least 15-feet by 30-feet in size.**
 - O. The wetlands area at the northeast corner of the site shall not be disturbed, and there shall not be any buildings located closer than 35-feet to this wetlands area.**
 - P. All street lights shall be downward screened so that they do not shine on neighboring properties or roadways.**
 - Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated November 29 and December 13, 2018.)

An Exhibit Booklet was previously distributed to the Council members and made a part of the record.

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found that Mark Davidson with Pennoni was present with Mr. Warrington, the Applicant. Mr. Davidson stated that the application is for a rezoning of AR-1 Agricultural Residential lands located within the ES-1 Environmentally Sensitive Development District Overlay Zone to MR Medium Density Residential District with a Conditional Use for multi-family dwelling structures; that 22 units (single family attached with 2-car garages) are proposed on 5.59 acres; that there are 0.27 acres of wetlands; that 60 percent of the site will be open space; that there is a vacant lot in the front; that the proposed project will maintain the residential character of the neighborhood; and that the property is currently being used for farming and business uses. Mr. Davidson discussed the proposed use, landscaping and buffers, sidewalks, water and sewer availability, the character and intensity of surrounding developments; and the design of the units (illustration shown). It was noted that DelDOT did not require a Traffic Impact Study. Mr. Davidson referenced the applications' compliance with the Zoning Ordinance and the 2008 Comprehensive Plan.

There were no public comments.

The Public Hearing and public record were closed.

**M 037 19
Adopt
Ordinance
No. 2626/
CZ 1865**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to Adopt Ordinance No. 2626 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.59 ACRES, MORE OR LESS” (Change of Zone No. 1865) filed on behalf of Francis C. Warrington III.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 038 19
Adopt
Ordinance
No. 2627/
CU 2151**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2627 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (22 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.59 ACRES, MORE OR LESS” (Conditional Use No. 2151) filed on behalf of Francis C. Warrington III, with the following conditions:

- A. The maximum number of residential units shall be 22.**
- B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- C. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- D. The project shall be served by central water to provide drinking water and fire protection.**
- E. Interior street design shall meet or exceed the Sussex County street design requirements.**
- F. With the exception of the entrance road, there shall be sidewalks on both sides of the roadway. The entrance area may have a sidewalk on just one side of the road.**
- G. Section 115-218 of the Zoning Code allows the County to require a 20-foot forested buffer around multi-family developments. There shall be a vegetated or forested buffer of at least 20-feet in width around the entire perimeter of the project, with the exception of the 50-foot wide entrance road area to the project. There shall be landscaping provided on the north side of this entrance road area to screen it from adjacent properties. To the extent feasible, utilities shall be located within the paved area or the south side of the entrance area to avoid interference with this landscaping.**

**M 038 19
Adopt
Ordinance
No. 2627/
CU 2151
(continued)**

- H. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas.**
- I. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- J. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- K. The Applicant shall form a homeowners' association responsible for the perpetual maintenance, repair and replacement of the roads, buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
- L. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management area and erosion and sedimentation control facilities.**
- N. As stated by the Applicant, there shall be a swimming pool and small pool house installed on the premises. The swimming pool shall be at least 15-feet by 30-feet in size.**
- O. The wetlands area at the northeast corner of the site shall not be disturbed, and there shall not be any buildings located closer than 35-feet to this wetlands area.**
- P. All street lights shall be downward screened so that they do not shine on neighboring properties or roadways.**
- Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Council-
member
Recusal**

Mr. Hudson recused himself from the Public Hearing on Conditional Use No. 2159 and left the meeting.

**Public
Hearing/
CU 2159**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.3673 ACRE, MORE OR LESS" (Conditional Use No. 2159) filed on behalf of Elisabeth Ann Burkhardt (Tax I.D. No. 335-8.18-28.00) (911 Address: 1500 Savannah

**Public
Hearing/
CU 2159
(continued)**

Road, Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on December 13, 2018 at which time the Commission recommended approval with the following conditions:

- A. The use shall be limited to professional offices.**
- B. As stated by the Applicant, the use shall occur within the existing structure, maintaining its residential appearance from Savannah Road.**
- C. The hours of operation shall be between 8:00 a.m. and 5:30 p.m., Monday through Friday. Additional hours shall be emergency appointments only.**
- D. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- E. The Applicant shall comply with all DelDOT requirements concerning, traffic and roadway improvements.**
- F. All exterior lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- G. All parking shall be located in the rear of the property behind the office.**
- H. One unlighted sign shall be permitted on the property. The sign shall be no larger than 32 square feet per side.**
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated December 13, 2018.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

Ms. Cornwell stated that the Planning and Zoning Commission included as part of the record, the record for the Applicant's previous application (Change of Zone No. 1857) which was denied.

An Exhibit Booklet was previously distributed to Council members and made a part of the record.

The Council found that Kristin Collison, Attorney, was present on behalf of the Elisabeth Burkhardt Trust, the owner of the property. She stated that a commercial use was previously permitted on the subject property under a Conditional Use for the benefit of the community as a psychiatrist's office; that Elisabeth Burkhardt is deceased and the Trust benefits her disabled daughter who wishes to sell the property; that a potential buyer of the property is a psychiatrist and she would like to operate the property under a professional services conditional use; that she will operate solely or possibly with one more psychiatrist, but no more than that; that she does anticipate hiring one staff person; that she does not plan to change the property or structure with the exception of adding parking spaces; and that

(continued) there are no objections to the Commissioner's recommended conditions.

There were no public comments.

The Public Hearing and public record were closed.

**M 039 19
Adopt
Ordinance
No. 2628/
CU 2159**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to Adopt Ordinance No. 2628 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.3673 ACRE, MORE OR LESS" (Conditional Use No. 2159) filed on behalf of Elisabeth Ann Burkhardt, with the following conditions:

- A. The use shall be limited to professional offices.
- B. As stated by the Applicant, the use shall occur within the existing structure, maintaining its residential appearance from Savannah Road.
- C. The hours of operation shall be between 8:00 a.m. and 5:30 p.m., Monday through Friday. Additional hours shall be emergency appointments only.
- D. Any dumpsters shall be screened from view of neighboring properties and roadways.
- E. The Applicant shall comply with all DeDOT requirements concerning traffic and roadway improvements.
- F. All exterior lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- G. All parking shall be located in the rear of the property behind the office.
- H. One unlighted sign shall be permitted on the property. The sign shall be no larger than 32 square feet per side.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 040 19
Adjourn**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn at 2:04 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

**(continued) Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}

DRAFT

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE

sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

January 18, 2019

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
SILVER WOODS - PHASE 5A
AGREEMENT NO. 1027 - 4

DEVELOPER:

Mr. Robert Thornton
Silverstock WP, LLC
P. O. Box 449
Bethany Beach, DE 19930

LOCATION:

South side of Road 368 (Beaver Dam Road), east
of Central Avenue. Town of Ocean View

SANITARY SEWER DISTRICT:

Miller Creek Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

51 single family houses and a clubhouse.

SYSTEM CONNECTION CHARGES:

\$324,360.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
08/26/15

Department of Natural Resources Plan Approval
07/30/15

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 64

Construction Admin and Construction Inspection Cost – \$43,961.25

Proposed Construction Cost – \$293,075.00



ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE

sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

January 29, 2019

PROPOSED MOTION

BE IT MOVED THAT BASED UPON THE RECOMMENDATION OF THE SUSSEX COUNTY ENGINEERING DEPARTMENT, FOR SUSSEX COUNTY PROJECT NO. 81-04, AGREEMENT NO. 1027-4 THAT THE SUSSEX COUNTY COUNCIL EXECUTE A CONSTRUCTION ADMINISTRATION AND CONSTRUCTION INSPECTION AGREEMENT BETWEEN SUSSEX COUNTY COUNCIL AND "SILVERSTOCK WP, LLC" FOR WASTEWATER FACILITIES TO BE CONSTRUCTED IN "BATSON CREEK ESTATES – PHASE SILVER WOODS – PHASE 5A", LOCATED IN MILLER CREEK SANITARY SEWER DISTRICT.

ORDINANCE NO. 38
AGREEMENT NO. 1027-4

TODD LAWSON
COUNTY ADMINISTRATOR




TODD F. LAWSON
COUNTY ADMINISTRATOR
(302) 855-7742 T
(302) 855-7749 F
tlawson@sussexcountyde.gov



Sussex County
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson Jr.

FROM: Todd F. Lawson
County Administrator 

RE: **ADVISORY COMMITTEE ON AGING & ADULTS WITH PHYSICAL DISABILITIES**

DATE: January 25, 2019

During Tuesday's meeting, you will consider appointments to the Sussex County Advisory Committee on Aging & Adults with Physical Disabilities ("Aging Committee").

As you know, the Aging Committee consists of 11 members who are appointed for a term of two years.

The following nominees for the respective councilmanic district will be considered on Tuesday:

District	Nominee
1	Cathy Parker
1	Helen Smith
1	Paul Rosa
2	Fran Smith
2	Linda Rogers
3	Larry Savage
3	Francine Shockley
4	Jamie Magee
4	Antionette Johnson
5	Linda Forte
5	Scott Phillips

Please let me know if you have any questions or concerns.



PUBLIC NOTICE

PROPOSED LAKESIDE EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (BLADES AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on November 27, 2018 to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Blades Area, to include several parcels along Sussex Highway (US Rt. 13) area, being situate in Broad Creek Hundred, Sussex County, Delaware.

This action is in conformity with 9 Del.C §6502.

A description of the area, which is contiguous to and to be added to the SCUSSD is described as follows:

Beginning at a point, said point being on the SCUSSD boundary, said point also being the northwesternmost property corner of lands N/F Jack Mullins; thence proceeding with said Mullins property in an easterly direction a distance of 99'± to a point, said point being on the northerly property line of RKC Properties, LLC; thence proceeding with said RKC Properties lands in a northeasterly direction a distance of 622'± to a point, said point being a shared property corner of lands N/F RKC Properties, LLC and lands N/F Curtis E. Williams, Jr.; thence continuing by and with said RKC lands in a southeasterly, northeasterly, southeasterly, southwesterly, southeasterly, westerly, southeasterly and southwesterly direction respectively a total distance of 2,700'± to a point, said point being the westernmost property corner of lands N/F of David W. Baker Trustee of Irrevocable Trust, said point also being on the easterly property line of lands N/F of Ronnie Gaines, Trustee; thence proceeding by and with said Baker lands in a southeasterly direction a distance of 758'± to a point, said point being the southeasternmost property corner of lands N/F of Lakeside Homes, LLC; thence proceeding by and with said Lakeside lands in a southwesterly direction a distance of 250'± to a point, said point being on the easterly ROW of Sussex Highway; thence proceeding with said ROW in a generally northwesterly direction a distance of 2,100'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 132-2.00 and Sussex County property assessment records. The annexation contains 32 acres more or less.



A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched and highlighted.

The public hearing will be held on this issue at 10:15 a.m. on January 15, 2019 in the Sussex County Council Chambers, County Administrative Offices, 2 The Circle, Georgetown, Delaware. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-1299).

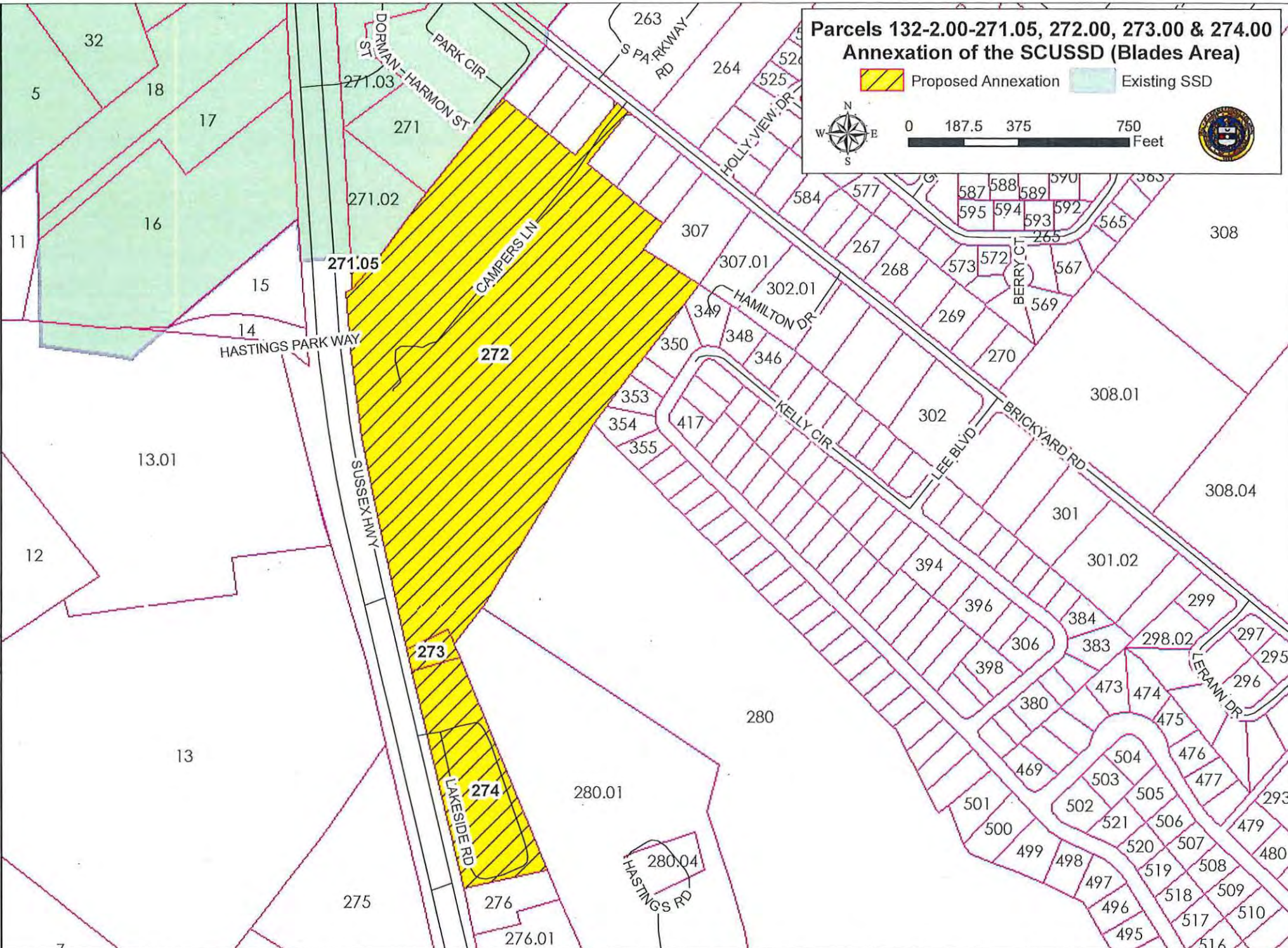
Hans M. Medlarz, P.E.
County Engineer

**Parcels 132-2.00-271.05, 272.00, 273.00 & 274.00
Annexation of the SCUSSD (Blades Area)**

 Proposed Annexation  Existing SSD



0 187.5 375 750 Feet



The proposed annexation is scheduled to be discussed January 15, 2019 at 10:15 AM, in Sussex County Council Chambers, 2 The Circle, Georgetown, DE 19947
For more information please visit: <https://www.sussexcountyde.gov/legal-notice/sewer-water>. Or call Sussex County Utility Planning at 302-855-1299

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCELS 132-2.00-271.05, 272.00, 273.00 & 274.00 ON THE EAST SIDE OF SUSSEX HIGHWAY. THE PARCELS ARE LOCATED IN THE BROAD CREEK HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

WHEREAS, Sussex County has established the Sussex County Unified Sanitary Sewer Sanitary Sewer District (SCUSSD); and

WHEREAS, in the best interests of the present district and to enhance the general health and welfare of that portion of Sussex County in the vicinity of Sussex Highway (Rt. 13), south of the Town of Blades, the inclusion of this area will be beneficial; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (a), the Sussex County Council may, upon request of the County Engineer, revise the boundary of an established sewer district when 50 or more houses have been connected by posting a public notice in four public places in the district describing the new or revised boundary; and

WHEREAS, the Sussex County Council has caused to be posted a public notice in at least four public places in the district, as verified by the affidavit of Phillip C. Calio, a copy of which affidavit and public notice is attached hereto and made a part hereof; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (b), the Sussex County Council shall, within ninety days after posting the public notices pass a formal resolution establishing the new boundary of the district;

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above situated on the east side of Sussex Highway, south of the Town of Blades, as follows:

BEGINNING at a point, said point being on the SCUSSD boundary, said point also being the northwesternmost property corner of lands N/F Jack Mullins; thence proceeding with said Mullins property in an easterly direction a distance of 99'± to a point, said point being on the northerly property line of RKC Properties, LLC; thence proceeding with said RKC Properties lands in a northeasterly direction a distance of 622'± to a point, said point being a shared property corner of lands N/F RKC Properties, LLC and lands N/F Curtis E. Williams, Jr.; thence continuing by and with said RKC lands in a southeasterly, northeasterly, southeasterly, southwesterly, southeasterly, westerly, southeasterly and southwesterly direction respectively a total distance of 2,700'± to a point, said point being the westernmost property corner of lands N/F of David W. Baker Trustee of Irrevocable Trust, said point also being on the easterly property line of lands N/F of Ronnie Gaines, Trustee; thence proceeding by and with said Baker lands in a southeasterly direction a distance of 758'± to a point, said point being the southeasternmost property corner of lands N/F of Lakeside Homes, LLC; thence proceeding by and with said Lakeside lands in a southwesterly direction a distance of 250'± to a point, said point being on the easterly ROW of Sussex Highway; thence proceeding with said ROW in a generally northwesterly direction a distance of 2,100'± to a point, said point being that of the **BEGINNING**.

BE IT FURTHER RESOLVED that the Sussex County Council directs the County Engineer and the Attorney for the County Council to procure the necessary lands and

right-of-way by purchase, agreement, or condemnation in accordance with the existing statutes; and

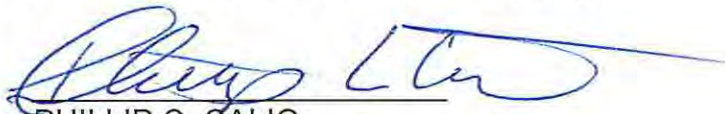
BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to prepare maps, plans, specifications, and estimates, let contracts for and supervise the construction and maintenance of, or enlarging and remodeling of, any and all structures required to provide for the safe disposal of sewage in the sanitary sewer district, as amended.

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
LAKESIDE MHP EXPANSION
AFFIDAVIT FOR PUBLIC HEARING

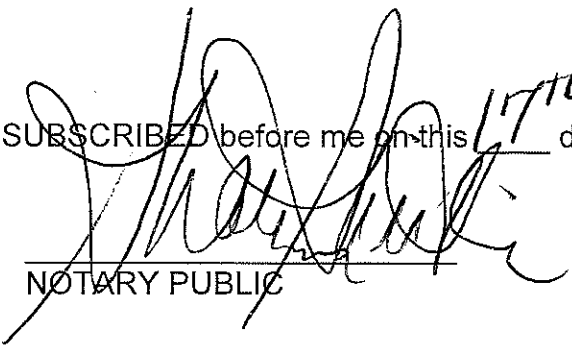
STATE OF DELAWARE)(:
COUNTY OF SUSSEX)(

BE IT REMEMBERED, That the subscriber, PHILLIP C. CALIO, personally appeared before me and known to me personally to be such, who being by me duly sworn to law did depose and say as follows:

- A. On December 17, 2018 he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On December 17, 2018 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
 - 1. On a post in front of Delmarva Power Pole 47140/02709 in the easterly ROW of Sussex Hwy. (Rt. 13), 2,664'± northeast of the intersection of Sussex Highway and Airport Road;
 - 2. On a post in front of Delmarva Power Pole 47136/02734 in the easterly ROW of Sussex Highway 2,930'± northeast of the intersection of Sussex Highway and Airport Road;
 - 3. On a post in front of Delmarva Power Pole 47118/02821 in the easterly ROW of Sussex Highway, 1,992'± south of the intersection of Sussex Highway and Brickyard Road;
 - 4. On a post in front of a stop sign at the intersection of Brickyard Road and Campers Lane at the entrance to Delmarva RV;
 - 5. On the Public Notice Board at the Blades Town Hall, 20 West Fourth Street, Blades Delaware;
 - 6. On Delmarva Power Pole 46629/03074 on North Market Street, across from the Blades Marina;
 - 7. On a post in front of the Blades Fire Hall sign at the intersection of East Fifth Street and Cannon Street;
 - 8. On a post in front of Diamond State Telephone Pole #VD34/3 in the easterly ROW of Brickyard Road, 325'± northwest of the intersection of Brickyard Road and Sussex Highway.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 17th day of Dec. A.D., 2018



NOTARY PUBLIC

SHARON E. SMITH
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires on 6/14/22

My Commission Expires _____

ADMINISTRATION
MICHAEL J. COSTELLO
GOVERNMENT AFFAIRS MANAGER
(302) 854-5060 T
(302) 855-7749 F
michael.costello@sussexcountyde.gov



Sussex County
DELAWARE
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson Jr.

FROM: Michael Costello
Government Affairs Manager

RE: **UPDATE-MOU WITH DOC AND DELDOT, LITTER COLLECTION**

DATE: January 25, 2019

During Tuesday's meeting, I will provide an update on the litter collection that has taken place in Sussex County under the MOU between the DOC, DeIDOT, and Sussex County. This MOU was approved by Council on June 5, 2018.



