



# **Sussex County Council Public/Media Packet**

**MEETING:  
January 31, 2023**

**\*\*DISCLAIMER\*\***

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**Sussex County Council  
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(302) 855-7743**

## COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT  
JOHN L. RIELEY, VICE PRESIDENT  
CYNTHIA C. GREEN  
DOUGLAS B. HUDSON  
MARK G. SCHAEFFER



# Sussex County

DELAWARE  
sussexcountyde.gov  
(302) 855-7743

## SUSSEX COUNTY COUNCIL

### A G E N D A

JANUARY 31, 2023

10:00 A.M.

#### Call to Order

#### Approval of Agenda

#### Approval of Minutes – January 24, 2023

#### Reading of Correspondence

#### Public Comments

#### Consent Agenda

1. Use of Existing Sewer Infrastructure Agreement, IUA 1161  
The Knoll, Holt's Landing Area

#### Todd Lawson, County Administrator

1. Caroling on The Circle Food Drive Recognition
2. Consideration of a MOU with DNREC related to White Creek dredging project
3. Consideration of a MOU with the Bay Beach Association related to WRDA implementation
4. Administrator's Report

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

1. Salt Air (Hunters Creek) Annexation of the Sussex County Unified Sanitary Sewer District (Millville Area)



**Hans Medlarz, County Engineer**

1. East Bridgeville Area (Morningside Village) request to poll
2. FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002
  - A. Balancing Change Order No. 1 and Granting of Final Acceptance
3. Wolfe Runne Sewer Expansion, Project S20-13
  - A. George, Miles & Buhr – Closeout Amendment No. 1
  - B. Davis, Bowen & Friedel – Standalone USDA Engineering Agreement

**Grant Requests**

1. Greater Lewes Foundation for their garden expansion and improvement program
2. Pop Warner Scholars (Woodbridge) for their Youth Football program

**Introduction of Proposed Zoning Ordinances**

**Council Members' Comments**

**Executive Session – Land Acquisition & Personnel pursuant to 29 Del.C.§10004(b)**

**Possible action on Executive Session items**

**Adjourn**

**-MEETING DETAILS-**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on January 24, 2023 at 4:15 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.

The meeting will be streamed live at <https://sussexcountyde.gov/council-chamber-broadcast>.

The County provides a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.**

Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

**Conference Number: 1-302-394-5036**

**Conference Code: 570176**

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.

The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountyde.gov/agendas-minutes/county-council>.

## ##

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 24, 2023**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 24, 2023, at 10:00 a.m., in Council Chambers, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>John L. Rieley</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

<b>Call to Order</b>	<b>The Invocation and Pledge of Allegiance were led by Mr. Vincent.</b> <b>Mr. Vincent called the meeting to order.</b>
<b>M 033 23 Approve Agenda</b>	<b>A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to approve the Agenda, as presented.</b> <b>Motion Adopted: 5 Yeas</b> <b>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</b>
<b>Minutes</b>	<b>The minutes from January 10, 2023, were approved by consensus.</b>
<b>Correspondence</b>	<b>There was no correspondence.</b>
<b>Public Comments</b>	<b>Public comments were heard, and the following people spoke:</b> <b>Ms. Jill Hicks spoke about growth, traffic, and healthcare issues in Sussex County. In addition, she spoke about the recent denial of the Future Land Use Map Amendment along Route 1.</b> <b>Ms. Maggie McLaughlin spoke about the recent denial of the Future Land Use Map Amendment along Route 1.</b>
<b>Rules of Procedure Review</b>	<b>Mr. Lawson led a discussion of Rules of Procedures related to Tributes, Resolutions &amp; Proclamations. Mr. Lawson provided background related to the documents of recognition issued by the County Council. The three forms of documents include Resolutions, Proclamations and Tributes. By Code, Resolutions are akin to Ordinances and require review and approval</b>

**Rules of Procedure Review (continued)** of by a vote of the County Council. Unlike Ordinances, Resolutions do not require a public hearing. Alternatively, Proclamations and Tributes are often issued by the Council in recognition of exemplary services or a momentous occasion. Proclamations and Tributes do not trigger Council review and approval, however, rarely is the entire Council aware of the issuance of a Proclamation and Tribute.

The amendment to the current Rules aims to address this potential issue.

In previous Rules of Procedure, the steps to approve and issue a County Council Proclamation were listed in the Rules at Rule 11. However, references to Proclamations were removed from Rule 11 in 2017 to reflect County's practices at that time.

In this updated version, a new Rule – Rule 11A was added to keep the process for issuing Proclamations and Tributes separate from Resolutions. As provided, Rule 11A is very similar to Rule 11.

Mr. Lawson explained that the intent is to have all requests for Proclamations and Tributes be submitted in writing and staff will then circulate the request to the entire County Council. Should a Member wish to have the request reviewed during a County Council meeting, the Member will ask to have the request placed on a future agenda. At that point, the Council will review and approve or disapprove of the Proclamation or Tribute. If no Member requests to have the Proclamation or Tribute placed on an agenda, the document will be processed and issued accordingly.