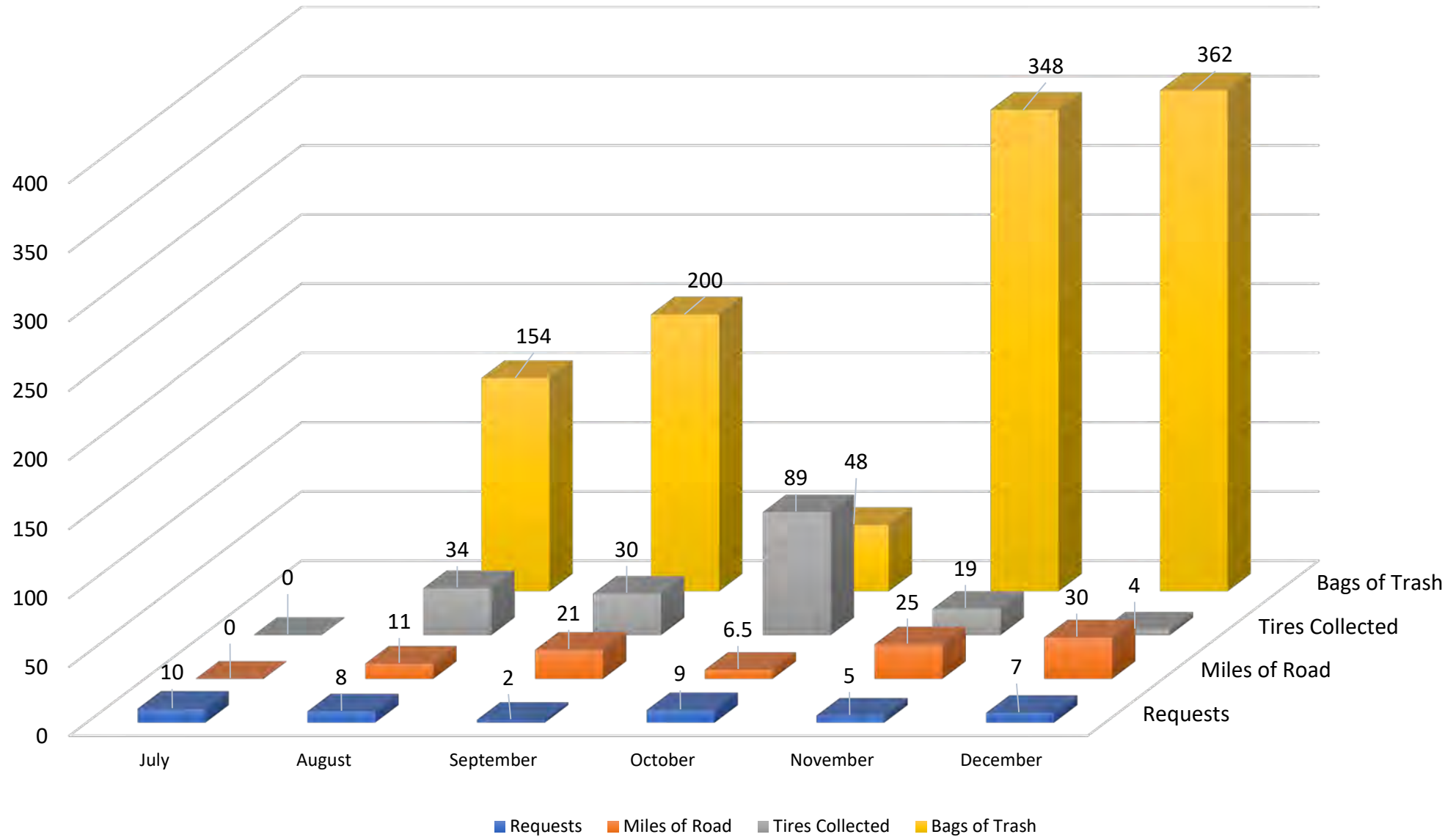
MEMORANDUM OF UNDERSTANDING

Collection of Roadside Litter and Trash

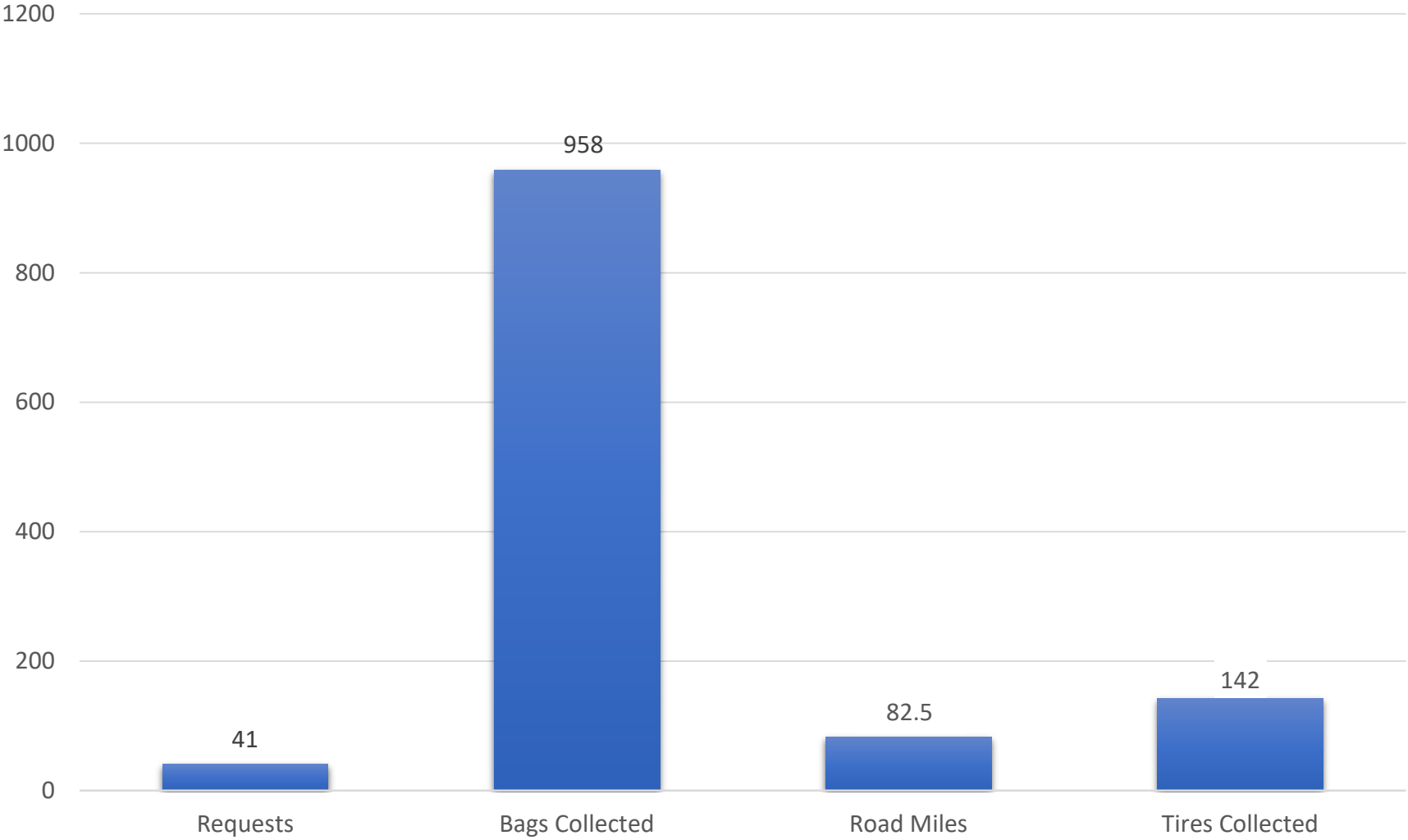
Activity Report
July-December 2018



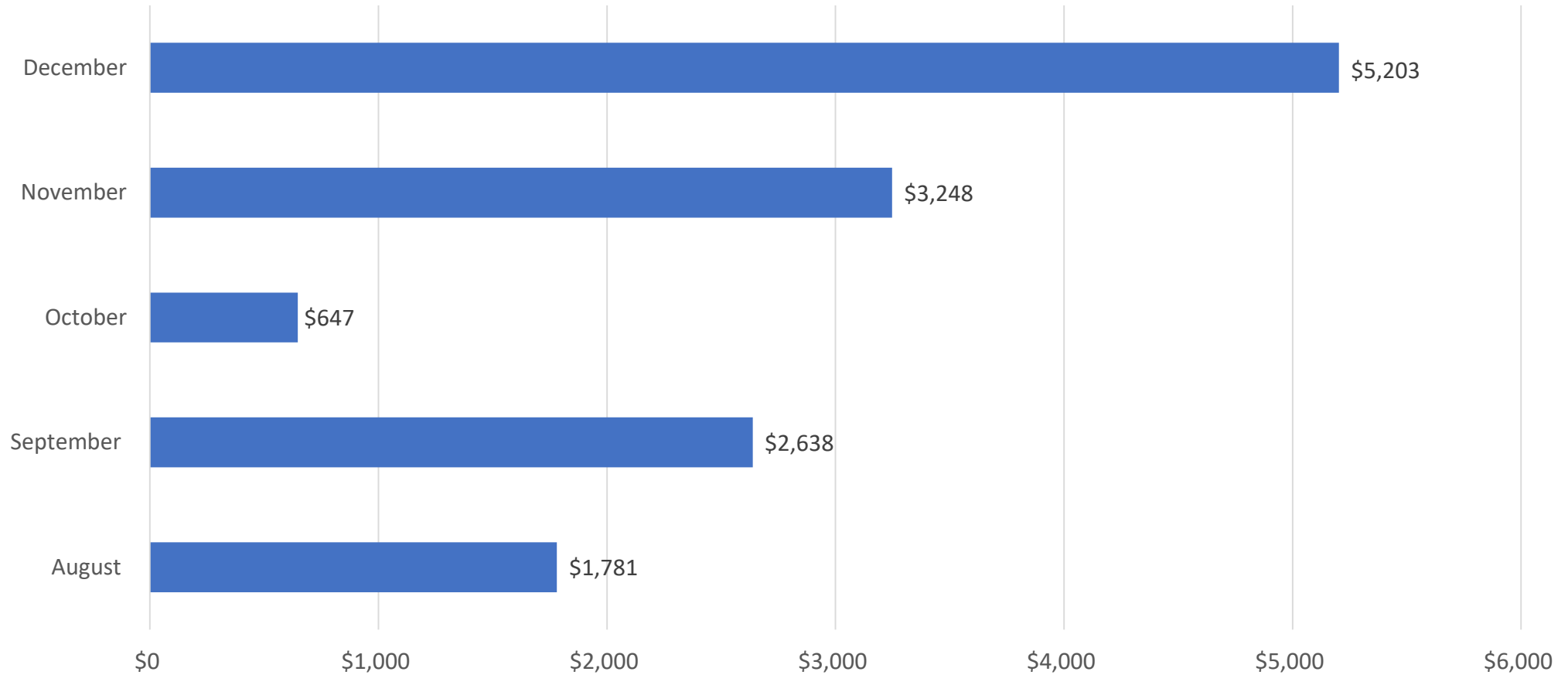
ACTIVITY BY MONTH



TOTAL ACTIVITY JULY-DECEMBER 2018



COST PER MONTH



Total: \$13,516

Average: \$164 per road mile



Stay Connected

- County Council
- County Directory & Contacts
- Open Government
- Meetings, Minutes & More



Request for Litter Clean Up Along Roadway

Sussex County has partnered with Delaware's Department of Correction and Department of Transportation in a unique agreement to tackle the roadside litter and illegal dumping issues that face our community. Using County funds along with manpower and logistical support from the prison system and transportation agency, state and local government is working together to ensure Sussex County remains a beautiful, natural, and inviting landscape for residents and visitors alike.

If you see widespread roadside litter or dumping problems anywhere in Sussex County, please let us know by filling out the form below. Or by contacting the Sussex County Constable's Office at (302) 855-7819. Sussex County thanks you for your interest and for doing your part to keep Sussex County clean!

Caller Name *

Name of the person reporting.

Phone Number *

Reporter's number

Roadway *

Name of the affected roadway.

Closest Intersection *

Intersection closest to the given roadway.

Description of Complaint *

Description of observed conditions.

- 2018 Comprehensive Plan Update
- County Council
- Council Chambers Broadcast
- County Facility Use Application
- Economic Development

- Employment
- Hours & Holidays
- Legal Notices
- Marriage Licenses

- News Releases
- Non-Profit Grant Program
- Open Government
- Planning & Zoning

- Sewer & Water Emergencies
- Sheriff Sales
- Tax Information
- TrashStoppers (State of DE)
- Vendor Self-Service

ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718
AIRPORT & INDUSTRIAL PARK (302) 855-7774
ENVIRONMENTAL SERVICES (302) 855-7730
PUBLIC WORKS (302) 855-7703
RECORDS MANAGEMENT (302) 854-5033
UTILITY ENGINEERING (302) 855-7717
UTILITY PERMITS (302) 855-7719
UTILITY PLANNING (302) 855-1299
FAX (302) 855-7773



Sussex County

DELAWARE

sussexcountype.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JAMES A. HICKIN, A.A.E.
AIRPORT MANAGER

MEMORANDUM

TO: Sussex County Council

THROUGH: Todd Lawson
County Administrator

FROM: Jim Hickin, A.A.E.
Airport Manager

DATE: January 25, 2019

RE: GROUND LEASE

The current tenant of Lot C6 at the airport (Frank Martin) owns the small, single unit T-hangar on the lot. He wishes to sell the hangar to Ronald Covais and has requested a ground lease be offered to Mr. Covais. Lot C6 is 2,350 ft², slightly larger than the footprint of the hangar. The hangar is pictured below.



The terms of the proposed lease are:

- Month to month terms with 30 days' notice by either party to terminate
- \$75 monthly rent. This is \$0.38/ft²/year, our current market rate for aeronautical ground leases
- Use of property is for storage of personally owned aircraft only
- Tenant pay all utilities (currently only electric is available to the lot)
- Insurance required: \$1M aircraft liability and \$1M property liability coverage

Please feel free to call me at 855-7775 if you have any questions.

cc: Hans Medlarz, P.E., County Engineer



AIRPORT TERMINAL BUILDING
21553 RUDDER LANE | PO BOX 589
GEORGETOWN, DELAWARE 19947

GROUND LEASE

DELAWARE COASTAL AIRPORT

THIS IS AN AGREEMENT OF LEASE, Made and entered into this ____ day of _____, A. D. 2019, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, party of the first part, hereinafter referred to as "Landlord",

-AND-

RONALD T. COVAIS, having an address of 16 Wharf St, Alexandria, VA 22314, party of the second part, hereinafter referred to as "Tenant".

WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to the conditions hereinafter expressed, that certain airplane hangar site situate upon the lands of the Delaware Coastal Airport, Sussex County, Delaware, (the "Leased Property") identified as **Lot Number C6**. **The Landlord and Tenant mutually agree that the Port-A-Port T-hangar located on the property is owned by the Tenant and shall be maintained by Tenant at Tenant's sole expense. Unless otherwise agreed to by Landlord, at the termination of the lease, Tenant shall remove said hangar from the Leased Property and shall promptly repair any damage to the Leased Property caused by said removal.**

2. Landlord agrees that the Tenant, its servants, employees, agents and invitees shall

have at all times the free and uninterrupted right of access to the said Leased Property.

3. It is mutually agreed by the parties hereto that the term of this Lease shall be on a month-to-month basis, automatically renewing unless either party shall give the other at least 30 days advance written notice of that party's intentions to terminate this Lease.

4. Tenant agrees to pay to Landlord monthly rental at the rate of Seventy Five Dollars (\$75.00) per month, said rental payments due in advance on or before the 1st day of each month. Payments made after 15th day of the month shall be subject to a late fee of 5% of total amount outstanding. Tenant agrees to pay the rental payments to the **Sussex County Council, Attention: Director of Accounting, at the County Administrative Office Bldg., 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947**, or at such other place or places as the Landlord may designate in writing. Failure of the Tenant to pay to Landlord the monthly rental referred to herein shall be construed as a default of Lease, and this Lease may be terminated by Landlord by reason of said default. (Paragraph 23).

5. Tenant agrees, in addition to the fixed rental provided for herein, to pay all lawful taxes levied upon the buildings and improvements erected or to be erected upon the leased property which are lawfully assessed during the term of this Lease or any renewal or extension thereof.

6. The use of the leased property and any hangar thereon shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction. Use of the leased property shall also comply with National Fire Protection Association Standard 409 relating to aircraft hangars. Tenant shall maintain the leased property, including any improvements thereon in good, clean condition, free from noxious activities or appearance and in accordance with any current or future Airport guidelines or policies.

7. Use of the leased property shall be limited to the storage of Tenant-owned aircraft only, and the Tenant agrees to supply to Landlord information as to the type and identifying number of any aircraft using the property. Tenant agrees to comply with the Federal Aviation Administration's Policy on the Non-Aeronautical Use of Airport Hangars.

8. It shall be a condition of this Lease that the Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased property, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the Airport. The Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the leased property to such a height so as to comply with Title 14 Code of Federal Regulations, Part 77. The Tenant expressly agrees for itself, its successors and assigns, to prevent any use of the leased property which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

9. The Landlord shall at all times under the terms hereof maintain the Delaware Coastal Airport as an active airport facility in compliance with the regulations of the Federal Aviation Administration.

10. Tenant agrees that Landlord shall not be required to furnish to Tenant any facilities or services of any kind, such as, but not limited to, steam, heat, gas, hot water, trash removal, electricity, light or power, except as otherwise provided specifically in this Lease. Landlord represents, however, that electricity is available to the Leased Premises.

11. Tenant agrees during the term of this Lease or any renewal or extension thereof, to comply with all laws, ordinances, lawful orders and regulations issued by the Federal Aviation Administration or any other governmental authority which affect or have jurisdiction over the said Leased Property.

12. The Tenant shall not have the right to assign this Lease or enter into a sublease. In the event Tenant seeks to sell the hangar constructed on the leased property, Tenant shall notify Landlord of his intentions, and the terms and conditions thereof. Tenant shall first offer to sell the hangar to Landlord upon the same terms and conditions.

13. Landlord shall have the right to enter the Leased Property at any time for inspections or to make repairs, additions or alterations as may be necessary for the safety, improvement or preservation of the Leased Property.

14. Tenant agrees to accept all facilities on the Leased Property and at the Airport on an "as-is" basis. Further, Landlord disclaims and Tenant accepts the disclaimer, of any warranty, either express or implied, of the condition, use, or fitness of any tie downs, ropes, or chains used to secure Tenants' airplanes or the airplanes of other airport users, and Tenant assumes full responsibility to furnish any equipment to properly secure Tenant's aircraft.

15. Tenant further agrees that Tenant will not hold Landlord and/or any of its agents, employees, directors, officers, volunteers, consultants and its elected or appointed officials responsible or liable for any loss occasioned by fire, theft, rain, windstorm, hail or from any other cause whatsoever, whether the cause be the direct, indirect or merely a contributing factor in producing the loss or damage to any airplane, automobile, the hangar and associated equipment as shall be appurtenant and necessary thereto, or any other personal property, parts or surplus that

may be located in or stored outside of the hangars, or upon the apron, field, runways, taxiways or other location at the airport; and Tenant agrees that the airplane(s) and their contents are stored, whether on the field or in a hangar, at Tenant's own risk. To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord for any loss of or damage to its real or personal property, improvements and aircraft, regardless of the cause of origin, including the negligence of the Landlord and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials. Tenant shall advise its property insurer(s) of the foregoing and such waiver shall be permitted under any insurance policies maintained by Tenant. And further, to the fullest extent permitted by law, Tenant agrees to hold harmless, indemnify and defend the Landlord, and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials from and against any and all claims, damages, liability and defense costs arising from the Tenant's occupancy of the Leased Property or operations incidental thereto or its obligations under the Agreement, unless such claims, damages, liability and defense costs results directly from the sole negligence of the Landlord.

16. Landlord agrees, covenants and represents as follows:

(a) That the Tenant, its volunteers, servants, employees, agents and invitees shall at all times during the term of this Lease and any renewal thereof, have free and uninterrupted non-exclusive right of access in common with others to the leased property herein relevant for all varieties and types of vehicular traffic and movement. And, Tenant shall have the right in common with others so authorized, to use the common areas of the airport, including runways, taxiways, taxilanes, aprons, roadways, and other conveniences for the ground movement, take-off, flying and landing of aircraft. Landlord agrees, at no expense to Tenant, to provide and maintain all

roadways required to afford such access to the Leased Property from nearby public highways and roads. Provided, however, that Landlord shall not be obligated to provide snow removal services or any other maintenance on Tenant's Leased Property in the hangar area.

(b) That the leased property herein relevant is owned in fee simple by the Landlord and that the leased property herein relevant is free from any encumbrances of any type.

(c) That the Landlord has the right to make this Lease and that it will execute or procure any further assurances of title that may be required by the Tenant.

(d) That electric service is available to the Tenant. Tenant shall solely be responsible for connecting to and for paying all such utilities during the term of this Lease.

17. Landlord reserves the right to further develop or improve the landing and ground movement areas of the airport as it sees fit, regardless of the view or desires of the Tenant and without Tenant's interference or hindrance. In addition, it is specifically agreed that this Lease is non-exclusive and that Landlord reserves the right to lease other property at the facility for identical or similar uses.

18. Tenant agrees during the term of this Lease or any renewal or extension thereof, that any destruction or damage to any building or improvement on the said Leased Property by fire, windstorm or any other casualty shall not entitle Tenant to surrender possession of the said Leased Property or to terminate this Lease or to violate any of its provisions or to cause any rebate or abatement in rent then due or thereafter becoming due under the terms hereof.

19. It is mutually agreed by the parties hereto that any notice under this Lease shall be in writing and must be sent by Registered or Certified Mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. Landlord hereby designates its

address as Sussex County Administrative Office Building, Attention: Airport Manager, 2 The Circle, P O Box 589, Georgetown, Delaware 19947. Tenant hereby designates its address as 16 Wharf St, Alexandria, VA 22314.

20. It is mutually agreed by the parties hereto that the terms "Landlord" and "Tenant" shall refer to and bind not only the parties hereto but also their respective successors, heirs and assigns.

21. Statutory Lien - Landlord hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, and personal property of any Tenant or a Sub-Tenant placed upon the Leased Property, and Tenant agrees that Landlord has such a lien.

22. (a) Aircraft Liability Insurance - Tenant shall secure and maintain, at its own expense, an aircraft liability policy with limits of \$1,000,000 per aircraft and \$1,000,000 per occurrence. Any deductible amount(s) selected by Tenant shall be the sole responsibility of the Tenant.

(b) Property Liability Insurance - Tenant shall secure and maintain, at its own expense, property liability insurance which insures against bodily injury, personal and advertising injury and property damage claims arising from the Tenant's occupancy of the Leased Property or operations incidental thereto, with a combined single limit of \$1,000,000 per occurrence.

(c) Evidence of Insurance/Insurers - Tenant shall furnish certificates of insurance, acceptable to Landlord, evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter.

23. (a) Events of Default Defined. The following shall be "events of default" under this Lease and the terms "event of default" or "default" shall mean, whenever they are used in this

Lease any one or more of the following events:

(1) failure by the Tenant to pay the rents required to be paid at the times specified herein and continuing for a period of thirty (30) days after notice by mail is given to the Tenant that the rental payment referred to in such notice has not been received;

(2) failure by the Tenant to observe and perform any covenant, condition or agreement of this Lease on its part to be observed or performed, other than as referred to in subsection (1) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, given to the Tenant by Landlord, unless the Landlord shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Landlord will not unreasonably withhold its consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Tenant within the applicable period and diligently pursued until the default is corrected; or

(3) the dissolution or liquidation of the Tenant or the filing by the Tenant of a voluntary petition in bankruptcy, or failure by the Tenant promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by the Tenant of any act of bankruptcy, or adjudication of the Tenant as bankrupt or assignment by the Tenant for the benefit of its creditors, or the entry by the Tenant into an agreement of compromise with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Tenant in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the

Tenant”, as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Tenant resulting from a merger or consolidation of the Tenant into or with another corporation or of a dissolution or liquidation of the Tenant following a transfer of all or substantially all its assets.

(b) Remedies of Default. Whenever any event of default referred to in subsections (1) through (3) above shall have happened and be subsisting, Landlord may take any one or more of the following remedial steps:

(1) Apply any money or property of Tenant’s in Landlord’s possession to discharge in whole or in part any obligation or covenant to be observed or performed by Tenant hereunder.

(2) Perform any obligation or covenant to be performed by Tenant hereunder and charge Tenant therefore.

(3) Terminate the Lease.

(4) Enter the leased property and take possession of the same and hold Tenant liable for the rent thereafter accruing and due until such time as Landlord can obtain another suitable Tenant of the leased property under the same terms hereof.

(c) No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

24. Tenant agrees that any waiver by Landlord of the performance of any one of the conditions of this Lease shall not be deemed to constitute a waiver of the right of Landlord to proceed against Tenant upon any subsequent breach of the same or other conditions of this Lease.

25. Tenant shall pay to Landlord, Landlord's reasonable attorney's fees if Landlord employs an attorney or requires the use of an attorney, including appointed County Attorneys, to protect the interest of Landlord if Tenant is adjudged bankrupt, or legal process is levied upon the interest of the Tenant in the Lease or the Leased Property, or if Tenant violates any of the terms of this Lease or Landlord is otherwise required, in Landlord's exclusive judgment, to protect and defend the interests of Landlord under this Lease.

26. The terms, conditions, covenants and provisions of this Lease shall be deemed to be severable. If any clause or provisions herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect. The Landlord may pursue the relief or remedy sought in any invalid clause, by conforming the said clause with the provisions of the statutes or the regulations of any governmental agency in such case made and provided as if the particular provisions of the applicable statute or regulations were set forth herein at length.

27. In all reference herein to any parties, person, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns.

28. The effectiveness of this Lease shall be contingent upon its approval by Sussex County Council in the form of a Motion or Resolution. In the absence of said approval, this Lease

shall be null and void and of no further force and effect.

29. The Tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination; (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Lease and to re-enter and as if said Lease had never been made or issued.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers and their corporate seals to be hereunto affixed, the day and year first above written.

SUSSEX COUNTY

APPROVED AS TO FORM:

By: _____
County Attorney

By: _____
Michael Vincent, President of County Council

Attest: _____
Clerk, County Council

TENANT

By: *Ronald T. Covais*
Ronald T. Covais

PROPOSED

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

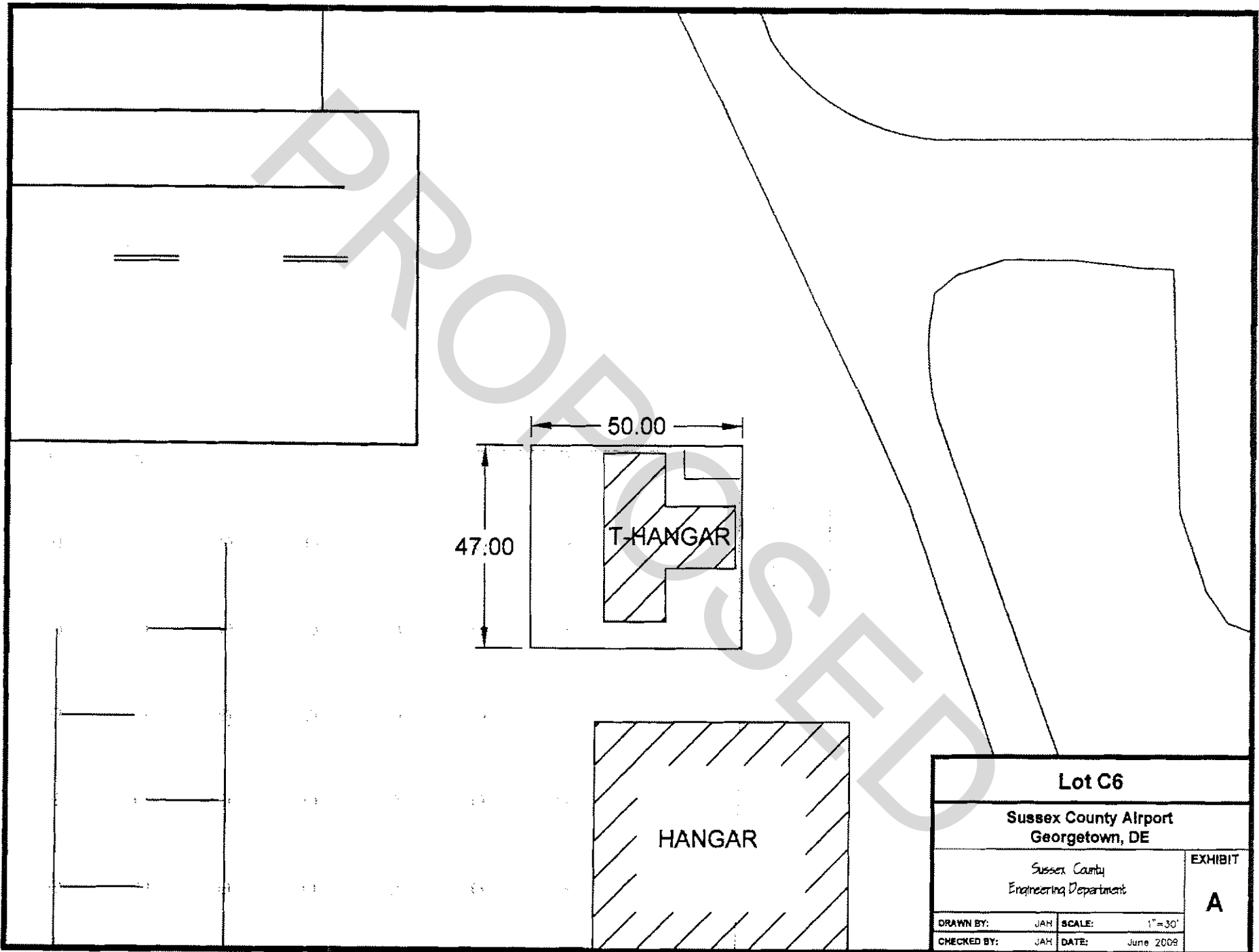
BE IT REMEMBERED, That on this 23rd day of January, A. D. 2019,
personally came before me, the Subscriber, a Notary Public for the State and County aforesaid,
Ronald T. Covais, party to this Indenture, known to me personally to be such, and acknowledged
this indenture to be his act and deed.

GIVEN under my hand and Seal of Office, the day and year aforesaid.



NOTARY PUBLIC

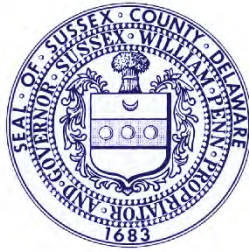
SUSAN A. WISE
NOTARY PUBLIC
STATE OF DELAWARE
MY COMMISSION EXPIRES ON JUNE 14, 2020



Lot C6			
Sussex County Airport Georgetown, DE			
Sussex County Engineering Department			EXHIBIT A
DRAWN BY:	JAH	SCALE:	1" = 30'
CHECKED BY:	JAH	DATE:	June 2009

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Hans Medlarz, P.E., County Engineer

RE: *Sussex County Landfill #3 Angola
Delaware Center for the Inland Bays, Site Reforestation & Meadow Creation*

DATE: January 29, 2019

Sussex County has partnered with the Delaware Center for Inland Bays (CIB), a nonprofit organization formed in 1994 on numerous occasions, most notably on the operation of the James Farm, a County owned property, which is currently leased to the CIB. An opportunity has arisen to expand on this partnership by taking actions to protect and restore the Inland Bays, as part of the Comprehensive Conservation and Management Plan (CCMP) while at the same time gaining credits under the proposed County's Clean Water Enhancement Program.

On August 14, 2018, Council awarded a 5-year contract to RK&K, Inc. for professional environmental and engineering services for development of environmental remediation projects and programmatic assistance in setting up storm water management districts and/or storm water management banking in the Inland Bays and the Sussex County portion of the Chesapeake Bay Watersheds. The purpose of the program is for Sussex County to provide a long term, efficient and environmentally responsible means for compliance with state and federal regulatory programs.

The first opportunity to restore a landfill buffer area has arisen at the Angola Landfill #3. The site is in proximity of perennial streams, which ultimately drain to Rehoboth Bay. The CIB has proposed a reforestation and meadow creation plan to the previously farmed property to protect waterways and wetlands, reduce nutrient loading and sustain various animal species.

Sussex County requests approval of the Reforestation & Meadow Creation Proposal, at a cost of \$10,386.07. Much of the labor will be provided by local volunteers at no cost, under the guidance and direction of the CIB. The approved FY 19 Capital Budget contains environmental projects with adequate funding.



Reforestation & Meadow Creation at Sussex County Landfill #3 Buffer Site

Project Lead:

Delaware Center for the Inland Bays
39375 Inlet Road, Rehoboth Beach, DE 19971
Project Coordinator: Victoria Spice
vspice@inlandbays.org, (302) 226-8105 x 116

Project Partner:

Sussex County
P.O Box 589, Georgetown, DE 19947
Contact: Hans Medlarz
Hans.Medlarz@sussexcountyde.gov
(302) 855-8818



Christopher Bason, Executive Director
Delaware Center for the Inland Bays



Background

Sussex County and The Delaware Center for the Inland Bays (CIB) have a long-standing, thriving partnership. The County has a seat on the Center's 14-member Board of Director's and was awarded by CIB the 2018 Friends of the Bay's Award in the category of 'Partner.' As a signatory to the Inland Bays Comprehensive Conservation and Management Plan, the County commits, when practicable, to complete many important actions needed to protect and restore the Inland Bays. Over the past two decades or so, Sussex County has worked hard to implement its commitments to the Plan, which have included providing centralized wastewater services to the watershed. They have far exceeded the septic conversion goal of the Inland Bays Pollution Control Strategy. The County also shares a special partnership with the Center at the County-owned James Farm Ecological Preserve, which the Center has managed as the centerpiece of its educational efforts since 1998. The County now supports financially the daily operations of the Preserve and has contributed significantly to implementing the Master Plan to improve the Preserve. Recently, Sussex County and the Center have partnered on planning and implementing a number of reforestation projects that restore habitat in the watershed and improve the quality of water entering the Inland Bays.

Project Description

The Delaware Center for the Inland Bays proposes to partner with Sussex County on the implementation of a project to re-establish forest and meadow on approximately 6.89 total acres of land formerly used for row crops. The location of the project site within the Inland Bays watershed is shown in Figure 1. The planting will result in a native, mixed hardwood /pine forest with pollinator meadow that will create wildlife habitat and reduce nutrient pollution to nearby waterbodies.

The Sussex County Landfill #3 Buffer Site Project, a 6.89-acre parcel located southwest of Lewes in the Rehoboth Bay Watershed (38.67999, -75.2009), is owned and managed by Sussex County (Figure 2). The property was leased for row-crop production until 2018 and serves as a buffer property for the landfill site to the west. Currently Lockwood Estates borders the south boundary, and a new development borders the east edge (Figure 2). The property's perimeter currently is fenced on three sides and provides access to groundwater wells that are monitored by DNREC. Proximity to Chapel Branch, a first order stream that drains to Burton Pond and Herring Creek and ultimately drains to Rehoboth Bay, makes implementing this project particularly important for improving water quality.

The proposed reforestation work addresses multiple elements of water quality and habitat management plans for the Inland Bays watershed.

- DNREC established TMDLs for nitrogen and phosphorus in the Indian River, Indian River Bay, and Rehoboth Bay in 1998. *The Inland Bays Pollution Control Strategy* (PCS) contains many actions to reduce nutrient loads to meet the TMDLs. Among the priority initiatives of the state's 319 Nonpoint Source Program is a PCS goal to establish 3,037 acres of forested waterway buffers in the Inland Bays Watershed. As of 2015, only 8% of that goal had been met. Conversion of cropland to forested buffers has the added benefit of immediate removal of agricultural nitrogen inputs to groundwater.
- The *Delaware Inland Bays Comprehensive Conservation and Management Plan* (CCMP), which guides the activities of the Plan signatories under Section 320 of the Clean Water Act, requires actions to encourage planting of trees and other plants adjacent to all wetlands. The objective of this is to mitigate wetland losses and provide forested buffers to reduce nutrient loading to the bays. The CCMP also calls for maximum protection of waterways, forested stream corridors, groundwater, natural areas, open space, and wetlands. Because of the additional impact of removing land from fertilization, conversion of cropland to forest addresses a CCMP Nutrient Management objective of targeting BMP implementation to areas of the watershed where they will result in the most efficient and cost effective nutrient reductions.
- The *Inland Bays Habitat Enhancement Plan*, developed to guide and support restoration and land protection efforts in the watershed, identifies Chapel Branch as a priority area for expansion of forested areas, in part because of its rare wetland communities and proximity to impaired waterways. Equidistant from Georgetown, Millsboro, Lewes and Rehoboth Beach, Chapel Branch has seen a steady growth with the conversion of farm fields and forested land to residences.
- *2015-2025 Delaware Wildlife Action Plan* notes that Delaware's coastal plain forests are highly fragmented and unable to sustain area-sensitive forest species. The plan calls for re-establishment of coastal plain oak-pine forest habitats lost to fragmentation. It also calls for protection of sensitive wetland habitats such as those at Chapel Branch, to enhance and protect both biodiversity and water quality.

Scope of Work

The reforestation project will be managed by the CIB. The CIB will work with Sussex County to develop project timelines, detailed planting plans, and coordinate planting activities and monitoring at each site. Trees will be obtained from the Maryland State Tree Nursery and other local nurseries. Planting will be done by volunteers and CIB staff. Dorothy Abbott, a forestry consultant working with the CIB, will provide input on species lists and planting/maintenance methods. The CIB will provide public outreach about the projects through press releases and social media.

At the project site, volunteers will plant approximately 2,335 bare-root trees. A 25-ft wide buffer will be planted with a pollinator mix between the fencing and first row of trees. A total of 4.5 acres will be reforested. Eastern Red Cedar and Black Locust will be the first row of trees and will be planted every 8 feet along the buffer. The other trees will be planted on approximately 10'x10' spacing, with random distribution of species. Species will consist of Persimmon, American Wild Plum, American Holly, Hop Hornbeam, Sassafras, Post Oak, Water Oak, Virginia Pine and Redbud. Because the entire parcel is established upon a "closed" landfill site, the tree species selected are those exhibiting a small to medium size at maturity.

The County will be responsible for preparation of the parcel for planting and for post-planting watering and maintenance.

Specific Tasks and Timeline

For a summary task timeline, see the table below. The timeline assumes a project start date of October 1, 2018.

Task 1 – Project Planning

- Receive species list from Forestry Consultant and meet with Sussex County to confirm list, stocking rates, planting methods, and timelines.
- Reserve stock at MD State Nursery.
- Organize volunteers for planting and confirm dates.
- Purchase additional supplies needed such as root dip, pollinator seed mix, and volunteer refreshments.

Task 2 – Project Implementation

- Just prior to planting, visit site with County and Forestry Consultant to designate planting rows with flags.
- Prepare trees with root dip, install bare-root trees, mulch with hay, water.

Task 3 – Monitoring and Maintenance

- Water weekly April-Oct for the first year of planting, complete any maintenance/invasive species removal as needed thereafter.
- Conduct post-planting inspections in late summer 2019, and annual monitoring after.

Task 4 – Project Outreach

- Submit Press Release to local news sources, take photos during planting and share to social media outlets

Timeline:

Sussex County Landfill #3 Buffer Property Reforestation Tasks	2018			2019											
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Confirm plant lists and stocking rates with landowner															
Reserve plant material from MD State Nursery															
Begin volunteer recruitment															
County to mow site and prepare for planting															
Purchase pollinator mix and volunteer supplies															
Plant seeds and trees															
Water seedlings weekly															
Project outreach/promotion															
Post-planting monitoring															
County maintenance															

County responsibility CIB responsibility

Measurable Environmental Results

Coastal forests and natural shoreline buffers are dwindling rapidly in the face of intense development pressure along the Inland Bays and their tributaries. The proposed project site is in very close proximity to surface waters and, once established, the plantings will provide additional buffer protection. In addition, re-establishment of forested corridors will benefit native wildlife, including many forest interior dwelling birds such as cerulean warbler (*Dendroica cerulean*) and black-and-white warblers (*Mniotilta varia*).

In general, an increase in forests reduces nitrogen and phosphorus loads, because forest soils enriched in organic matter absorb water and nutrients, attenuate water outflow, and reduce surface runoff. Conversion of cropland to forested buffers is a particularly effective and efficient BMP to reduce nutrient inputs to Delaware's coastal bays. If not utilized by plants or retained in soil organic material, nitrate from nitrogen fertilizer is moved by water down through the soil and into groundwater. Because southern Delaware is underlain by predominately sandy, porous sediments, precipitation rapidly permeates through the soil, carrying with it agriculturally-derived nitrogen. These groundwater nutrient loads exert a powerful influence on the health of the Inland Bays.

Thus reforestation of croplands results in significant, long-term nutrient reductions to the Inland Bays. Estimated total nitrogen (TN) and total phosphorus (TP) load reductions from conversion of cropland to upland forest are 17 lb/ac/yr and 0.4 lbs/ac/year respectively. In addition, conversion of croplands to grasslands estimate a 8.5 lbs/ac/year reduction in TN and 0.2 lbs/ac/year reduction in TP. (Inland Bays Pollution Control Strategy, Appendix E). *Therefore, it is estimated that this entire project will prevent up to 83.4 pounds of TN and 2.3 pounds of TP from entering nearby surface waters each year. Additionally, it is estimated 3,121,274.30 pounds of CO₂ will be sequestered over a 20-year period.*

Outputs:

- 4.5 acres of forests.
- 2.4 acres of meadow for pollinators.
- ~7 acres of cropland removed from fertilization.
- Two press releases issued.
- Project visibility on social media.
- Final project summary report developed.

Outcomes:

- Estimated total nitrogen and phosphorus load reductions of 83.4 lb/yr and 2.3 lb/yr, respectively.
- Estimated 3,121,274.30 pounds of CO2 will be sequestered over a 20 year period.
- Estimated 4.8 acres of interior forest created.
- Protection of water quality through expansion of forested buffers along Chapel Branch
- Reduction of forest fragmentation benefitting migratory songbirds, nesting songbirds (especially forest interior species), and a variety of other native wildlife species.
- Increased habitat for native pollinator species and protective shelter for small mammals.

Operation and Maintenance

The project site will be inspected annually for a period of five years to assess planting success and monitor for invasive species and plant damage. The CIB will be responsible for these inspections and for informing Sussex County of findings. Any maintenance and correction to these issues will be the responsibility of Sussex County.

Budget

A detailed project budget, with breakdown of funds requested is provided in Table 1 on the following page.

Funds for the project will be used to cover costs of staff labor, local travel, contractual services, plant material, and other supplies.

In addition, we estimate that approximately 280 total hours of volunteer labor will be used to install plant material at the Landfill Buffer site. The value of volunteer time has been calculated at \$25.45 per hour. The volunteer hours will be tracked by the CIB.

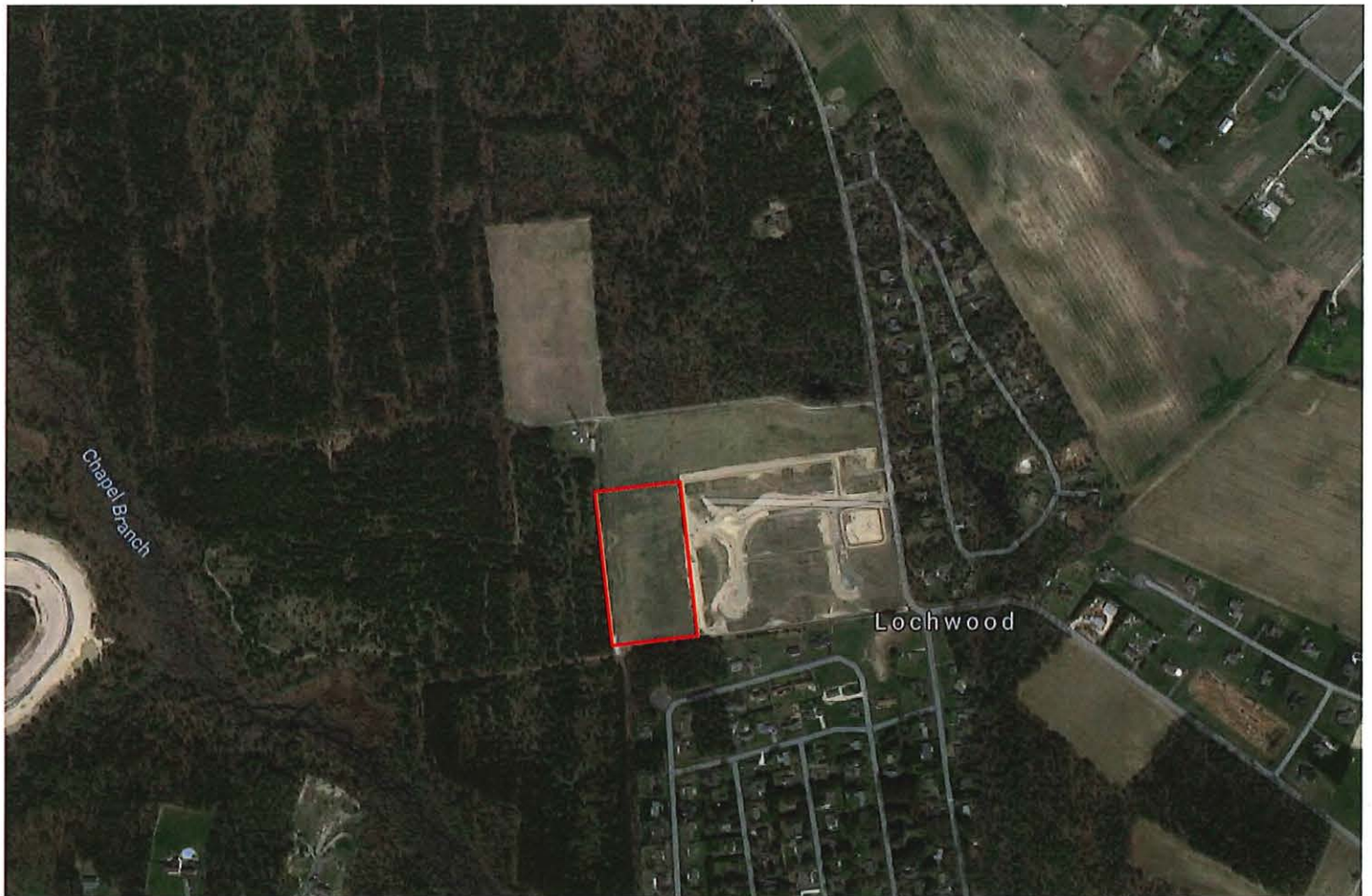
Total project cost:	\$10,386.07
Total funds requested:	\$10,386.07
Total cash and in-kind match:	\$7,126.00

Sussex County Landfill #3 Buffer Site	Total
<u>Labor</u>	
CIB Project Manager (110 hrs)	\$4,243.63
CIB Science & Rest. Coordinator (8 hrs)	\$708.47
CIB Communication Specialist (9 hrs)	\$412.27
Volunteer time (280 hrs)	\$7,126.00
<i>In-kind, not included in budget</i>	
<u>Contracted Services</u>	
Volunteer Planted	\$0.00
Forestry Consultant (25 hrs)	\$687.50
<u>Materials and Supplies</u>	
Bare root tree stock (2335 seedlings)	\$3,000
Pollinator Seed Mix (15 lbs @ \$71.38)	\$1,070.70
Soil Moist Root Dip (2 12-oz jars @ \$38.95)	\$77.90
Small Square Hay Bale (no alfalfa)	\$50.00
Supplies - water & snacks for volunteers	\$50.00
<u>Travel</u>	
CIB Truck (.535/mile) - 5 trips	\$42.80
Personal vehicle (.535/mile) - 5 trips	\$42.80
PROJECT TOTAL	\$10,386.07

Figure 1. Inland Bays watershed, showing location of the project site:
Sussex County Landfill #3



Figure 2.
Sussex County
Landfill #3 project
site, Lewes, DE.
Parcel to be
reforested is
shown in red.



ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
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UTILITY PERMITS	(302) 855-7719
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FAX	(302) 855-7799



Sussex County

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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Hans Medlarz, P.E., County Engineer

RE: *Wolfe Neck Regional Wastewater Facility –*
A. Spray Irrigation Site & Agricultural/Silvaculture Lease Agreement
B. Hunting Program Agreement
C. CIB Memorandum of Understanding

DATE: January 29, 2019

During the July 19, 2016 County Council meeting, the Engineering Department presented Sussex County's proactive wastewater infrastructure planning with the goal of optimal long-term utilization of existing transmission and treatment capacity. On August 30, 2016, Council authorized agreement negotiations with the Department of Natural Resources and Environmental Control (DNREC), Division of Parks & Recreation, the owner of the spray irrigation lands at the Wolfe Neck Facility.

On December 31, 2016, the 20-year land lease with DNREC expired and on January 10, 2017, County Council approved the Wolfe Neck Regional Wastewater Facility's first 1-year land lease extension, which was administratively extended by both parties for a second 1-year term through 2018. During the same meeting, Council furthermore approved an innovative land conversion proposal in partnership with DNREC to serve as the basis of a new 25-year lease.

Part of the approved approach was a loss compensation of Stafford Farms, Inc., the farm lease holder at the time, and assumption of the interim farming operation by County staff. The loss was based on the 2014-2016 growing seasons using comparable yields of other irrigated fields. The submitted documentation was reviewed by the State resulting in a verified three-year loss of \$146,016.00. Subsequently, the State canceled the farm lease and on January 23, 2018, Council approved the loss compensation.



The Engineering Department requests approval of the listed three action items guaranteeing the long-term viability of the Wolfe Neck Facility, benefitting the environment by modifying the treated effluent disposal approach, and enhancing the recreational opportunities for the citizens of Sussex County. The documents have been reviewed by the respective legal counsels and include the following highlights:

1. Land lease with DNREC, Division of Parks for a 25-year initial term with a “not in default” renewal option for a second 25-year term.
2. The lease price is based on the average of DNREC’s Sussex County agricultural leases for irrigated fields subject to readjustment every 5-years thereafter.
3. An additional 38 acres located on the northern field adjacent to Wolfe Neck Road will be added to the lease for a total acreage of approximately 376 acres and a resulting initial annual lease payment of \$91,673.
4. Phased 5-year conversion of the facility’s disposal system from center pivot agricultural rigs to a fixed head irrigation grid and addition of filtration to the treatment process allowing public access.
5. Implementation of Natural Resources Conservation Service designed site grading improvements.
6. Re-naturalization of the site by the Center of Inlands Bays under a Memorandum of Understanding with Sussex County allowing the Center’s cost recovery.
7. Development of equally shared stormwater management credits associated with the afforestation of agricultural lands not encumbered by spray irrigation permits.
8. County contribution of \$1,000,000 to the design and construction of an onsite trail system open to the public with implementation responsibility and long-term maintenance by DNREC, Division of Parks.
9. Deer hunting on the site under a stand-alone Hunting Program Agreement administered by the County.
10. Design and construction of public sanitary restroom facilities at the trail head parking lot with ongoing future facility maintenance performed by DNREC, Division of Parks.
11. Contribution to research funding for University of Delaware study of nutrient migration before and after an agricultural conversion to silviculture.

In addition, the County is in the process of securing a new 5-year land application permit from DNREC, Division of Water in accordance with the implementation milestones.

WOLFE NECK REGIONAL FACILITY
SPRAY IRRIGATION SITE & AGRICULTURAL/SILVICULTURE
LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease" or "Agreement"), is made this _____ day of _____ 2019 by and between SUSSEX COUNTY (hereinafter the "County") and the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation (hereinafter "DNREC." As used throughout this Agreement "DNREC" refers to the Division of Parks and Recreation, unless otherwise specified herein).

WITNESSETH:

WHEREAS, the County leased from J.G. Townsend, Jr. & Co. (hereinafter "Townsend") approximately 414.864 acres of land situated in Lewes and Rehoboth Hundred via the "Spray Irrigation Site Lease," dated May 31, 1996, which lease agreement is of record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Deed Book 2150, Page 240; and

WHEREAS, pursuant to the May 31, 1996 "Spray Irrigation Site Lease", the County disposed of its treated wastewater from its Wolfe Neck Regional Wastewater Facility on the leased land through spray irrigation on agricultural crops planted on the land; and

WHEREAS, on May 3, 1999, Townsend conveyed by Deed to the State of Delaware, via DNREC, approximately 642.3507 acres of land, which lands included the lands subject to the May 31, 1996 "Spray Irrigation Site Lease" between the County and Townsend; and

WHEREAS, the May 3, 1999 conveyance from Townsend to the State of Delaware is of record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Deed Book 2383, Page 255; and

WHEREAS, DNREC purchased the land from Townsend pursuant to the Delaware Land Protection Act, 7 Del. C. § 7501 *et seq.*; and

WHEREAS, in conjunction with the conveyance, Townsend, via the “Assignment of Spray Irrigation Site Lease” agreement, dated May 3, 1999, assigned all its rights and duties under the May 31, 1996 “Spray Irrigation Site Lease” to the State of Delaware, which rights, duties, and privileges the State of Delaware accepted; and

WHEREAS, the May 3, 1999 conveyance from Townsend to the State of Delaware expressly subjected the conveyed lands to the terms of the May 31, 1996 “Spray Irrigation Site Lease;” and

WHEREAS, DNREC and the County have performed their respective duties and obligations under the May 31, 1996 “Spray Irrigation Site Lease”; and

WHEREAS, the County submitted timely notice to DNREC of its intent to renew the May 31, 1996 “Spray Irrigation Site Lease”; and

WHEREAS, DNREC and the County have extended the May 31, 1996 “Spray Irrigation Site Lease” for an additional one (1) year term until December 31, 2018, in order to allow the County to continue its spray irrigation activities on the lands while DNREC and the County negotiate the terms of this Agreement; and

WHEREAS, DNREC and the County are desirous of entering this Agreement, which Agreement shall supersede and replace any and all of DNREC’s, the State of Delaware’s, and the County’s rights, obligations, privileges and duties that existed or may exist under the May 31, 1996 “Spray Irrigation Site Lease” and the May 3, 1999 “Assignment of Spray Irrigation Site Lease” agreements; and

WHEREAS, DNREC owns three (3) parcels of land located at Lewes and Rehoboth Hundred with Tax Parcels No. 334-7.00-30.00, 334-7.00-15.00 and 334-7.00-15.02, and the County wishes to continue leasing 376 ± acres thereof, designated as “Leased Spray Land” on Exhibit A, attached hereto and hereby incorporated by reference (hereinafter collectively referred to as “Property” or “Premises”), subject to the terms and conditions set-forth herein; and

WHEREAS, DNREC is permitted, pursuant to its obligations under the May 31, 1996 “Spray Irrigation Site Lease”, 7 *Del. C.* § 4510, and 29 *Del. C.* § 8003(5) to replace the May 31, 1996 “Spray Irrigation Site Lease” with this Agreement; and

WHEREAS, the lands leased by DNREC to the County under this Agreement are not “surplus real property,” as that phrase is defined by 29 Del. C. § 9402(d), because the leased lands are needed and shall continue be utilized by DNREC for public purposes, and the leasing of these lands to the County serves the public purpose by enabling DNREC to improve recreational opportunities on the leased lands; and

WHEREAS, the leasing of these lands to the County is consistent with and promotes the purposes of the Delaware Land Protection Act, 7 Del. C. § 7501 *et seq.*, because the lease will help protect and restore the biological diversity of plants and animals and their habitat; provide for public outdoor recreation; and allow for water resource conservation; and

WHEREAS, the Delaware Parks Advisory Council further approved entering into a revised lease agreement with the County on May 4, 2017; and

WHEREAS, the County intends to convert its wastewater disposal process on the lands from spray irrigation on agricultural crop land to spray irrigation on natural indigenous silviculture lands; and

WHEREAS, in order to complete the conversion of the agricultural crop land to indigenous silviculture lands on the Premises and in consideration for DNREC entering into this Agreement, the County will compensate DNREC in accordance with the terms and conditions set forth below; and

WHEREAS, in consideration for the County entering this Agreement, DNREC, in addition to other consideration described herein, will install a trail for public recreational purposes off the Premises as depicted on Exhibit A; and

WHEREAS, the parties believe that this Agreement will benefit the citizens of the County and the State of Delaware in accordance with the parties’ respective core principles and objectives.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which the parties hereby acknowledge by their signatures below, the parties hereto agree as follows:

1. Premises. DNREC hereby agrees to lease the Premises to the County, including all improvements thereon, subject to the terms and conditions hereinafter set forth. Upon the conditions noted herein, those improvements related to public recreational uses, including the recreational trail, Restroom Facility and any other recreational improvements designated for public use will be considered excluded from the Premises leased by the County, which shall be designated by the Final Design Plan, as defined herein. The boundaries of the excluded areas shall be designated on the Final Design Plan and shall be marked by on-site indicators, including but not limited to, fencing and signage. Any motorized vehicles, except vehicles for maintenance, emergency services or as authorized by the parties hereto, shall be excluded from the Premises and prohibited from using the recreational trail and access road.

2. Term. This Lease shall become effective on 12:01am January 1, 2019 (“Effective Date”). The term of the Lease shall commence on the Effective Date and expire twenty-five (25) years therefrom, on January 1, 2044, without notice, unless extended as set forth herein.

(a) Renewal Option. The County may request to renew this Agreement for one (1) additional 25-year renewal term, provided that the County is not in default under the terms of this Agreement at the time of exercising the renewal option, which term will commence on January 1, 2044 and expire on January 1, 2069, without notice. In the event the County wishes to exercise this renewal option, the County must provide written notice to DNREC informing DNREC that it is requesting to exercise its option to renew this Agreement at least 12 months prior to the expiration of this Agreement (by December 31, 2043). DNREC shall respond in writing no later than thirty (30) days after receiving notice of the County’s request for the renewal option.

3. Purposes.

(a) Wastewater Disposal. The County's use of the Premises shall be for the purposes related to the County's wastewater disposal operations of the Wolfe Neck Regional Wastewater Facility. The County intends to use the Premises for purposes of agricultural-based spray irrigation for an initial period while the County converts the Premises' farmland into a wooded area to be used for spray irrigation for the Wolfe Neck Regional Wastewater Facility effluent. The County and DNREC consider spray irrigation to be an appropriate way to dispose of treated wastewater and that converting the Premises farmland to wooded areas will enhance wildlife habitat while improving the efficiency of the County's wastewater disposal activities. All uses of the Premises related to the County's disposal operations of the Wolfe Neck Regional Wastewater Facility shall be conducted in compliance with all regulatory permits, and all applicable federal, state and local laws, regulations and ordinances.

(b) Public Recreational Facilities. DNREC and the County consider it beneficial to improve public recreational opportunities near the Premises. The proposed public recreational facilities shall be set forth in the site design plans in accordance with Section 7 of this Agreement.

(c) Stormwater Management Offset Credits. The parties acknowledge that the Delaware Sediment and Stormwater Regulations provide that stormwater management offset credits may be used as an alternative method to obtain full or partial compliance with certain specified requirements of the Delaware Sediment and Stormwater Regulations (*see* 7 Del. Admin. C. 5101-13.0). The parties further acknowledge that programs to generate, verify, bank, convey, and utilize such stormwater management offset credits are being developed ("Stormwater Management Banking Programs"), which programs will enable stormwater management offset credits to be utilized as an alternative means of obtaining compliance with Delaware's Sediment and Stormwater Regulations.

The parties further acknowledge that Stormwater Management Banking Programs have not been established at the time the parties executed this Agreement; however, the parties anticipate that the Wolfe Neck Reforestation Project described herein to be performed by the County may be eligible to generate such stormwater management offset credits. Furthermore, the potential availability of such stormwater management offset credits is a valuable part of the County's consideration for performing the Wolfe Neck Reforestation Project and entering into this Agreement. The parties, therefore, desirous of obtaining the environmental benefits of the Wolfe Neck Reforestation Project, including the potential to utilize stormwater management offset credits that may be generated in the future from the Reforestation Project, agree as follows concerning their respective rights and obligations as to any stormwater management offset credits that may be generated in the future from the County's performance of the Wolfe Neck Reforestation Project:

i. DNREC's and County's rights and obligations described herein concerning stormwater management offset credits that may be generated from the Wolfe Neck Reforestation Project and/or Premises shall only arise if DNREC creates a Stormwater Management Banking Program and thereafter elects to place the Wolfe Neck Reforestation Project and/or Premises, or a portion thereof, into the program. DNREC shall have the sole discretion to determine whether to place the Wolfe Neck Reforestation Project and/or Premises into its Stormwater Management Banking Program in order to obtain the stormwater management offset credits that may be available as a result of the County's performance of the Wolfe Neck Reforestation Project.

ii. DNREC and the County acknowledge that the areas of the Wolfe Neck Reforestation Project that the County utilizes for spray irrigation of its treated wastewater may be ineligible to generate stormwater management offset credits, as the parties recognize that land utilized for the application of treated wastewater may not also be eligible to generate stormwater management offset credits. The parties thus acknowledge that the total quantity of stormwater management offset credits that may be generated from the Wolfe Neck Reforestation Project and/or Premises will depend, in part, on the extent to which the County utilizes the reforested areas for spray irrigation of its treated wastewater. The County intends to study the affects of the Wolfe Neck Reforestation Project's affects on groundwater quality and the extent to which the reforested areas it utilizes for its spray irrigation of treated wastewater may also be eligible to generate stormwater management offset credits.

iii. In the event DNREC elects to place the Wolfe Neck Reforestation Project and/or Premises, or a portion(s) thereof, into its Stormwater Management Banking Program during the term of this Agreement, DNREC shall be deemed the generator of 100% of any stormwater management offset credits generated from the applicable portion of the Reforestation Project and/or Premises. Thereafter, DNREC shall convey 50% of the available stormwater management offset credits generated from the Wolfe Neck Reforestation Project and/or Premises to the County for the County's exclusive use in exchange for the County's performance of the Reforestation Project. DNREC shall retain the remaining 50% of the stormwater management offset credits generated from the Wolfe Neck Reforestation Project and/or Premises for its use.

iv. DNREC and the County agree to cooperate in the future to reach an agreement on the terms and conditions of DNREC's conveyance of the stormwater management offset credits generated from the Wolfe Neck Reforestation Project and/or Premises to the County. At a minimum, these terms and conditions will include the following:

- a. Any stormwater management offset credits that DNREC conveys to the County that are generated from the Wolfe Neck Reforestation Project and/or Premises shall be utilized exclusively by the County for its compliance with the Delaware Sediment and Stormwater Regulations. The County shall not transfer or otherwise convey any stormwater management offset credits that DNREC conveys to the County that are generated from the Wolfe Neck Reforestation Project and/or Premises to a third party, and any such attempted transfer will be deemed null and void;
- b. DNREC shall have the sole discretion to remove the Premises and/or the Wolfe Neck Reforestation Project, or a portion thereof, from the stormwater offset credit program. In the event DNREC removes the Premises and/or Wolfe Neck Reforestation Project, or a portion thereof, from the stormwater offset credit program, or the Premises and/or Reforestation Project otherwise become ineligible for stormwater management offset credits, the County shall be solely responsible for obtaining an alternative means of satisfying its obligations under the Delaware Sediment and Stormwater Regulations that were being satisfied by any stormwater management offset credits from the Wolfe Neck Reforestation Project and/or Premises (i.e. paying the fee in lieu, constructing onsite stormwater controls, and/or acquiring stormwater management offset credits from an alternative source); and
- c. The consideration for DNREC's conveyance of stormwater management offset credits generated from the Wolfe Neck Reforestation Project and/or Premises to the County shall be the County's prior performance of the Reforestation Project on the Premises as described herein.

4. Construction of Improvements. The parties agree that Exhibit B depicts the overall conceptual site plan for the conversion to fixed head spray irrigation based on silviculture on the Premises. The parties shall follow the procedures set forth in Section 7 to finalize and approve the initial site design plan for the Premises and surrounding areas. After completion of the improvements approved on the Final Design Plan, as defined herein, the parties may make a written request to the other party in order to install any additional improvements on the Premises. Such request shall be reviewed by the other party, and a response provided within thirty (30) days of the receipt of the request. Any plans to install such improvements must receive, if applicable, prior wastewater construction permit approval from DNREC, Division of Water, Groundwater Discharges Section. Upon expiration of this Lease, if DNREC so requests, the County shall be responsible for removing any County above ground improvements installed on the Premises.

(a) In the event that DNREC seeks to revise the location of any County improvement(s) after installation, which improvement(s) was approved by DNREC, the change must be mutually acceptable to both parties, with DNREC agreeing to pay the direct costs of such relocation, unless the parties agree otherwise.

(b) In the event that DNREC seeks to revise the location of any County improvement(s), which improvement(s) was not approved by DNREC, the parties shall cooperate as to the relocation of the improvement, with the County agreeing to pay the direct costs of such relocation, unless the parties agree otherwise.

5. Compliance with Applicable Laws. In its respective use of the Premises, installation of improvements on the Premises, and/or performance under this Agreement, each party agrees to comply with all applicable statutes, ordinances, rules, orders, policies, regulations and requirements of the Federal, State, and County Governments and any and all Courts, Departments and Bureaus that may apply to the Premises, including, but not limited to all environmental requirements. The parties further represent and warrant that it has and/or will obtain all permits necessary for its purposes on the Premises and will conduct such operations in accordance with those permits. To the extent permitted by law, the County further acknowledges that it is solely responsible, as the operator of the Premises, for any liability that may arise from the County's operations on the Premises, including for any enforcement action taken by the State of Delaware or any other entity, in the event the County fails to conduct its operations in compliance with all applicable laws, regulations, and permit conditions.

6. Consideration. The County shall pay the following consideration for the lease of the Premises, as follows:

(a) The County shall pay ninety-one thousand six hundred and seventy-three dollars (\$91,673.00) annually to DNREC for the lease of the Premises, which is calculated using the 376.0 acres of lands suitable for spray irrigation multiplied by a rate of \$243.76 per acre (“Annual Base Rental Fee”). The annual rent shall be adjusted based upon a determination of the acreage under the Final Design Plan envisioned under Paragraph 1 of this Lease. Payment of the Annual Base Rental Fee shall be made by the County in a lump sum on an annual basis due on January 1st of each year as consideration for the following year, the first payment being due upon the Effective Date of this Agreement. In the event that this Agreement is terminated prior to the end of any calendar year for any reason, the County shall be reimbursed for the remaining months on a pro rata basis.

(b) DNREC shall adjust the Annual Base Rental Fee in accordance with the following: The first adjustment to this Lease fee shall occur on January 1, 2022, and the adjustment to the Annual Base Rental Fee shall occur every five (5) years thereafter. The County’s Annual Base Rental Fee shall be adjusted, whether by increase or decrease, to reflect the average of the annual rental fees (on a “per acre” basis) of all agricultural leases that DNREC bids in Sussex County. In the event that DNREC ceases to perform a rebid of its agricultural leases once every five (5) years, the parties shall negotiate an alternative basis for adjustment to the Annual Base Rental Fee in writing.

(c) The County shall also make payments totaling one million dollars (\$1,000,000) to DNREC. DNREC shall receive these payments on an annual installment basis over the course of five years beginning on the Effective Date of this Agreement. DNREC shall submit a written request for funds annually to the County in an amount as determined by DNREC, and the County shall make payment within thirty (30) days of receipt thereof. DNREC acknowledges that these funds are in consideration for DNREC developing at least one million dollars’ worth of recreational improvements, including a recreational trail, near the Premises.

(d) The County shall design and build a restroom facility on parcel number 334-7.00-15.02 (“Restroom Facility”), and DNREC grants the County the right of access to said parcel for purposes of this construction. The design plans shall be submitted to DNREC for approval prior to the commencement of issuing an advertisement for bids for the work. As part of the construction of the Restroom Facility, the County, at its sole cost and expense, shall also connect DNREC’s building known as “Wolfe House” into the County’s sanitary sewer system serving the Restroom Facility.

(e) After receiving approval from DNREC, Division of Water, the County shall complete the site grading improvements to the Premises as shown on the design plans, which have been prepared in accordance with the Natural Resources Conservation Service Standard and Specification document, Transmittal No. 338, and are attached hereto as Exhibit B.

(f) The County acknowledges that it has agreed or will agree by separate Memorandum of Understanding with The Delaware Center for Inland Bays (“CIB”) to reimburse the CIB up to \$400,000.00 for the costs of restoring the Premises to a natural wooded state. DNREC, Division of Parks and Recreation and the Division of Water, Groundwater Discharges Section, shall review and approve the plans for the re-naturalization project prior to commencement of the activities.

(g) The County acknowledges that it intends to negotiate with the University of Delaware to contribute up to \$300,000.00 for the purpose of having the University conduct a study comparing the nutrient migration rates before and after agricultural land is converted to silviculture practices. The County shall provide DNREC a copy of the final report.

7. Initial Site Design and Construction.

(a) Within three months from the last execution of this Agreement, DNREC shall prepare and submit to the County a concept design plan showing the location of the recreational trail and any proposed recreational improvements near the Premises. After receipt of the design plan for the recreational trail and improvements, the County shall have no more than ninety (90) days to prepare and submit to DNREC a plan for its wastewater improvements that reasonably complements the recreational trail. In addition, the County shall review whether the other recreational improvements, if any, are acceptable and incorporate any approved revisions to the recreational improvements in its design plan. The parties

shall agree upon a comprehensive design plan that includes both the wastewater and recreational improvements within sixty (60) days after the County's submission to DNREC of this proposed design plan. Upon the parties' agreement to this comprehensive plan, DNREC shall have six (6) months to vet the design plan, as needed. Any changes that result from the vetting process shall be agreed upon by the parties before adoption into the final design plan. Prior to the end of the six-month period, DNREC and the County shall execute the final site design plan, which shall be binding upon the parties ("Final Design Plan"). The Final Design Plan shall be executed by both parties and upon such act, shall be immediately and automatically incorporated into this Agreement as a new Exhibit D. Upon incorporation, the Final Design Plan shall supersede both Exhibits A and B. If the parties are diligently working to complete the design plans under this paragraph and require additional time to complete the final plans, they mutually agree to reasonably extend the time periods in this paragraph.

(b) This Final Design Plan shall include depictions of all site improvements and the exact boundaries of the areas leased to the County as "Premises." This Final Design Plan shall exclude all recreational areas open to the public from the definition of "Premises." The parties' respective uses of the Premises shall operate in separate areas with adequate buffers, fencing, signage, and other markers. A fence and signage may be constructed, in the County's discretion and at the County's sole expense, around the recreational improvements to ensure a clear delineation between the Premises and DNREC's recreational areas and facilities that are adjacent to the Premises.

(c) If for any reason the parties are unable to reach agreement on a Final Design Plan within a year after the Effective Date, DNREC shall reimburse all consideration paid by the County and this Agreement shall continue as agricultural-based spray irrigation. However, the only consideration due from the County shall be the annual rental fee. The remainder of the provisions for consideration in Section 6 and any provisions related thereto shall be considered void and of no effect.

(d) The County shall have five (5) years from the Effective Date to modify the applicable spray irrigation permits and construct the improvements outlined in the Final Design Plan necessary for the conversion of the agricultural-based spray irrigation to the silviculture-based spray irrigation, unless extended by written agreement of the parties. DNREC's approval of the site design plans shall not relieve the County from obtaining any other necessary approvals or permits from other DNREC Divisions, including but not limited to the Division of Water. The County's construction of the improvements necessary for the conversion of the agricultural based spray irrigation to the silviculture-based spray irrigation shall be in accordance with all such approvals and applicable laws and regulations.

8. Maintenance and Utilities. The County and DNREC shall have the following responsibilities for the maintenance and utilities of the Premises, as follows:

(a) The County shall provide the necessary maintenance services to ensure that the Premises leased by the County depicted on the Final Design Plan, with the exceptions noted below, are kept in a well-maintained condition in accordance with its purpose throughout the term of the Agreement. Such maintenance services shall be performed in a good and workmanlike manner. The County shall not be responsible for maintenance, repairs, or improvements of any kind to the excepted areas off the Premises noted below.

(b) Upon completion of the construction of the Restroom Facility, DNREC shall be responsible for the maintenance and repair of its Restroom Facility and any associated infrastructure immediately upon DNREC's written acceptance of the completed Restroom Facility for the useful life of the Restroom Facility. The County's right of access necessary for construction shall terminate upon DNREC's written acceptance of the Restroom Facility. The County shall be responsible for the maintenance and repair of the sewer system serving the Restroom Facility and Wolfe House starting from the clean outs to be located ten (10) feet outside either structure as long as DNREC maintains the Restroom Facility and Wolfe House.

(c) The designated area shown on Exhibit C, as Meadow Land approximately 18.4 acres in size shall be maintained by the County as a meadow throughout the term of this Agreement, which shall mean a maximum of three mowings per year. Mowing shall only occur between November 1 and March 31 of each year. No mowing of the Meadow Land area shall occur between April 1 and October 30 of each year.

(d) DNREC shall be responsible for the maintenance and repair of the recreational trail and any other improvements related to the recreational purposes DNREC constructs adjacent to the Premises or for which DNREC assumes responsibility (i.e., Restroom Facility following completion and acceptance).

(e) The County shall contract for and shall be solely liable for all costs associated with utilities necessary for its operations on the Premises. DNREC shall contract for and be solely liable for all costs associated with the utilities necessary for its operations. The County and DNREC shall pay all charges for their respective utilities in a timely fashion. The County agrees to waive all sewer connection charges for the Restroom Facility and Wolfe House and further exempt, in perpetuity, the Premises from the County's annual sewer front footage assessment fees.

9. Clear Title. DNREC covenants that it has good title to the Premises and that it has the rights to lease the Premises to the County. DNREC further covenants that the Premises are free and clear of any liens or encumbrances and shall remain so during the term of this Lease.

10. Damages or Destruction of Premises. In the event of damage or destruction to the Premises, each party shall be responsible for the repair or maintenance of the portion of the Premises that it is responsible for maintaining, unless the parties otherwise agree or specifically required herein.

11. Access. The County shall have the primary right to use the Premises for its purposes and shall be permitted to access all areas of the Premises to conduct the operations allowable pursuant to this Agreement. DNREC, in its discretion, may allow public access to the areas designated in the Final Design Plan as open for public use, unless access to those areas are limited by the County's wastewater operations. Hunting deer will be permitted on the Premises in accordance with the terms of a Hunting Program Agreement separately entered into between the parties.

12. Termination. This Agreement may be terminated for non-performance or breach, as follows:

(a) Should either party breach or fail to comply with any of the provisions of the Agreement, the non-breaching party may, in writing, order the breaching party to remedy such breach. The breaching party shall cure said breach or failure to comply within thirty (30) days from receipt of the written notice from the non-breaching party. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the breaching party will commence to cure the default within thirty (30) days, proceeding to cure the default in an as prompt as possible manner. The remedies of this Lease for default by the breaching party shall be cumulative and not limited to the provisions contained in this Lease but shall include all other remedies available to the non-breaching party at law or in equity.

13. Assignment. The County shall not assign this Agreement or lease or sublease the Premises or any part of the Premises to any entity(s) or person(s) whatsoever without first receiving DNREC's written consent to such assignment or sublease. If the State of Delaware decides to sell the Premises, it agrees to give Sussex County a first option to purchase at fair market value as adjusted for improvements made by Sussex County. Sussex County shall have ninety (90) days from receipt of a written notice to exercise said option.

14. Encumbrances. The County shall not mortgage or encumber any part of the Premises or this Agreement and shall keep the Premises and any improvements thereon free and clear of all liens and claims of liens or encumbrances.

15. Property Condition. The County hereby acknowledges that it has inspected the Premises, that it has had the opportunity to perform any testing or inspections, that it is familiar with its condition, and that DNREC has not made any warranties or representations as to the Premises condition or fitness for any particular purpose. The County acknowledges that DNREC is leasing the Premises to County in "As Is" and "Where Is" condition.

16. Agreements of Record. This Agreement shall be subject to the terms of any easements, restrictions, or other agreements of record now against the Premises. DNREC may enter an easement or restriction on the Property after the Effective Date of this Agreement, provided that: (i) the easement or restriction will not interfere with the County's use of the Premises for its purpose; or (ii) if the easement or restriction may reasonably interfere with the County's use of the Premises for its purposes, DNREC shall first obtain the County's written consent before entering the easement or restriction.

17. Notice. Any notice provided for herein shall be given by hand or registered or certified mail, postage prepaid and addressed to:

(a) If for the County: Sussex County Engineer, Sussex County Department of Engineering, 2 The Circle, Georgetown, Delaware 19947, and to the County Administrator at the same address.

(b) If for DNREC: DNREC, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901 with a copy sent to Deputy Attorney General for DNREC, Attn: William Kassab, 102 W. Water Street, Dover, Delaware 19901.

(c) The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party.

18. Amendments/Modification. No amendments or modifications to this Lease shall be binding unless in writing and signed by the County and DNREC.

19. Binding on Heirs. This Lease shall be binding upon and for the benefit of the heirs, executors, administrators, and successors of the County and DNREC in like manner as upon the original parties, except as provided by mutual written agreement.

20. Integration. This document comprises the entire Agreement between the parties hereto relative to the subject matter of this Agreement and the County's lease of the Premises and supersedes any prior agreements or representations, whether verbal or in writing. The parties acknowledge that they have not relied on any promises or representations not contained in this Agreement as a basis for entering into this Agreement.

21. Laws of Delaware. The Lease shall be governed by and construed in accordance with the substantive laws of the State of Delaware regardless of its choice of law provisions. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Delaware.
22. Signature Authority. The individuals signing this Agreement on behalf of the County and DNREC represent and warrant that they have the full and complete authority to execute this Agreement on behalf of their respective organizations.
23. Opportunity to Consult with Legal Counsel. The parties acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Agreement.
24. Time. Time is of the essence. The term “day” as used herein shall mean calendar day, unless specifically defined as a “business day,” which shall be deemed to exclude weekends and State-recognized holidays.
25. No Waste, Nuisance or Unlawful Use. The County shall not commit or allow any waste or nuisance to be committed on the Premises. The County also shall not use or allow the Premises to be used for any unlawful purpose. The County further acknowledges that it is solely responsible for any liability that may arise in the event the County engages in or permits nuisance or unlawful activities on the Premises, to the extent permitted by law.
26. Legal Construction. The parties acknowledge that each had the ability to negotiate terms and conditions, and this Agreement shall not be construed against the party who prepared and drafted the Agreement documents. If one or more of the provisions of the Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
27. Headings and Subheadings. The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Lease.

28. Non-Waiver of Rights. Any forbearance by either party in exercising its rights hereunder shall not be construed as a waiver thereof, unless expressly set forth in writing and signed by the waiving party. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.

29. No Third-Party Beneficiaries. Neither the provisions of this Agreement nor the performance of the parties hereunder is intended to benefit, nor shall inure to the benefit, of any third party.

30. Execution in Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.

31. Indemnity. To the extent permitted by law, the County shall indemnify and hold harmless the State of Delaware, DNREC, and its agents and employees from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of County, its agents or employees, or (B) County's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) County shall have been notified promptly in writing by DNREC or the State of Delaware of any notice of such claim(s); and (ii) County shall have the sole control of the defense of any action on such claim(s) and all negotiations for its settlement or compromise.

The above provisions of this paragraph are not intended to waive, alter, or otherwise amend the immunity of the County under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act for claims brought by any third party(ies).

32. Insurance. The County shall maintain insurance during the term of this Agreement in the amounts specified by State of Delaware. In the event the State of Delaware requires additional insurance coverage or increases or decreases coverage amounts during the term of this Agreement or any renewal term, DNREC shall notify the County and the County shall secure such additional insurance within a reasonable time following receipt of DNREC's notice. Presently, the State of Delaware requires the County to maintain the following insurance:

(a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and

(b) Pollution Insurance - \$1,000,000.00 per occurrence/\$3,000,000.00 general aggregate, and

(c) Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and

(d) Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate; or

(e) Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or

(f) Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and

(g) If County is required to transport state employees pursuant to this Agreement, Automotive Liability Insurance covering all registered automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

(h) County shall provide forty-five (45) days written notice of cancellation or material change of any policies required by this Agreement.

(i) Before County takes possession of the Premises pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies required by this Agreement shall be provided to DNREC. The certificate holder is as follows:

DNREC, Division of Parks and Recreation, 89 Kings Highway,
Dover, DE 19901.

(j) In no event shall the State of Delaware be named as an additional insured on any policy required under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

SUSSEX COUNTY

By: _____ (Seal) _____
Michael H. Vincent Date
Sussex County Council President

Witness Signature Date

Witness Name (Please Print)


Approved As to Form Date
David M. Rutt, Esq.,
Counsel for Sussex County

**DELAWARE DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL**

By: _____ (Seal) _____
Shawn M. Garvin Date
Secretary of DNREC

Witness Signature Date

Witness Name (Please Print)



Approved as to Form Date
William J. Kassab, Deputy Attorney General
Counsel for DNREC

HUNTING PROGRAM AGREEMENT
FOR WOLFE NECK REGIONAL FACILITY

THIS HUNTING PROGRAM AGREEMENT (hereinafter the "Agreement") made and entered into this ___ day of _____, 2019 ("Effective Date"), by and between:

STATE OF DELAWARE, Department of Natural Resources and Environmental Control, an agency of the State of Delaware, 89 Kings Highway, Dover, Delaware 19901 (hereinafter known as "State");

- A N D -

SUSSEX COUNTY, a political subdivision of the State of Delaware, 2 The Circle, Georgetown, Delaware, 19947 (hereinafter known as "County").

WHEREAS, the parties have entered a lease entitled "Wolfe Neck Regional Facility Spray Irrigation Site and Agricultural/Silvicultural Lease Agreement" on or about the same date as this Agreement in order to lease to the County land near Wolfe Neck Regional Wastewater Treatment Facility for purposes of wastewater treatment ("Lease"); and

WHEREAS, the State has required as a condition of this Lease that the County establish and maintain a hunting program on the lands leased to the County ("Premises"); and

WHEREAS, this Agreement sets the terms and conditions of such hunting program.

In consideration of the mutual covenants and conditions contained herein and other consideration, the sufficiency of which the parties hereby acknowledge, the State and County agree to the following terms and conditions:

1. The term of this Agreement shall automatically commence upon the Effective Date. In the event that the County's Lease of the Premises is terminated for any reason, this Agreement shall also terminate immediately without further action by either party.

2. The County is hereby granted the exclusive right to establish a program to permit hunting on the Premises ("Hunting Program"), and no other parties may permit hunting on the Premises during the term of this Agreement, except in accordance with this Hunting Program. Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, the County shall prepare the documents setting forth its proposed program to permit hunting on the Premises and submit such Hunting Program to the State for approval, which shall not be unreasonably withheld.

3. The rights and privileges being provided in this Agreement are limited to said Premises described and not any other lands that may be owned by the State or the County.

4. The Hunting Program shall include, at a minimum, the following items. Nothing herein shall prohibit the County from proposing additional aspects to the Hunting Program, as it determines to be in the interest of its wastewater operations and the public health, safety, and welfare.

- (a) The purpose of all hunting on the Premises shall be limited to deer management and recreational deer hunting.
- (b) The Hunting Program shall designate the portions of the Premises on which hunting may occur.
- (c) The Hunting Program shall permit bow and cross bow hunting exclusively.
- (d) Hunting shall be permitted for a minimum of five (5) calendar days (consecutive or non-consecutive) per calendar year. The number of hunting days shall be determined annually to account for the control of the deer herd. County shall publish the hunting days on its website. The specific hours in which hunting is permitted on a hunting day will be established by the County.
- (e) The Hunting Program shall comply with the applicable State laws and regulations, including but not limited to, Title 7, Section 3900 of the Delaware Administrative Code.
- (f) The County shall require every participant to sign an agreement which shall include provisions such as a release/indemnity, compliance with applicable laws and regulations, and other such provisions as the County deems advisable. A copy of such agreement shall be included with the Hunting Program documents submitted for the State's approval.
- (g) All hunters will be required to obtain a park permit and hunting license from the State in order to participate in the Hunting Program.
- (h) The Hunting Program shall prohibit participants from consuming alcohol and/or non-prescription drugs while hunting on the said Premises and refrain from entering the said Premises while under the influence of alcohol or non-prescription drugs.
- (i) Minor children shall not be permitted to participate in the Hunting Program unless they do so in compliance with the State of Delaware Hunting Regulations.
- (j) The Hunting Program shall be open to all members of the public and shall not be limited to a particular club, group or other segment of hunters.

5. After final approval of the Hunting Program, the County may submit amendments to the Hunting Program to the State in writing as may be deemed necessary, and those amendments shall be subject to the State's approval, which shall not be unreasonably withheld.

6. The parties agree that this Agreement comprises the entire understanding between the parties with respect to this subject matter of this Agreement, and prior written or verbal statements or representations shall have no effect, unless specifically incorporated herein.

7. This Agreement may not be modified, unless amended by a separate writing signed by both parties.

8. The failure of either party to enforce a right under this Agreement shall not constitute a waiver of such right, unless a signed writing expressly waives such right.

9. No Third-Party Beneficiaries. This Agreement affects the rights, obligations, and duties of the Parties only. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it be interpreted or construed in a manner which shall: (a) grant any third party the right to enforce any of the terms, rights, or obligations set forth in this Agreement; (b) confer any substantive or procedural rights or privileges to any third party in relation to or arising out of any collateral civil or criminal legal proceeding; or (c) waive or otherwise affect the sovereignty of the State of Delaware or the application of 10 *Del. C.* § 4001, *et seq.* to any civil proceeding involving any officer, employee, or agent of the State of Delaware.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

SUSSEX COUNTY

By: _____ (Seal) _____
Michael H. Vincent Date
Sussex County Council President

Witness Signature Date

Witness Name (Please Print)

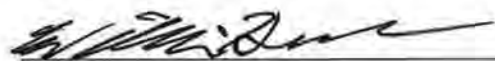
Approved As to Form Date
David M. Rutt, Esq.,
Counsel for Sussex County

**DELAWARE DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

By: _____ (Seal) _____
Shawn M. Garvin Date
Secretary of DNREC

Witness Signature Date

Witness Name (Please Print)



Approved as to Form Date
William J. Kassab, Deputy Attorney General
Counsel for DNREC

1-8-2019
Date

MEMORANDUM OF UNDERSTANDING

SUSSEX COUNTY AND THE CENTER FOR INLAND BAYS, INC.

THIS MEMORANDUM OF UNDERSTANDING (“MOU” or “Agreement”) between Sussex County, a political subdivision of Delaware and The Center for Inland Bays, Inc. entered this ___ day of _____, 2019.

WHEREAS, Sussex County has entered into a long-term lease with the State of Delaware in order to convert its current spray irrigation operations on crops at its Wolfe Neck Regional Wastewater Facility to a spray irrigation system on forest; and

WHEREAS, the Center for Inland Bays wishes to contribute to the conversion from agriculture to forest through planting with seedlings of native species the area to be leased by Sussex County (“Premises”); and

WHEREAS, Sussex agrees to reimburse the Center for Inland Bays up to four hundred thousand dollars (\$400,000.00) for the renaturalization efforts.

THEREFORE, in consideration of the mutual covenants, conditions, and payment contained herein, the sufficiency of which is hereby acknowledged by the parties’ signature of this Agreement, the parties agree as follows:

1. After receiving notice from Sussex County that it is ready to proceed with the renaturalization, the Center for Inland Bays shall create implementation plans for the renaturalization and submit them to Sussex County within ninety (90) days.
2. Sussex County shall review and send any comments or revisions within sixty (60) days. After the parties reach a mutual agreement regarding the implementation plans, the Center for Inland Bays shall commence the renaturalization process.
3. The Center for Inland Bays shall install the vegetation at its own cost and be responsible for all aspects thereof, including the materials, labor, and transport of the vegetation to the Premises.

4. Sussex County agrees to reimburse the Center for Inland Bays up to four hundred thousand dollars (\$400,000.00) in total for the direct costs of the re-naturalization including vegetation, materials, project management, and contractual labor, which may be reimbursed in monthly progress payments. The Center for Inland Bays agrees to limit indirect costs to its established rate of 37% of direct personnel costs only, not including contractual labor. Upon receipt of a detailed invoice from the Center for Inland Bays for the expenditures related to the re-naturalization, Sussex County shall review the invoice and request additional supporting documentation if needed. Sussex County shall pay the invoice within thirty (30) days after approval.
5. In the event that Center for Inland Bays anticipates its costs will exceed Sussex County's contribution of \$400,000.00, the Center for Inland Bays agrees to submit an estimate to Sussex County prior to incurring the costs for approval by Sussex County Council and at least three (3) months' prior to the fiscal year in which the additional funding is requested. The Center for Inland Bays will only be reimbursed for additional funding that is previously approved by Sussex County Council through budgeting legislation.
6. To the extent permitted by law, the Center for Inland Bays shall release, indemnify and hold Sussex County harmless for all claims, losses, damages, injuries, and other costs (including reasonable attorneys' fees) arising out of or related to the entry and activities of the Center for Inland Bays officials, employees, volunteers, licensees, and agents on the Premises and their activities on the Premises, except to the extent Sussex County has caused those claims, losses, damages, injuries, and other costs by its willful and wanton conduct and/or gross negligence.
7. This Agreement constitutes the entire understanding of the parties regarding this matter and supersedes any prior agreements or representations, whether verbal or written. This Agreement shall not be modified except by a writing signed by both parties. Time shall be of the essence, and any reference to "days" shall mean calendar days unless otherwise indicated as a business day.
8. This Agreement shall be considered expired upon both parties' completion of the obligations contained herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above-mentioned.

SUSSEX COUNTY

Clerk of Council

_____ (Seal)
Michael H. Vincent, Council President

**THE DELAWARE CENTER FOR
INLAND BAYS**

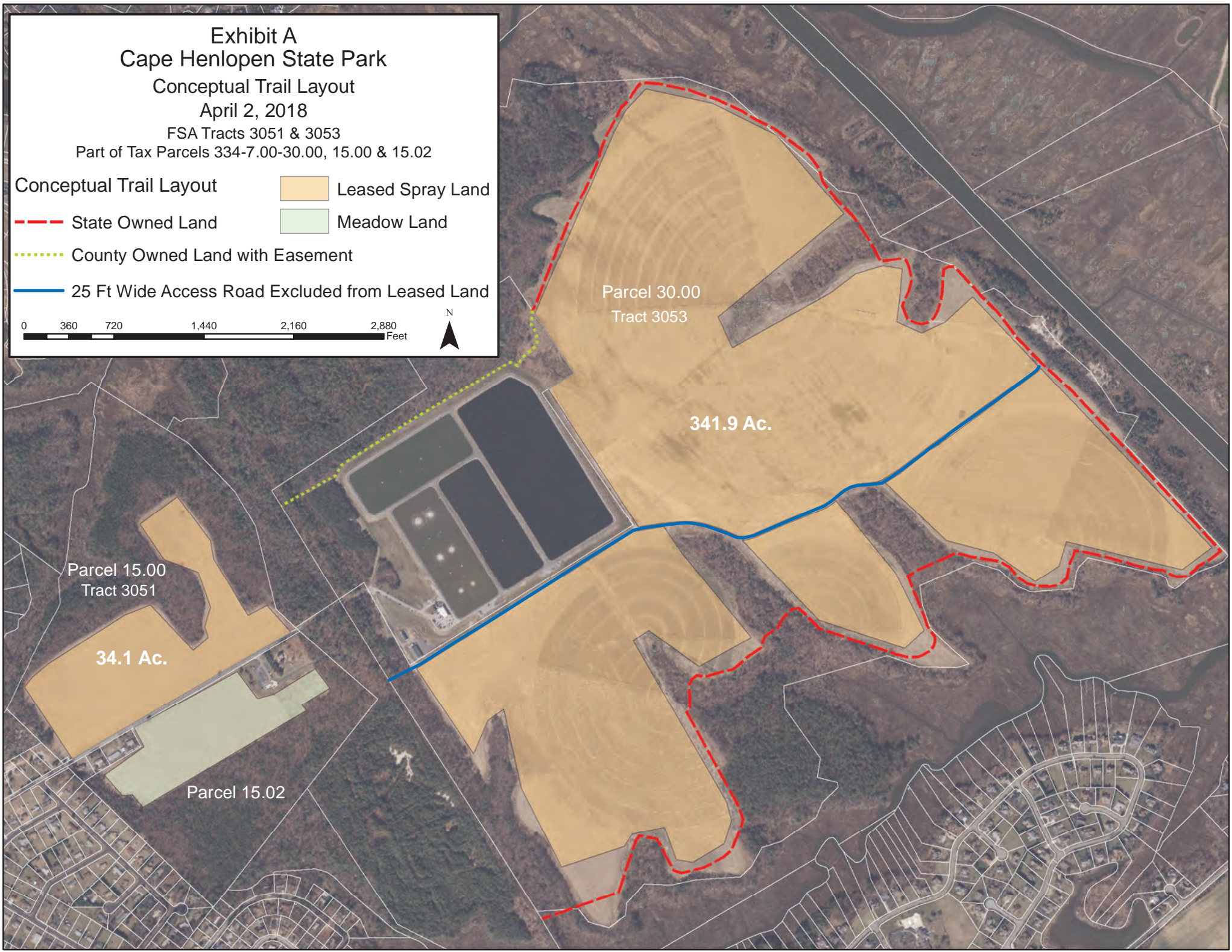
Board Secretary
Print Name: _____

_____ (Seal)
Christopher Bason
Executive Director

Exhibit A
Cape Henlopen State Park
Conceptual Trail Layout
April 2, 2018

FSA Tracts 3051 & 3053
Part of Tax Parcels 334-7.00-30.00, 15.00 & 15.02

- Conceptual Trail Layout
- State Owned Land
- County Owned Land with Easement
- 25 Ft Wide Access Road Excluded from Leased Land
- Leased Spray Land
- Meadow Land





WOLFE
GLADE

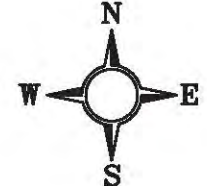
POT HOOK
CREEK

WOLFE NECK ROAD

LEGEND

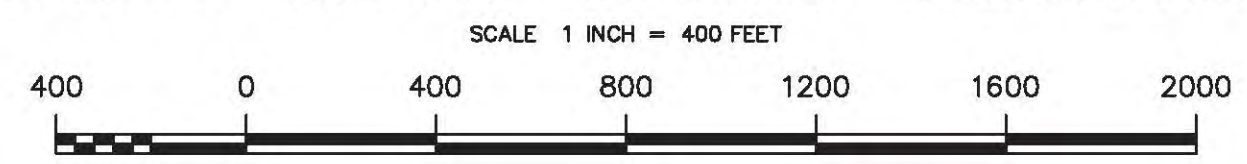
- CONCEPTUAL TRAIL ALIGNMENT
- NRCS FEATURES
- NO SPRAY AREA
- EXISTING LYSIMETER
- EXISTING PIEZOMETER
- PROPOSED FIXED SPRAY HEAD AREA

LEWES AND
REHOBOTH CANAL



HOLLAND
GLADE

CONCEPTUAL PLAN OF WOLFE NECK SPRAY IRRIGATION MODIFICATIONS



SUSSEX COUNTY ENGINEER

Hans M. Medlarz



HANS M. MEDLARZ, P.E.
DATE: MARCH 2, 2018

EXHIBIT "B"

SEAL

Exhibit C
Cape Henlopen State Park
Meadow Land

FSA Tracts 3051 & 3053
Part of Tax Parcels 334-7.00-30.00, 15.00 & 15.02

 Leased Spray Land  Meadow Land

0 115 230 460 690 920
Feet



Parcel 15.00
Tract 3051

34.1 Ac.

Existing Trailhead Parking,
Proposed Sanitary Facility

18.4 Ac.

Parcel 15.02



ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Hans Medlarz, P.E., County Engineer

RE: *Ellendale Water District Agreement*

DATE: January 29, 2019

Petitions requesting the creation of a water district in the greater Ellendale area were submitted to the Engineering Department, which in conjunction with the Town of Ellendale, established a potential district boundary. County Council accepted Resolution No. R 024 17, approving the boundaries on September 19, 2017. A referendum was held on November 4, 2017 but did not receive sufficient votes to proceed with the establishment of a water district.

Residents in favor of the formation of a district regrouped and in conjunction with the Engineering Department optimized the boundaries, including only areas of greatest need and resubmitted the required number of petitions. On June 26, 2018, Council approved Resolution No. R 009 18, establishing the revised boundary of the Ellendale Water District.

A referendum was held on September 15, 2018, with the final count revealing the eligible voters to be in favor of the project, with 81 Yes versus 21 No votes cast. Based on the affirmative results of the election, and in accordance with Title 9 Delaware Code Section 6507, County Council approved the Ellendale Water District on October 2, 2018, through Resolution No. R 015 18.

A combined State Drinking Water SRF & USDA capital funding package will have to be submitted. The first step in this process was the filing of a Notice of Intent earlier this month. It reflects Artesian Water Company as the supplier of potable water and provider of certain services at rates and terms necessary to meet the referendum approved maximum annual user rate of \$430.00 for the average residential account within the District.

The Engineering Department, in conjunction with the Assistant County Attorney, has developed the attached draft of the Ellendale Water District Agreement with the Artesian Water Company. It has been agreed to in principle by the Artesian Water Company and is now presented to County Council for approval.



ELLENDALE WATER DISTRICT AGREEMENT

This Ellendale Water District Agreement (“Agreement”) made and entered into this _____ day of _____, 2019 (the “Effective Date”), by and between ARTESIAN WATER COMPANY, 664 Churchmans Rd, Newark, Delaware 19702, a Delaware corporation (“Artesian”), and SUSSEX COUNTY, a political subdivision of the State of Delaware, 2 The Circle, Georgetown, Delaware 19947 (“County”).

WITNESSETH:

WHEREAS, Artesian is the owner of a water supply and distribution system, and
WHEREAS, County desires to purchase potable water service from Artesian to supply users within the Ellendale Water District, and related services as set forth herein, and

WHEREAS, the parties hereto have agreed upon the terms and conditions pursuant to which Artesian shall supply water to County as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

- (1) **WATER PURCHASE.** Artesian agrees to furnish and sell to County and County agrees to purchase and take from Artesian under and pursuant to the terms of this Agreement a supply of water through metered service connections established by mutual consent, in order for Artesian to supply water to County for the Ellendale Water District.
- (2) **SERVICE AREA.** For the purposes of this Agreement, it is mutually agreed by the parties hereto that the area to be supplied water pursuant to the terms hereof is all properties in the Ellendale Water District other than tax parcels 230-26.00-75.00, 230-26.00-113.00, 230-26.00-114.00, and 230-26.00-122.00, which are

under executed development agreements to be served by Artesian. The boundaries of the Ellendale Water District shall be as depicted on the map attached hereto and incorporated herein as Exhibit A, the boundaries of which County may hereinafter revise as provided by Delaware Code, Title 9, Chapter 65 upon concurrence by Artesian.

- (3) **TERM.** It is mutually agreed by the parties hereto that the term of this Agreement shall be enforced for a period of ten (10) years, commencing upon the Effective Date of this Agreement and terminating ten (10) years thereafter. If, at the expiration of the initial term or any subsequent renewal term County is not in default upon any of the terms or conditions of this Agreement, then the Agreement shall automatically renew for an additional ten (10) year term.
- (4) **RATES.** County agrees to pay to Artesian for water furnished pursuant to the terms hereof according to the following rates and charges:
 - (i) The initial rate shall be \$6.58 per 1,000 gallons for all water purchased after the Effective Date of this Agreement. Notwithstanding rate modifications in accordance with Paragraph (6) the initial rate shall be subject to special recalculation based upon cost of service principles when the Ellendale Water District reaches seventy-five percent (75%) build out.
- (5) **BILLING.** It is mutually agreed by the parties hereto that Artesian shall submit a bill to the County for water used on a monthly basis and County agrees to pay Artesian within twenty-five (25) days from the billing date.
- (6) **ARTESIAN TERMS OF SERVICE.** During the term of this Agreement, Artesian's provision of water service shall be in accordance with the rates, rules, regulations and rulings of the PSC and Artesian's PSC-approved tariff, all as amended from time to time.
- (7) **COUNTY OBLIGATIONS.** County agrees at its expense and cost and without expense or liability to Artesian to perform the following in the Ellendale Water District:
 - a. Respond to and perform all Miss Utility locate requests;

- b. Provide all water connections and disconnections to customer locations;
- c. Respond to all after hour emergency responses;
- d. Administer all customer billing, collections and inquiries;
- e. Collect all delinquent customer payments and disconnect service from customers when appropriate and after notice;
- f. Prepare annual Consumer Confidence Reports based on County's lead and copper residential samplings and supplemental data supplied by Artesian.
- g. Reimburse Artesian for all hydrant and valve replacements.
- h. Apply to the PSC for the Certificate of Public Convenience and Necessity ("CPCN") for the Ellendale Water District.

(8) ARTESIAN OBLIGATIONS: Artesian agrees, at its expense and cost and without expense or liability to County to perform the following in the Ellendale Water District:

- a. Inspect, test and exercise all hydrants and valves at least annually;
- b. Flush all water mains annually;
- c. Maintain all valves and hydrants including repairs but not replacement;
- d. Perform compliance samplings per Safe Drinking Water Act ("SDWA") requirements;
- e. Provide emergency response to customers during Artesian regular business hours;
- f. Conduct monthly meter readings for all customers and upload the data to the County's billing system.
- g. Relinquish all existing single residence parcel CPCNs within the Ellendale Water District boundary, except the tax parcels identified in Paragraph (2) above.

(9) JOINT OBLIGATIONS: The parties jointly agree that:

- a. County shall install all water mains, meters, hydrants and valves

as well as all other infrastructure to complete servicing of customers in the Ellendale Water District, in accordance with established Artesian construction standards with Artesian providing engineering and technical assistance as necessary for such installation.

- b. County will enter into cost sharing agreements with third parties to partially fund installation of such infrastructure only if such agreements benefit both parties to this Agreement with the understanding when such cost sharing agreements have been fulfilled that the County shall, after completion of the project, be the sole owner of the Ellendale Water District's infrastructure.
- c. County and Artesian agree to allow perpetual cross access to the water mains owned and maintained by either respective party to serve any and all parcels certificated under existing or future CPCNs.
- d. County shall contribute a one-time cost share towards the installation of an Artesian potable water storage facility with the understanding that the facility be complete upon system start-up for County access. County shall have neither an operational nor a maintenance responsibility for said water storage. County's cost share of the facility shall be calculated as follows:

Contribution = [Actual Storage Project Cost / total (existing + planned) number Equivalent Dwelling Units in the combined (Artesian + County) service area] * total (existing + planned) in the County's service area.

The calculation shall be subject to Delaware Health & Social Services Department's concurrence. The County's contribution shall be due thirty (30) days following system commissioning.

- e. County shall pay to Artesian a one-time set up fee of Twenty

Thousand and 00/100 Dollars (\$20,000.00) for purposes of uploading the meter reading data to the County's billing system. The set up fee shall be due thirty (30) days following system commissioning.

(10) **INSURANCE:** Commercial General Liability Insurance. Artesian shall secure and maintain, at its own expense, commercial general liability insurance which insures against bodily injury, property damage, and personal injury claims arising from Artesian's water supply and distribution system or operations incidental thereto, with a combined single limit of \$1,000,000 per occurrence and a general aggregate limit of \$2,000,000 and a completed operations aggregate limit of \$2,000,000. Such insurance shall include County as an additional insured as respects to claims arising from Artesian property or operations.

(i) County shall secure and maintain, at its own expense, commercial general liability insurance which insures against bodily injury, property damage, and personal injury claims arising from the County's water distribution system or operations incidental thereto, with a combined single limit of \$1,000,000 per occurrence and a general aggregate limit of \$2,000,000. Such insurance shall include Artesian as an additional insured as respect to claims arising from County property or operations.

(ii) **Property Insurance**

a. Artesian shall secure and maintain, at its own expense, all risk (special form) property insurance, which insures against direct physical loss of or damage to Artesian's real and personal property and any resulting loss or extra expense therefrom, with limits sufficient to insure Artesian's interest therein.

b. County shall secure and maintain, at its own expense, all risk (special form) property insurance which insures against direct physical loss of or damage to County's real and personal

property and any resulting loss or extra expense therefrom, with limits sufficient to insure County's interest therein.

(iii) Artesian and County waive any right of recovery from the other for any loss of or damage to the property of the other, to the extent of insurance recovery from the property insurance required above. Any deductible amount(s) shall be the sole responsibility of the party whose insurance policy requires such deductible.

(iv) Workers Compensation and Employers Liability Insurance.

a. Artesian and County shall each secure and maintain at their own expense, workers compensation and employer's liability insurance, and each party shall be responsible for all such claims of its own employees.

(11) METER TESTING. County agrees, at its expense and cost and without any expense or liability to Artesian, to employ a competent testing firm as approved by Artesian to service and calibrate all metering equipment every ten (10) years. County further agrees that the cost of calibrating and testing the metering equipment shall be paid by County without any expense or liability to Artesian.

(12) METER READING. Artesian agrees to cause the meters to be read and County agrees that Artesian shall have access at all times to said meters for reading purposes. Artesian agrees to furnish to County a copy of the results of any such reading conducted by Artesian.

(13) COUNTY OBLIGATION REGARDING ACCESSORY EQUIPMENT. County agrees, at its own cost and expense and without any expense or liability to Artesian, to provide and keep in repair all service connections, meters and meter vaults. County agrees that all service connections, meters and meter vaults shall conform with Artesian's materials standards. If, during the course of meter reading or otherwise, Artesian determines that any meters or meter vaults may be in need of repair or replacement, Artesian shall provide that information to County within a reasonable time.

(14) ENFORCEMENT. It is mutually agreed by the parties hereto that either

party hereto may proceed against the other party hereto either in law or in equity, by suit, mandamus or other proceedings, to enforce or compel performance of any and all covenants contained herein against the other party hereto.

- (15) **USE OF WATER.** County agrees not to sell, lease nor give any interest in or right or privilege to utilize any water furnished by Artesian pursuant to the terms hereof to any other municipality or to any other consumer of water whose premises are located outside the boundaries of the Ellendale Water District as defined herein. County agrees to notify Artesian of any Ellendale Water District expansions that will add consumers to the system within thirty (30) days. County further agrees not to permit any connection, other than standard residential annexations, to be made to the water supply main or mains except to supply customers within the boundaries of the Ellendale Water District as defined herein without first obtaining the written consent of Artesian.
- (16) **QUALITY.** Artesian agrees that all water delivered to County shall be of the same quality, purity, and potability as is furnished by Artesian to its water customers pursuant to the then current primary and secondary Federal drinking water standards under the SDWA.
- (17) **DISCONTINUATION OF SERVICE BY COUNTY.** Artesian agrees that County may discontinue the purchase of water from Artesian after providing ten (10) days' advance notice of discontinuation by certified mail with return receipt requested upon the happening of any one or more of the following events, it being understood that any such discontinuance of the purchase of water shall continue only until the violation for which notice is given is corrected:
- (i) The water supplied to the County does not conform to SDWA; or
 - (ii) The water supplied at the metering location or locations is corrosive with pH of less than 6.5 as determined by a competent engineering and testing firm; or
 - (iii) Unjustified interruption of water supply to County resulting in an

inadequate supply of water or the reduction of reserve fire storage in the elevated storage tank to less than twenty-five percent (25%) of capacity.

(18) DISCONTINUATION OF SERVICE BY ARTESIAN. County agrees that Artesian may discontinue water service to County upon the happening of any one or more of the following events, it being understood that any such discontinuance of water service shall continue only until the violation for which notice is given is corrected:

- (i) The failure of County to pay all or any part of the amounts due for water service as set forth in Paragraph 5 of this Agreement within twenty-five (25) days after the billing for such water service and following ten (10) days written notice in advance by certified mail with return receipt requested; or
- (ii) The resale of water in violation of Paragraph 15 hereof and following ten (10) days notice in advance by certified mail with return receipt requested; or
- (iii) A break or leak in the distribution or transmission water systems of Artesian or a break or leak in the distribution system of the County until such condition is repaired or isolated; or
- (iv) The existence of an emergency as determined by Artesian that necessitates the discontinuance of the water supply to County; or
- (v) A violation of any term or condition of this Agreement by County or any user within the Ellendale Water District as defined herein and following ten (10) days notice in advance by certified mail with return receipt requested.

(19) WAIVER OF DAMAGES. Artesian shall only be liable for damages in connection with its provision of water service to the Ellendale Water District in accordance with the rulings of the PSC and the terms of Artesian's PSC-approved tariff as amended from time to time.

- (20) **INDEMNIFICATION.** To the extent permitted by law, the parties shall indemnify, defend and hold the other harmless from and against any and all claims for bodily injury and property damage occurring as a result of its respective water supply and distribution systems or operations incidental thereto unless such claims arise from the negligence of the other party. Such indemnification shall not affect the statutory immunity afforded to either party, and to the extent any claim may be precluded by such immunity, this Paragraph shall not be applied to alter, qualify, or inhibit the parties' immunity.
- (21) **NON-ASSIGNMENT.** County and Artesian agree not to assign or in any other manner transfer this Agreement or any interest thereunder without the previous written agreement of the other party being obtained.
- (22) **WAIVER OF BREACH.** It is mutually agreed by the parties hereto that if either party hereto waives the breach of any covenant or condition contained in this Agreement, such waiver shall not be construed as a waiver of any subsequent breach of the same or a different covenant or condition set forth herein.
- (23) **BINDING EFFECT.** It is mutually agreed by the parties hereto that the terms of this Agreement shall be binding not only upon the parties hereto, but also upon their respective successors and permitted assigns.
- (24) **TIME OF ESSENCE.** Time is of the essence for purposes of performing this Agreement. Any reference to "day" shall mean a calendar day, unless specifically noted otherwise herein.
- (25) **GOVERNING LAW.** The parties agree that the Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without respect to its conflict of laws provisions.
- (26) **MERGER.** It is agreed that this Agreement and its exhibits comprises the full understanding and agreement between the parties regarding this subject, and any representation, warranty, right or obligation, whether oral or in writing, shall not

be effective unless such is expressly incorporated in this Agreement. This Agreement may not be modified, amended, or replaced without the signed, written consent of both parties.

(27) HEADINGS. Headings contained herein are for reference only and not deemed substantive in nature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers and their respective corporate seals to be hereunto affixed, the day and year first above written.

SUSSEX COUNTY

ARTESIAN WATER COMPANY, INC.

BY: _____

BY: _____

Michael H. Vincent - Council President

Dian C. Taylor, President and
Chief Executive Officer

Attest: _____

Attest: _____

Clerk of Council

Secretary

Date: _____

Date: _____

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable I.G. Burton, III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

FROM: Hans Medlarz, P.E., County Engineer

RE: ***Delaware Coastal Airport & Business Park
A. Bulk Wastewater Services Agreement***

DATE: January 29, 2019

The Delaware Coastal Business Park, as well as the entities located at the Coastal Airport along Rudder Lane, currently receive wastewater treatment services from the Town of Georgetown under the May 15, 2018 Agreement. Given the limited availability of municipal sewer capacity, it had an allowance for the surrender of capacity under Article VIII by redirecting it to alternate wastewater service provider with twelve (12) months prior notice.

In the summer of 2018, the Town and County Councils approved an addendum to the Agreement regarding the potential capacity surrender for both parties allowing the Town the option to also gain capacity beyond the County flows without initial capital contribution, while allowing the County to recuperate all capital funds over the life of the investment.

The Engineering Department is now presenting a Bulk Wastewater Services Agreement with Artesian Wastewater Resources, Inc. providing alternate transmission and treatment at the same metered user rate as the Town of Georgetown. The service handshake point will be at the intersection of Park Avenue and the railroad. The County would not be subject to any sewer connection charges but instead contribute \$750,000 towards the extension of the transmission system to the handshake point. Once the capacity is actually transferred, it will trigger the calculation of the applicable sewer impact fee credits as set forth in the Town of Georgetown Code at the time of the Notice to Surrender. In addition, the County would have to make internal transmission improvements for the flow reversal to the handshake point.

The Agreement as presented allows for cost effective alternative transmission and treatment while at the same time offering the Town some capacity relief. If approved, the Engineering and Finance Departments would pursue a joint construction project allowing the Town to contribute flow as needed. In addition, we would explore flow credit transfer to the Ellendale Sewer District area for



future Town & County Council approval. The Departments are requesting Council's approval of the Agreement and concurrence in the approach.

**BULK WASTEWATER SERVICES AGREEMENT
FOR THE
DELAWARE COASTAL BUSINESS PARK & AIRPORT**

THIS BULK WASTEWATER SERVICES AGREEMENT FOR THE DELAWARE COASTAL BUSINESS PARK & AIRPORT (the "2019 Agreement") is made this _____ day of _____, 2019, between **SUSSEX COUNTY**, a political subdivision of the State of Delaware ("Sussex County"), and **ARTESIAN WASTEWATER MANAGEMENT, INC.**, a Delaware corporation ("Artesian");

WHEREAS, Artesian is a regulated public utility with regional wastewater facilities located from north of Milton to the Stonewater development on Delaware Route 5 that, once connected, have capacity to provide wastewater service to the Delaware Coastal Business Park & Airport and such other County-served areas as may connect to or flow through the Delaware Coastal Business Park & Airport (collectively, the "Park"); and

WHEREAS, Sussex County and Artesian entered into a Bulk Wastewater Services Agreement on August 30, 2016 (the "2016 Agreement") that set forth terms and conditions for sharing infrastructure and establishing cost for the transfer of wastewater to and from each other's wastewater systems; and

WHEREAS, both Sussex County and Artesian agree that this 2019 Agreement does not supersede, amend or affect in any way the 2016 Agreement, and the calculation of wastewater flows in connection with this 2019 Agreement shall be separate and distinct from the calculation of wastewater flows relating to the 2016 Agreement; and

WHEREAS, the parties wish to enter into this 2019 Agreement for the purpose of allowing Artesian to accept, and ultimately treat and dispose of Sussex wastewater, via an interconnection at or near the Park;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. The following capitalized terms as used herein shall have the meaning ascribed below unless the context of their usage shall clearly indicate otherwise:

- a. The "Artesian Wastewater Facilities" or "Artesian Facilities" means any Artesian regional wastewater facilities owned, operated or utilized by Artesian for treatment or disposal of Wastewater.
- b. The "Sussex County Wastewater Facilities" or "Sussex County Facilities" means any Sussex County wastewater facilities or collection system owned, operated or utilized by Sussex County for treatment or disposal of Wastewater from the Park.

- c. "Wastewater" means water containing domestic waste discharged into a wastewater collection and transmission system from residential and non-residential structures.

2. Purpose. The purpose of this Agreement is to document the terms upon which Artesian is to provide treatment and disposal services for Wastewater from the Sussex County Facilities.

- a. The parties agree that there will be a single interconnection located at a mutually acceptable location on the north side of the intersection between the railroad right-of-way and Park Avenue.

- b. Artesian shall design and construct, at its expense, the force main from the interconnection to Artesian's existing force main. The interconnection shall include a meter vault and meter capable of measuring flows from Sussex County. The County shall be responsible for connecting the Sussex County Facilities to the meter at the interconnection. The meter vault shall be owned and maintained by Artesian.

3. Connection Fees. The parties agree that this agreement contemplates a significant delivery, treatment and disposal of Wastewater, for which Artesian has or will make a substantial investment in infrastructure, therefore:

- a. Sussex County shall pay an initial connection fee of \$750,000 due upon completion of the installation of the force main from the Park, along Delaware Route 9 to Delaware Route 5, continuing along Delaware Route 5 to Artesian's system located near the development known as Spring Breeze.

4. User Fees. The parties agree that, for the price of \$7.00 per thousand gallons, Artesian will accept, treat and dispose of Wastewater from Sussex County, subject to any applicable regulatory requirements. This rate will not be subject to increase for the first five (5) years following the execution of this 2019 Agreement. The rate will then be subject to change based on a cost of service study provided in connection with any change in rates and subject to the approval of the Delaware Public Service Commission.

- a. The parties agree that, upon completion of the interconnection, the Sussex County Facilities shall deliver to Artesian a minimum flow of 50,000 gallons per day (gpd) of domestic Wastewater (the "Minimum Flow"). The actual flow shall be calculated as an average daily flow on a monthly basis. Should Sussex County not deliver the Minimum Flow in any month, Artesian shall bill Sussex County the difference between actual flows delivered and the required Minimum Flow. The calculated deficiency in monthly average flow shall be invoiced on the next bill following the shortfall determination.

- b. The parties further acknowledge and agree that the rate per thousand gallons is dependent on the initial connection fee and Minimum Flow described in Sections 3.a. and 4.a. above. Sussex County shall notify Artesian at least twelve (12)

months in advance of any permanent daily increase to more than 50,000 gpd of Wastewater deliveries. Additional flows in excess of twenty percent (20%) for three (3) consecutive months may, in Artesian's sole discretion, result in additional lump sum contributions from Sussex County to Artesian or otherwise result in amendment of this 2019 Agreement.

c. This 2019 Agreement shall be contingent upon the parties receiving to all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this 2019 Agreement, including but not limited to any necessary approvals required from Sussex County government, the Delaware Public Service Commission, and the Delaware Department of Natural Resources and Environmental Control.

5. Metering. Artesian shall own and maintain the meter at the interconnection. The meter shall be inspected and calibrated at least once each year. Sussex County shall have a right of reasonable access to, and electronic ability to read, the meter.

6. Operation and Maintenance of the Artesian Facilities. Artesian shall be responsible for all repairs and replacements associated with Artesian Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any Artesian Facilities to any Sussex County Facilities. No structure, pipes or other infrastructure of any type shall be connected to the Artesian Facilities until Artesian inspects and approves any such proposed connection.

7. Operation and Maintenance of the Sussex County Facilities. Sussex County shall be responsible for all repairs and replacements associated with Sussex County Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any Sussex County Facilities to any Artesian Facilities. No structure, pipes or other infrastructure of any type shall be connected to the Sussex County Facilities until Sussex County inspects and approves any such proposed connection.

8. Further Assurances. Each party hereto shall use reasonable efforts to comply with all legal requirements imposed upon it by reason of the commitments, obligations and terms as set forth in this 2019 Agreement.

9. Warranties with Respect to Sussex County. Sussex County hereby represents to Artesian as follows:

a. *Organization and Authority.* Sussex County has the requisite power and authority to carry on its business as and warrants now being conducted in regard to the provision of wastewater treatment and disposal.

b. *Authority.* Sussex County has requisite power and authority to enter into and perform its obligations under this 2019 Agreement and all other agreements and documents delivered in connection herewith. Neither the execution and delivery of this 2019 Agreement, and all other agreements and documents executed in connection

herewith by Sussex County, nor the consummation of the transactions contemplated hereby or thereby, nor the performance of this 2019 Agreement and all other agreements and documents executed in connection herewith by Sussex County, shall (a) materially violate, conflict with or constitute a material default under any contract, commitment or agreement to which Sussex County is a party or by which Sussex County is bound; or (b) materially violate any order, writ, injunction, decree, judgment or ruling of any court or governmental authority, or any law, statute, ordinance or regulations of any governmental entity or authority applicable to Sussex County or the Development.

c. *Execution.* Delivery of this 2019 Agreement and all other agreements and documents to be delivered by Sussex County in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Sussex County.

d. *Valid and Binding Agreement.* This 2019 Agreement constitutes the valid and binding agreement of Sussex County, enforceable against Sussex County in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

10. Warranties with Respect to Artesian. Artesian hereby represents and warrants to Sussex County as follows:

a. *Organization and Authority.* Artesian has the requisite power to carry on its business as now being conducted.

b. *Authority.* Artesian has requisite power and authority to enter into and perform this 2019 Agreement and all other documents to be delivered by Artesian in connection herewith. Neither the execution and delivery of this 2019 Agreement, nor all other agreements and documents executed in connection herewith, nor the consummation of the transactions contemplated hereby or thereby nor the performance of this 2019 Agreement and all other agreements and documents executed in connection herewith by Artesian shall (a) conflict with or result in a material breach of any provision of the organizational documents of Artesian; (b) materially violate or conflict with, or constitute a material default under any contract, commitment or agreement to which Artesian is a party or by which it is bound; or (c) materially violate any order, writ, injunction, decree, judgment or ruling of any court or governmental authority or any law, statute or ordinance or regulation of any governmental entity applicable to Artesian or any of its properties.

c. *Execution.* Delivery of this 2019 Agreement and all other agreements and documents to be delivered by Artesian in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Artesian.

d. Valid and Binding Agreement. This 2019 Agreement constitutes the valid and binding obligation of Artesian, enforceable against Artesian in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

11. Indemnification by Artesian. Artesian hereby agrees to indemnify and hold Sussex County harmless from and against any and all liabilities, damages, costs and expenses resulting from any negligent act or omission on the part of Artesian, or others acting under or through Artesian, in connection with Artesian's performance of any obligation owed to Sussex County in connection with providing Wastewater treatment and disposal services pursuant to this 2019 Agreement, and this indemnification obligation on the part of Artesian shall survive the termination of this 2019 Agreement.

12. Indemnification by Sussex County. Sussex County hereby agrees to indemnify and hold Artesian harmless from and against any and all liabilities, damages, costs and expenses resulting from any negligent act or omission on the part of Sussex County, or others acting under or through Sussex County, in connection with Sussex County's performance of any obligation owed to Artesian in connection with providing Wastewater treatment and disposal services pursuant to this 2019 Agreement, and this indemnification obligation on the part of Sussex County shall survive the termination of this 2019 Agreement.

13. Survival of Indemnities. All indemnities set forth in this 2019 Agreement shall survive the termination of this Agreement.

14. Term. This 2019 Agreement shall be in effect for an initial term of ten (10) years, to be automatically renewed for additional terms of ten (10) years upon the expiration of each such ten (10) year term, unless a written notice is delivered by either party to the other at least five (5) years in advance of the expiration of the then-current ten (10) year term, stating that that party is not agreeing to another renewal.

15. Notices. All notices required in connection with this 2019 Agreement shall be in writing and shall be deemed to have been given if personally delivered or mailed by registered, certified, or first-class mail, postage prepaid, or sent by overnight delivery, email, telecopier, or facsimile transmission to:

If to Sussex County:
The Sussex County Council
2 The Circle
P.O. Box 589
Georgetown, Delaware 19947

If to Artesian:

Artesian Wastewater Management, Inc.
Attention: Joseph A. DiNunzio, Executive Vice President
664 Churchmans Road
Newark, DE 19702
Telephone: (302) 453-6900
Fax: (302) 453-6957
Email: jdinunzio@artesianwater.com

with a copy to:

Artesian Wastewater Management, Inc.
Attention: Karl G. Randall, General Counsel
664 Churchmans Road
Newark, Delaware 19702
Telephone: (302) 453-6900
Fax: (302) 453-6957
Email: krandall@artesianwater.com

or to such other addresses or to such other persons as either party shall have last designated by notice to the other party hereto. Notices delivered personally or by overnight delivery shall be effective upon delivery. Notices properly addressed and delivered by mail, return receipt request, shall be effective upon deposit with the United States Postal Service. Notices sent by email, telecopier, or facsimile transmission shall be effective upon confirmation of transmission.

16. Section Headings. The headings of Sections contained in this 2019 Agreement are provided for convenience only, form no part of this 2019 Agreement, and shall not affect its construction or interpretation. All references to Sections in this 2019 Agreement refer only to the corresponding Sections of this 2019 Agreement. The recitals set forth above Section 1 of this 2019 Agreement are incorporated into the terms of this agreement for all purposes.

17. Amendment. Neither this 2019 Agreement nor any terms or provision herein may be changed, waived, discharged, or terminated orally or electronically. Any such amendment shall be valid only if evidenced by a written instrument executed by all parties hereto.

18. Counterparts. This 2019 Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary for a single counterpart to be executed by all parties provided that each party shall have executed at least one counterpart.

19. Waiver Of Trial By Jury. The parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any dispute or disputes arising out of or in any way connected with this 2019 Agreement or the performance, or lack thereof, by a party hereto of such party's obligations hereunder.

20. Jurisdiction. Each party hereby consents to the exclusive jurisdiction of the courts of the State of Delaware as to all matters relating to the enforcement, interpretation or validity of this 2019 Agreement and, if such party is a non-resident of the State of Delaware, hereby appoints the Secretary of State of the State of Delaware as its agent for service of process. The parties agree that this 2019 Agreement may be enforced in equity; and that specific performance or other equitable relief, in addition to any monetary or other damages that may be proved, may be an appropriate remedy in any such action.

21. Severability. If any provision of this 2019 Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 2019 Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

22. No Presumption Against the Drafter. Each of the parties to this 2019 Agreement participated in its drafting, and the interpretation of any ambiguity contained in the 2019 Agreement shall not be affected by a claim that a particular party drafted any particular provision hereof.

23. Benefit. This 2019 Agreement shall be binding upon and inure to the benefit of the parties hereto, and to each respective party's legal representatives, heirs, successors and permitted assigns.

[Signature pages follow]

IN WITNESS WHEREOF, the parties, intending hereby to be legally bound hereby, caused this 2019 Agreement to be executed by their duly authorized representatives as of the date and year first written above.

WITNESS:

Name: _____

SUSSEX COUNTY:

By: _____ (SEAL)
Name:
Title:

ATTEST:

Name: _____
Title: _____

ARTESIAN:

ARTESIAN WASTEWATER MANAGEMENT, INC., a Delaware corporation

By: _____ (SEAL)
Name: Dian C. Taylor
Title: President & Chief Executive Officer

STATE OF DELAWARE)
) ss.
_____ COUNTY)

BE IT REMEMBERED that on this ____day of _____, A.D. 2019, personally came before me, the Subscriber, a Notary Public of the State and County aforesaid, _____, known to me to be the _____ of Sussex County, a party to this 2019 Agreement, and as such, being authorized so to do, acknowledged that he executed this 2019 Agreement in his own hand for the County.

AS GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public
My Commission Expires:

STATE OF DELAWARE)
) ss.
NEW CASTLE COUNTY)

BE IT REMEMBERED that on this _____ day of _____, A.D. 2019, personally came before me, the Subscriber, a Notary Public of the State of Delaware, Dian C. Taylor, known to me to be the President & Chief Executive Officer of Artesian Wastewater Management, Inc., a corporation existing under the laws of the State of Delaware, party to this 2019 Agreement, and in her capacity as such, and being authorized so to do, acknowledged that she executed this 2019 Agreement in her own hand for the corporation.

AS GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public
My Commission Expires:

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Hans Medlarz, P.E., County Engineer

RE: *2016 Bulk Wastewater Services Agreement
w/ Artesian Wastewater Management Inc.
A. Addendum No.1*

DATE: January 29, 2019

On July 19, 2016, the Engineering Department gave a comprehensive presentation on Sussex County's proactive wastewater infrastructure planning in the North Coastal Planning Area. The presentation addressed expansion of utility coordination between wastewater service providers, avoiding duplication of capital expenditures. The goal was utilization of existing sewer transmission and treatment capacity up to its permitted limits.

County Council authorized agreement negotiations with other wastewater service providers for the utilization of seasonally available, existing wastewater treatment capacity and on August 30, 2016, approved the original agreement with Artesian Wastewater Management, Inc. Other agreements with municipal providers have followed since then. The approach of allowing the most cost-effective transmission and treatment of wastewater, represented by the tier style service map, has been incorporated in the County Code revisions for Chapter 110, as well as the 2018 Comprehensive Plan.

The 2016 agreement did not require modification of the either party's underlying DNREC wastewater permit, but instead allowed raw wastewater to be transmitted and treated by the most cost-effective option. The intention was to create a substantially revenue neutral, in other words, balanced flow exchange system. It worked well for both parties and to date, the contractual 500,000 gallons balance threshold has not been crossed.

The Department is now presenting Addendum No. 1 to the Agreement, expanding the exchange to treated effluent with a 4 to 1 exchange ratio for balancing purposes. In addition, the Addendum resets the term at 10 versus 5-years and removes the "at will" reduction option for either party, allowing for better long-term planning. The Addendum has been developed in conjunction with the Assistant County Attorney and he has signed off to form. The Engineering Department is requesting Council's approval of Addendum No.1.



ADDENDUM No.1 TO THE
BULK WASTEWATER SERVICES AGREEMENT
Between
ARTESIAN WASTEWATER MANAGEMENT, INC.
and
SUSSEX COUNTY

WHEREAS, on August 30, 2016, both parties entered into a Bulk Wastewater Services Agreement (“Agreement”) regarding exchange of Wastewater; and

WHEREAS, both parties desire to amend the Agreement.

NOW THEREFORE, the Sussex County Council and Artesian Wastewater Services Management, Inc. agree to amend the Agreement as follows:

1. By adding subparagraph d. under Section 1. Definitions as follows:

d. “Effluent” means Wastewater treated to a degree of water quality necessary to meet or exceed the conditions imposed by the State permit issued to the treatment facility receiving such Wastewater.

2. By deleting the last sentence of subparagraph a. under Section 2. Purpose and replacing it as follows:

In that regard, there are numerous locations in Sussex County where each party’s facilities are capable of being connected or integrated to allow for the movement from one party’s system to the other party’s system of Wastewater for treatment and of Effluent for disposal.

3. By deleting subparagraph b. under Section 2. Purpose in its entirety and replacing it as follows:

b. The parties agree that either party shall on an ongoing basis, upon 30 days’ prior written notice from the other party, accept and treat such amount of Wastewater, and accept and dispose of such amount of Effluent, as the receiving party states it is ready and willing to accept, subject to any applicable regulatory requirements.

4. By deleting subparagraph c. under Section 2. Purpose in its entirety and replacing it as follows:

c. The parties agree that if either party accepts Effluent for disposal it shall be exchanged at a ratio of one (1) unit of Wastewater for four (4) units of Effluent.

5. By deleting subparagraph d. under Section 2. Purpose in its entirety and replacing it as follows: d. Should either party's systems and facilities experience operating limitations that will likely result in violations of applicable permits, potential damage to the systems or facilities, or insufficient capacity to accept or treat Wastewater or to discharge Effluent, the acceptance and treatment of Wastewater and the acceptance and disposal of Effluent by a receiving party may be limited or discontinued for such period of time as agreed to by the parties or as necessary as a matter of law or sound engineering principles.

6. By deleting subparagraph e. under Section 2. Purpose in its entirety and replacing it as follows:

e. On June 30th of each calendar year beginning on June 30, 2017, the parties shall exchange any and all reports of their metered flows for the previous year (July 1 to June 30) measured at the parties' respective connection points and compare the annual totals for each party in order to engage in an annual true-up process. If either party's flows to the other party exceeds 500,000 gallons, then that party shall be responsible for paying for the amount of annual flow exceeding 500,000 gallons at the rate of \$8.00 per thousand gallons, it being understood that the measurement of Effluent flows shall be divided by four (4) for purposes of performing the calculations in accordance with Section 2.c. as amended hereby. Such payment shall be made to the other party within thirty (30) days of receiving notice thereof of the amount of such exceedance. Other than the payments required by this Paragraph, it is the intention of the parties that this Agreement shall be substantially revenue neutral. If both parties' flows are 500,000 gallons or less, then the parties shall take no action. Credits or debits for annual flow that are more or less than 500,000 gallons shall not be carried over into the next year.

7. By amending Section 8. Term by replacing the current five-year term with a new ten-year term that shall begin upon the date of the full execution and delivery of this Addendum, to be followed by automatic renewal terms of ten years each unless either party delivers a notice of non-renewal as provided in the Agreement.

All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have set their hands and seals the day stated below.

Signed in the Presence of: **ARTESIAN WASTEWATER MANAGEMENT**

_____ By: _____(SEAL)
Joseph A. DiNunzio, E.V.P. Dian C. Taylor, President

STATE OF DELAWARE :
: SS.

COUNTY OF NEW CASTLE :

BE IT REMEMBERED, that on the _____ day of _____, 2019, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Dian C. Taylor, known to me personally to be the President and Chief Executive Officer of Artesian Wastewater Management, Inc. and, in that capacity, she executed this Addendum in her own hand for the corporation.

Notary Public

SUSSEX COUNTY, DELAWARE

Attest:

_____ By: _____(SEAL)
Clerk, Sussex County Council Michael H. Vincent, President

STATE OF DELAWARE :
: SS.

COUNTY OF SUSSEX :

BE IT REMEMBERED, that on the _____ day of _____, 2019, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, known to me personally to be President of the Sussex County Council and, in that capacity, he executed this Addendum in his own hand for the County.

Notary Public

BULK WASTEWATER SERVICES AGREEMENT

THIS WASTEWATER SERVICES AGREEMENT is made this 30th day of August, 2016, between **SUSSEX COUNTY**, a political subdivision of the State of Delaware ("Sussex County"), and **ARTESIAN WASTEWATER MANAGEMENT, INC.**, a Delaware corporation ("Artesian");

NOW THEREFORE, in consideration of the mutual promises made and herein set forth, the parties agree as follows:

1. **Definitions.** The following capitalized terms as used herein shall have the meaning ascribed below unless the context of their usage shall clearly indicate otherwise:

- a. The "Artesian Wastewater Treatment Facilities" or "AW Facilities" means any Artesian Regional Wastewater Treatment Facilities owned, operated or controlled by Artesian for disposal and treatment of Wastewater.
- b. The "Sussex County Wastewater Treatment Facilities" or "SC Facilities" means any Sussex County Wastewater Treatment Facilities owned, operated or controlled by Sussex County for disposal and treatment of Wastewater.
- c. "Wastewater" means water containing domestic waste deposited into the wastewater collection and transmission system from residential and non-residential structures.

2. **Purpose.** The purpose of this Agreement is to document the terms, pursuant to which Artesian is to provide Wastewater treatment and disposal services to Sussex County and the terms pursuant to which Sussex County is to provide Wastewater treatment and disposal services to Artesian. In furtherance of such purpose:

a. Each of Artesian and Sussex County have periodic need of additional Wastewater treatment and disposal capacities and facilities in Sussex County, beyond those under their own ownership or control, to assure the timely, efficient and cost effective transmission and management of Wastewater. In that regard, there are numerous locations in Sussex County where each party's facilities are capable of being connected or integrated to allow for the movement and disposal of Wastewater generated by one party's system to the other party's system.

b. The parties agree that either party shall, upon 30 days' prior written notice from the other party, accept, treat and dispose of such an amount of Wastewater on an ongoing basis as the receiving party states it is ready and willing to accept, subject to any applicable regulatory requirements.

c. The parties agree that, once Wastewater is accepted by either party, the party accepting Wastewater from the other party will provide 90-day prior written notice of discontinuance or reduction of receipt of amounts of Wastewater previously accepted. The party receiving any such notice of discontinuance or reduction may discontinue or reduce delivery of Wastewater at any time subsequent to receipt of notice, but will discontinue or reduce the amount of Wastewater to the amount provided in the notice no later than the 90th day from the date of delivery of notice.

d. Notwithstanding the notification period in Section 2(c) above, should either party's systems and facilities experience operating limitations that will likely result in violations of applicable permits, potential damage to the systems or facilities, or insufficient capacity to accept, treat or discharge the other party's Wastewater, the acceptance, treatment and disposal of Wastewater by a receiving party may be limited or discontinued for such period of time as agreed to by the parties or as necessary as a matter of law or sound engineering principles.

e. On June 30th of each calendar year beginning on June 30, 2017, the parties shall exchange any and all reports of their metered flows for the previous year (July 1 to June 30) measured at the parties' respective connection points and compare the annual totals for each party in order to engage in an annual true-up process. If either party's flows to the other party exceeds 500,000 gallons, then that party shall be responsible for paying for the amount of annual flow exceeding 500,000 gallons at the rate of \$8.00 per thousand gallons. Such payment shall be made to the other party within thirty (30) days of receiving notice thereof of the amount of such exceedance. Other than the payments required by this Paragraph, it is the intention of the parties that this Agreement will be substantially revenue neutral. If both parties' annual flows are 500,000 gallons or less, then the parties shall take no action. Credits or debits for annual flow that are more or less than the 500,000 gallons shall not be carried over into the next year.

f. This Agreement shall be subject to all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this Agreement including but not limited to any approvals required from Sussex County government, the Delaware Public Service Commission and the Delaware Department of Natural Resources and Control.

g. Each party shall establish and maintain flow metering at a location sufficiently near the connection point to the accepting party's system in order to capture the flow into the accepting party's system, and such connection point(s) shall be approved by the party into whose system the flow is entering. Any and all measurements of flow shall be made by the party with origination of such flow and shall be supervised by the accepting party. The results of the flow metering shall be reviewed and evaluated by the originating party at least quarterly, and such quarterly reports shall be promptly shared with the accepting party. The metering devices used to measure flow shall be calibrated annually by a qualified third party testing agency. The results of the calibration, including any written reports, shall be sent to both the originating and accepting parties. If the calibration reveals a discrepancy greater than five percent (5%) above or below the

actual, calibrated reading, the party with the flow discrepancy shall pay or receive a credit for the value of the discrepancy for a three month period immediately preceding the calibration. If the value of this discrepancy affects the annual flow amount determined at the annual true-up, the parties shall adjust the final true-up amount and make any necessary payments to account for said adjustment within thirty (30) days of the notice of such adjusted annual flow amount.

3. Operation and Maintenance of the Artesian Wastewater Treatment Facilities. Artesian shall be responsible for all repairs and replacements associated with AW Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any AW Facility to any SC Facility. No structure, pipes or other infrastructure of any type shall be connected to the AW Facilities until Artesian inspects and approves any such proposed connection.

4. Operation and Maintenance of the Sussex County Wastewater Treatment Facilities. Sussex County shall be responsible for all repairs and replacements associated with SC Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any SC Facility to any AW Facility. No structure, pipes or other infrastructure of any type shall be connected to the SC Facilities until Sussex County inspects and approves any such proposed connection.

5. Further Assurances. Each party hereto shall use reasonable efforts to comply with all legal requirements imposed upon it by reason of the commitments, obligations and terms as set forth in this Agreement.

6. Warranties with Respect to Sussex County. Sussex County hereby represents and warrants to Artesian as follows:

a. *Organization and Authority.* Sussex County has the requisite power and authority to carry on its business as now being conducted in regard to the provision of wastewater treatment and disposal.

b. *Authority.* Sussex County has requisite power and authority to enter into and perform its obligations under this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the performance of this Agreement shall: (a) violate, conflict with, or constitute a material default under any contract, commitment or agreement to which Sussex County is a party or by which Sussex County is bound; or (b) violate any (i) order, writ, injunction, decree, judgment or ruling of any court, or (ii) law, statute, ordinance or regulation applicable to Sussex County.

c. *Execution.* Delivery of this Agreement and all other technical documents associated with existing or proposed infrastructure to be delivered by Sussex County in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Sussex County.

d. *Valid and Binding Agreement.* This Agreement constitutes the valid and binding agreement of Sussex County, enforceable against Sussex County in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

7. Warranties with Respect to Artesian. Artesian hereby represents and warrants to Sussex County as follows:

a. *Organization and Authority.* Artesian has the requisite power to carry on its business as now being conducted.

b. *Authority.* Artesian has requisite power and authority to enter into and perform its obligations under this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the performance of this Agreement shall: (a) violate, conflict with, or constitute a material default under any contract, commitment or agreement to which Artesian is a party or by which Artesian is bound; or (b) violate any (i) order, writ, injunction, decree, judgment or ruling of any court, or (ii) law, statute, ordinance or regulation applicable to Artesian.

c. *Execution.* Delivery of this Agreement and all other technical documents associated with existing or proposed infrastructure to be delivered by Artesian in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Artesian.

d. *Valid and Binding Agreement.* This Agreement constitutes the valid and binding obligation of Artesian, enforceable against Artesian in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

8. Term. This Agreement shall be in effect for a term of five years, to be automatically renewed for an additional term of five years upon the expiration of each such five year term, unless a written notice is delivered by either party to the other, one year in advance of the expiration of the then current five year term, stating that that party is not agreeing to another five year renewal.

9. Notices. All notices and other communications, whether required or otherwise, made under this Memorandum shall be in writing and shall be deemed to have been given if personally delivered or mailed by registered, certified, or first-class mail, postage prepaid, or sent by overnight delivery, email, telecopier, or facsimile transmission:

If to Sussex County:

Sussex County Council
2 The Circle
PO Box 589
Georgetown DE 19947

If to Artesian:

Artesian Wastewater Management, Inc.
664 Churchmans Road
Newark, DE 19702
Attention: Joseph A. DiNunzio, Executive Vice President
Telephone: (302) 453-6900
Fax: (302) 453-6957
Email: jdinunzio@artesianwater.com

with a copy to:

Artesian Resources Corporation
Karl G. Randall, General Counsel
664 Churchmans Road
Newark, DE 19702
Telephone: (302) 453-6900
Fax: (302) 453-6957
Email: krandall@artesianwater.com

or to such other address or to such other person as one party shall have last designated by notice to the other party hereto. Notices delivered personally or by overnight delivery shall be effective upon delivery. Notices properly addressed and delivered by mail, return receipt request, shall be effective upon deposit with the United States Postal Service. Notices sent by email, telecopier, or facsimile transmission shall be effective upon confirmation of transmission.

10. Section Headings. The headings of Sections contained in this Agreement are provided for convenience only, form no part of this Agreement and shall not affect its construction or interpretation. All references to Sections in this Agreement refer only to the corresponding Sections of this Agreement.

11. Amendment. Neither this Agreement nor any terms or provision herein may be changed, waived, discharged, or terminated orally or electronically. Any such amendment shall be valid only by a written instrument, executed by all Parties hereto.

12. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary for a single counterpart to be executed by all parties provided that each Party shall have executed at least one counterpart.

13. Waiver Of Trial By Jury. The Parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any dispute or disputes arising out of or in any way connected with this Agreement or the performance, or lack thereof, by a party hereto of such party's obligations hereunder.

14. Jurisdiction. Each Party hereby consents to the exclusive jurisdiction of the courts of the State of Delaware as to all matters relating to the enforcement, interpretation or validity of this Agreement and, if such party is a non-resident of the State of Delaware, hereby appoints the Secretary of State of the State of Delaware as its agent for service of process. The Parties agree that this Agreement may be enforced in equity; and that specific performance or other equitable relief, in addition to any monetary or other damages that may be proved, would be an appropriate remedy in any such action.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. No Presumption Against the Drafter. Each of the Parties to this Agreement participated in drafting this Agreement, and the interpretation of any ambiguity contained in the Agreement will not be affected by a claim that a particular Party drafted any particular provision hereof.

17. Benefit. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and to each respective Party's legal representatives, heirs, successors and permitted assigns.

(Signature Pages to Follow)

ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718
AIRPORT & INDUSTRIAL PARK (302) 855-7774
ENVIRONMENTAL SERVICES (302) 855-7730
PUBLIC WORKS (302) 855-7703
RECORDS MANAGEMENT (302) 854-5033
UTILITY ENGINEERING (302) 855-7717
UTILITY PERMITS (302) 855-7719
UTILITY PLANNING (302) 855-1299
FAX (302) 855-7799



Sussex County


DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Samuel R. Wilson, Jr.
The Honorable Douglas B. Hudson
The Honorable John L. Rieley

FROM: John Ashman 
Director of Utility Planning

RE: *Use of Existing Infrastructure Agreement
Suitewater, LLC
File: OM 9.01*

DATE: January 18, 2019



On July 19, 2016, the Engineering Department gave a presentation on Sussex County's proactive wastewater infrastructure planning in the North Coastal Planning Area. The planning effort identified infrastructure needs and matched them to transmission and treatment capacity upgrades respectively. This arrangement collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Department requests approval of an agreement for the Use of Existing Infrastructure with **Suitewater, LLC** for the **Home 2 Suites by Hilton** project in the West Rehoboth Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Home 2 Suites by Hilton** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Suitewater, LLC** will contribute **\$28,184.00** for the financial catch-up contribution of the existing infrastructure to serve an additional **41.67** Equivalent Dwelling Units. Payment will be required prior to receiving a connection permit for the facility.



Home 2 Suites by Hilton Existing Infrastructure

 Parcel 334-6.00-17.00  Existing SSD



0 90 180 360 Feet



USE OF EXISTING INFRASTRUCTURE AGREEMENT

Home 2 Suites by Hilton

THIS AGREEMENT ("Agreement"), made this _____ day of _____ 201~~8~~⁹ by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the "County," and;

SUITEWATER, LLC, a Delaware Limited Liability Company and developer of a project known as Home 2 Suites by Hilton, hereinafter called the "Developer."

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcels 334-6.00-17.00 to be known as Home 2 Suites by Hilton ("Project") and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **41.67** additional equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$28,184.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving a connection permit for the facility.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made

- pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
 - (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
 - (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
 - (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
 - (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
 - (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
 - (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **8 North First Street, Rehoboth Beach DE 19971.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

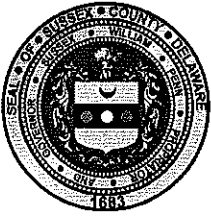
Robin A. Griffith
Clerk of the County Council

FOR SUITEWATER, LLC

By: Nicholas J. Caggiano (Seal)
Nicholas Caggiano - Authorized Signatory

12-18-2018 (DATE)

WITNESS: Mary Davis



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Sussex County 4-H
PROJECT NAME: 4-H Interstate Exchange Program
FEDERAL TAX ID: 45-5577151 NON-PROFIT: YES NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?
 YES NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: The goal of 4-H is to develop citizenship, leadership, responsibility and life skills of youth through experiential learning programs and a positive youth development approach.

ADDRESS: Elbert N. & Ann V. Carvel Research & Education Center
16483 County Seat Hwy.
Georgetown Delaware 19947
(CITY) (STATE) (ZIP)

CONTACT PERSON: Kaleb Scott
TITLE: Program Assistant, Sussex County 4-H
PHONE: 302-856-7303 ext. 560 EMAIL: kjscott@udel.edu

TOTAL FUNDING REQUEST: \$250.00 per participant (11 youth and 3 adult chaperones)

Has your organization received other grant funds from Sussex County Government in the last year? YES NO

If YES, how much was received in the last 12 months? _____

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? YES NO

Are you seeking other sources of funding other than Sussex County Council? YES NO

If YES, approximately what percentage of the project's funding does the Council grant represent? _____

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|--|---|
| <input type="checkbox"/> Fair Housing | <input type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input type="checkbox"/> Other _____ | <input checked="" type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|---|--|---|
| <input type="checkbox"/> Disability & Special Needs | <input type="checkbox"/> Victims of Domestic Violence | <input type="checkbox"/> Homeless |
| <input type="checkbox"/> Elderly Persons | <input type="checkbox"/> Low to Moderate Income ² | <input checked="" type="checkbox"/> Youth |
| <input type="checkbox"/> Minority | <input type="checkbox"/> Other _____ | |

BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:

14 participants for this program

SECTION 3: PROGRAM SCOPE

- A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

The 4-H Interstate Exchange Program in Delaware is held to provide exciting learning experiences for delegates. The exchange program is a two-year commitment. One year to host and one year to travel. In 2018, youth from Stillwater County, Montana visited our small wonder and got to experience things Delaware had to offer. This included visits to surrounding farms such as Fifer Orchards and Poultry Extension Agent Georgie Cartanza's Organic Chicken Operation as well as visitations across the state from the beaches of Sussex County to the history of Fort Delaware in New Castle County. This year, 14 Sussex County 4-H participants will be traveling to Stillwater County, Montana; an opportunity to visit another state that they may never have the chance to see otherwise in addition to learning more about the Montana 4-H program with hopes to bring new and exciting ideas to our county. With the funds requested we are hoping to cover a portion of the travel expenses for 11 youth and 3 adult chaperones. Additionally, we hope to use the remaining funds in our current budget to pay for gifts for the families that are hosting our members and have a starting budget for the 2020-2022 exchange group.

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

REVENUE	Funds in account are collected from county fund-raisers throughout the year.
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	7,417.78
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Operating Cost - Airline Expense	-\$ 8,507.80
TOTAL EXPENDITURES	-\$ 8,507.80
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-\$ 1,090.02

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Sussex County 4-H Organization agrees that:
 (Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

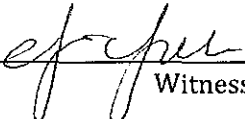
- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**



Applicant/Authorized Official

1/11/2019

Date



Witness

1/11/2019

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government
Attention: Gina Jennings
PO Box 589
Georgetown, DE 19947

[Handwritten signature]

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM
GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

Kalib Scott
Applicant/Authorized Official

Program Assistant, 4-H
Title

[Handwritten signature]
Witness

1/16/19
Date

Vincent
1-16-19



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Dept. of DE VFW Auxilliary

PROJECT NAME: Dept. of DE VFW Auxilliary Convention Year Book

FEDERAL TAX ID: 23-7224412 NON-PROFIT: YES NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?
 YES NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: To promote fraternal, patriotic, historical, and charitable and educational spirit, to aid and assist the members of the Veterans of Foreign Wars of the U.S. wherever possible, to maintain true allegiance to the government of the USA; fidelity to the Constitution and Law's to foster true patriotism; and to maintain and extend the institution of American Freedom

ADDRESS: Greenwood Memorial VFW Auxilliary 7478
102 Maryland Avenue
Greenwood, Delaware 19950-7724
(CITY) (STATE) (ZIP)

CONTACT PERSON: Dr. Michaele S. Russell

TITLE: Past Dept. President and Current Dept. of DE VFW Auxilliary Chaplain

PHONE: 302-349-4220 EMAIL: michaele.russell@comcast.net

TOTAL FUNDING REQUEST: \$100.00

Has your organization received other grant funds from Sussex County Government in the last year? The Sussex Council took an ad in 2018 YES NO

If YES, how much was received in the last 12 months? full page ad \$150.00

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? YES NO

Are you seeking other sources of funding other than Sussex County Council? YES NO

If YES, approximately what percentage of the project's funding does the Council grant represent? 0.01

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|---|--------------------------------------|
| <input type="checkbox"/> Fair Housing | <input type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input checked="" type="checkbox"/> Other It does support the veteran and active duty military personnel and their programs | <input type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Disability & Special Needs | <input checked="" type="checkbox"/> Victims of Domestic Violence | <input checked="" type="checkbox"/> Homeless |
| <input checked="" type="checkbox"/> Elderly Persons | <input checked="" type="checkbox"/> Low to Moderate Income ² | <input checked="" type="checkbox"/> Youth |
| <input checked="" type="checkbox"/> Minority | <input checked="" type="checkbox"/> Other The VFW Auxiliary have programs and structures in place to benefit every category as it relates to veterans and their families. | |

BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program: 5,000 - 6,000 - We also spent thousands of dollars on projects that support Sussex County communities throughout the entire county.

SECTION 3: PROGRAM SCOPE

- A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

We are asking for a \$100 full page ad to be placed in the 2019 Convention Year Book. It helps with our mission, but it also says to the men and women who have served our country and protected our freedom, "Thank you for your service." Trust me, our organization and supporters of our organization take the time to read through these Convention Support Ads and are very appreciative of them. It truly does say to them, "We're proud of you and your sacrifices."

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	\$7,000 - 8,000
TOTAL REVENUES	
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Paper, office supplies, the printing and compiling of the Convention Year Book for 2019.	
TOTAL EXPENDITURES	\$ 0.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 0.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Greenwood Memorial VFW Auxiliary agrees that:
(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**

Michael S. Russell

Applicant/Authorized Official

January 5, 2019

Date

Willard Russell

Witness

January 5, 2019

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government
Attention: Gina Jennings
PO Box 589
Georgetown, DE 19947



**SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM
GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING**

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In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

Michael S. Russell
Applicant/Authorized Official

Willard Russell
Witness

Dept. of DE VFW Aux. Past Dept. Pres. & current
Chaplain

Title

January 5, 2019

Date

Wilson
1-15-19



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: TRINITY FOUNDATION

PROJECT NAME: 9TH ANNUAL HEART & SOLE 5K

FEDERAL TAX ID: 203303713 NON-PROFIT: YES NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?

YES NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: To continuously improve people ' s lives by serving and investing in our community to promote wellness, inspire giving, and influence future leaders.

ADDRESS: 50 FALLON AVE

SEAFORD DE 19973
(CITY) (STATE) (ZIP)

CONTACT PERSON: GREG MASSEY

TITLE: VP AGENT DEVELOPMENT

PHONE: 3023620869 EMAIL: greg.massey@trinitylogistics.com

TOTAL FUNDING REQUEST: 1000

Has your organization received other grant funds from Sussex County Government in the last year? YES NO

If YES, how much was received in the last 12 months? 750

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? YES NO

Are you seeking other sources of funding other than Sussex County Council? YES NO

If YES, approximately what percentage of the project's funding does the Council grant represent? 6.7%

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|---|--------------------------------------|
| <input type="checkbox"/> Fair Housing | <input checked="" type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input type="checkbox"/> Other _____ | <input type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Disability & Special Needs | <input type="checkbox"/> Victims of Domestic Violence | <input type="checkbox"/> Homeless |
| <input type="checkbox"/> Elderly Persons | <input type="checkbox"/> Low to Moderate Income ² | <input type="checkbox"/> Youth |
| <input type="checkbox"/> Minority | <input checked="" type="checkbox"/> Other <u>NANTICOKE HEALT SVCS</u> | |

BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:

500

SECTION 3: PROGRAM SCOPE

- A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

This will be our 9th Heart & Sole 5k event. To date, the event has raised \$95k and seen over 1200 people from the community participate in the event. Initially, we had several benefactors, but in the past 4 years, the funds have been allocated 100% to benefit the Cardiac Rehab unit at Nanticoke Hospital. These funds have been instrumental in purchasing new equipment to assist patients in their continuing rehab and promotion of a healthy lifestyle. Our goal this year is to raise \$15000, with proceeds to stay 100% in western Sussex County

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

n/a

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	15,000.00
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Trisports management	-\$ 1,400.00
Event shirts	-\$ 1,350.00
Finisher ribbons and plaques	-\$ 400.00
	00.00
TOTAL EXPENDITURES	-\$ 3,150.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 11,850.00

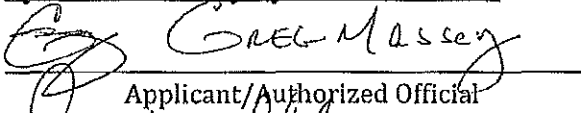
SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the TRINITY FOUNDATION agrees that:
(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

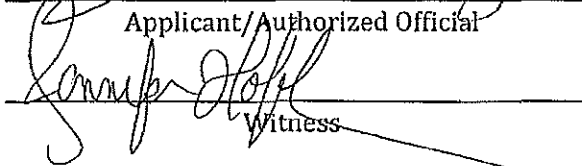
SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**


Applicant/Authorized Official

1/22/19

Date


Witness

1/22/19

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government
Attention: Gina Jennings
PO Box 589
Georgetown, DE 19947

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM
GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING

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I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

GREG MASSEY 
Applicant/Authorized Official

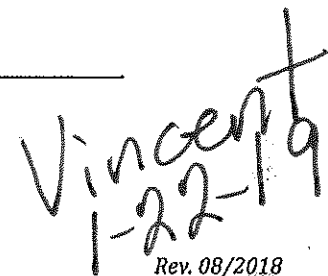

Witness

CO-CHAIR H/S 5K

Title

1/22/19

Date



To Be Introduced 1/29/19

Council District No. 3 – Burton

Tax I.D. No. 234-21.00-213.00

911 Address: 24500 Hollyville Road, Millsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A DOG BAKERY WITH STORAGE AND WAREHOUSE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.3981 ACRES, MORE OR LESS

WHEREAS, on the 14th day of January 2019, a conditional use application, denominated Conditional Use No. 2171, was filed on behalf of Lisa St. Clair; and

WHEREAS, on the ____ day of _____ 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2171 be _____; and

WHEREAS, on the ____ day of _____ 2019, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2171 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the northwest side of Hollyville Road, approximately 91 feet northwest of Harmony Cemetery Road and being more particularly described in the attached legal description prepared by Sergovic Carmean Weidman McCartney & Owens, P.A., said parcel containing 5.3981 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

To Be Introduced 01/29/19

**Council District No. 4 - Hudson
Tax I.D. No. 234-29.00-66.00, 66.01 & 66.02
911 Address: None Available**

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT AND A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 49.94 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2019, a zoning application, denominated Change of Zone No. 1877, was filed on behalf of Schiff Land Development Company, LLC; and

WHEREAS, on the _____ day of _____ 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1877 be _____; and

WHEREAS, on the _____ day of _____ 2019, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [CR-1 Commercial Residential District and MR Medium Density Residential District] and adding in lieu thereof the designation of MR-RPC Medium-Density Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the southeast side of John J. Williams Highway (Route 24) approximately 0.45 mile southwest of Oak Orchard Road

and being more particularly described in the attached legal description prepared by David W. Baker, Esq., P.A., said parcel containing 49.95 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

TO BE INTRODUCED

To Be Introduced 1/29/19

Council District No. 2 - Wilson

Tax I.D. No. 230-26.20-18.00

911 Address: 18366 Wild Cherry Street, Ellendale

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TRANSITIONAL HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.3028 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of January 2019, a conditional use application, denominated Conditional Use No. 2172, was filed on behalf of Iris Downing; and

WHEREAS, on the ____ day of _____ 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2172 be _____; and

WHEREAS, on the ____ day of _____ 2019, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2172 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Cedar Creek Hundred, Sussex County, Delaware, and lying on the south side of Wild Cherry Street approximately 141 feet west of S. Old State Road and being more particularly described in the attached legal description prepared by the United States Department of Agriculture, said parcel containing 0.3028 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.