A new future in Rule 11.3A includes a reference to a unique numeric series for all Proclamations and Tributes to identify the document and its content.

Mr. Vincent commented that he requested for this item to be placed on the agenda. He has done some research; however, he is not done with that research at this time. Therefore, he would like to request to have this item deferred until he completes his research.

Mr. Rieley asked if this would have any impact on a Council Member writing a letter on County letterhead. Mr. Lawson replied that the Rules of Procedures as currently written do not reference letters from County Council Members.

**M 034 23  
Defer  
Action/**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Administrator's Report**

**Mr. Lawson read the following information in his Administrator's Report:**

**1. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, The Vineyards at Nassau Valley – Phase 3 (Plan Review) and Friendship Creek – Phase 1C (PS&FM Construction Record) received Substantial Completion January 9<sup>th</sup> and January 11<sup>th</sup> respectively.

[Attachments to the Administrator's Report are not attached to the minutes.]

**2022 Mass Annexation Request**

John Ashman, Director of Utility Planning and Design Review presented the 2022 Mass Annexation Request for Council's consideration. Mr. Ashman reported that under the authority of the County Engineer, the Engineering Department has been accepting annexation fees and connecting individual parcels on an as-needed basis. The County Engineer may grant connections to scattered parcels at the EDU density of the abutting property but cannot exceed 12 EDUs per acre, parcels must be able to become contiguous. The connection must be evaluated and determined to not overload capacity in the existing infrastructure. The department is submitting a list of parcels as an all-encompassing annexation for those parcels previously requesting, paying the appropriate annexation fee, and meeting the previously stated requirements. The parcels are: 234-12.00-212.00, 234-12.00-211.00, 234-12.00-210.00 and 134-7.00-118.00. The Engineering Department is requesting permission to adjust the Sewer Tier maps to reflect the addition of these parcels.

**M 035 23 Approve 2022 Mass Annexation Request**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department that the Sussex County Council approves the Mass Annexation as presented and gives permission to adjust the sewer tier maps accordingly.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea**

**Amendment No. 6/ Winding Creek Village**

Hans Medlarz, County Engineer presented Amendment No. 6 for the Winding Creek Village Water Design for the Herring Creek Sanitary Sewer District for Council's consideration. The Engineering Department is requesting issuance of this amendment for the final design, construction administration and inspection services.

**M 036 23**      **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 6 to the EJCDC base engineering contract for the Herring Creek Sanitary Sewer District with Whitman, Requardt and Associates be approved in the amount not to exceed \$370,287.00, for the final design, construction administration and inspection services for the Winding Creek Village Water District.**

**Motion Adopted:      5 Yeas**

**Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Old Business/  
CU2329**      **Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT RESTORATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.20 ACRES, MORE OR LESS” filed on behalf of Thomas Drgon Trustee.**

**Mr. Whitehouse reminded Council that a public hearing was held during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further consideration.**

**M 037 23**      **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT RESTORATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.20 ACRES, MORE OR LESS”.**

**Motion Denied:      4 Nays, 1 Yea**

**Vote by Roll Call:      Mrs. Green, Nay; Mr. Schaeffer, Nay;  
Mr. Hudson, Nay; Mr. Rieley, Yea;  
Mr. Vincent, Nay**

**Old Business/  
CZ1969**      **Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a 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 RESIDENTIALDISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS” filed on behalf of Ron Sutton.**



**Mr. Whitehouse reminded Council that a Public Hearing on the application during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further consideration.**

**M 038 23  
Defer  
Action/  
CZ1969**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer a 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 RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS”.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Old  
Business/  
CU2339**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS” filed on behalf of Ron Sutton.**

**Mr. Whitehouse reminded Council that a Public Hearing on the application during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further application.**

**M 039 23  
Defer  
Action/  
CU2339**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS”.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Grant  
Requests**

**Mrs. Jennings presented grant requests for Council’s consideration.**

**M 040 23 Manufactured Home Owners Association** A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to give \$1,500.00 (\$500.00 from Mr. Schaeffer's Councilmanic Grant Account, \$500 from Mr. Hudson's Councilmanic Grant Account and \$500 from Mr. Vincent's Councilmanic Grant Account) to Delaware Manufactured Home Owners Association for their Educating and Aiding Manufactured Owners program.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 041 23 Race4warriors** A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to give \$2,000 (\$400 from each Councilmanic Grant Account) to Race4warriors for their Race4warriors event.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 042 23 Nicmar Youth Connection Enterprises, Inc.** A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Nicmar Youth Connection Enterprises, Inc. for their Eastern Shore Alumni Basketball Classic.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Introduction of Proposed Ordinances** Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS"

**The Proposed Ordinance will be advertised for Public Hearings.**

**Council Member Comments**

**There were no Council Member comments.**

**M 043 23 Recess**

**At 10:33 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess until 1:30 p.m. Public Hearings.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call:** Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea

**M 044 23 Reconvene** At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to reconvene.

**Motion Adopted:** 5 Yeas.

**Vote by Roll Call:** Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea

**Rules** Mr. Moore read the rules and procedures for public hearings.

**Public Hearing/  
CU2336** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS” (property lying on the north side of Woodland Ferry Road [S.C.R. 78] 0.15 mile east of the intersection of Woodland Ferry Road [S.C.R. 78] and Bethel Road [S.C.R. 493] and on the east side of Bethel Road [S.C.R. 493] 0.2 mile north of the intersection of Woodland Ferry Road [S.C.R. 78] and Bethel Road [S.C.R. 493]) (911 Address: N/A) (Tax Parcel: 232-5.00-11.03 [p/o]) filed on behalf of Community Power Group, LLC

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 15, 2022, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 10 recommended conditions as outlined.

The Council found that Mr. Michael Borkowski, President of Community Power Group, LLC spoke on behalf of the Application; that Community Power Group, LLC is a very experienced group; that they are focused in the mid-Atlantic area; that the company uses domestic equipment, pollinator friendly ground covers and game fences when possible; that the land owner owns a lot of land in the area; that the proposed area was picked because the electrical infrastructure was available; that it was felt that it could be kept off of the roadway; that there is no request for any exemptions or exceptions; that that they did make recent revisions to the site plan; that they added double layered buffers in certain areas; that the extended buffering in other areas; that there were neighbors located to the

**Public  
Hearing/  
CU2336  
(continued)**

north who expressed concerns regarding buffering; that they had not proposed buffer in the area, as there was a robust buffer already in existence; that due to this and the concern of the owner, they added landscaping to that area; that the Application meets and/or exceeds all zoning requirements of the County; that they proposed to use polycrystalline panels; that thin-film panels do contain Cadmium in them; that polycrystalline panels have no adverse chemicals in them; that they will use Single Axis Trackers (SAT) racking system; that Community Power Group did submit FAA approved glare studies; that they did submit noise studies; that they propose pollinator-friendly ground cover for the site; that they propose game fencing to surround the site; that a decommissioning plan was submitted; that this will be a community solar farm; that the energy will be sold back to the community; that there is a meter placed, which spins backward; that the solar farm will receive a negative invoice; that subscribers will subscribe to the farm; that if a person's electric bill is \$300, they will subscribe to the farm for \$300 worth of credits; that Community Power Group will obtain the persons meter number and will allocate the credits to the meter; that questions have been asked about what solar farms do to property values; that Cohenreznick did a study on property values near solar projects and the study found there was no negative impact on property values near solar farms; that property values can also be verified on Zillow.com.

There were no public comments.

The Public Hearing and public record were closed.

**M 045 23  
Defer  
Action/  
CU2336**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS".

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing/  
CU2325**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR LESS" (property lying on the northeast side of Jay Patch Road [S.C.R. 376A], approximately 0.5-mile southeast of Pepper Road [S.C.R. 376]) (911 Address: N/A) (Tax Parcel: 533-9.00-58.00) filed on

**Public  
Hearing/  
CU2325  
(continued)**

**behalf of David & Sandra Blank**

**Jamie Whitehouse, Planning and Zoning Director presented the application.**

**The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 8, 2022, the Planning & Zoning Commission recommended approval of the application for the 3 reasons stated and subject to the 14 recommended conditions as outlined.**

**The Council found that Mr. David Blank and Ms. Sandra Blank spoke on behalf of their Application; that the record from the previously Public Hearing was well documented; that he will let that summary of the record explain most of the purpose of the project; that the idea for the campground came to them from Planning and Zoning; that his work in India led to a breakthrough, which led him to Sussex County; that at the same time, they purchased their property along Jay Patch Rd., with the intention of placing a single-family home on the property; that the technology they are attempting to pioneer will benefit the planet; that since the first public hearing, two approvals have been obtained; that one is from the Sussex Conservation District; that the other approval is from the Fire Marshall.**

**Mr. Hudson questioned if two units could go onto one septic system. Mr. Blank replied that a campground managers residence has also been requested to be located on the campground which would be a single-family home. The septic would be located at that residence and that the other units would be connected to that system. It is estimated within 2 to 3 years the project would start.**

**Mr. Schaeffer questioned Condition N proposed by the Planning and Zoning Commission. Mr. Whitehouse noted that it can be modified if desired.**

**Public comments were heard.**

**Mr. Mark Meckes spoke in opposition of the application; that he is currently building a home across the street from the proposed project; that at the previous public hearing, many people spoke in opposition of the application; that it was originally proposed as a campground; that now the applicant's are stating it is for personal use; that he has concerns about the septic system; that traffic is a concern; that he questioned if there could be a time limit of how long the campers could be there; that you do not see campers on land of this size indefinitely; that it is a dead end road; that Jay Patch Road is not wide enough to pass two cars coming in and going; that if the campers are permanent you would not have that traffic.**

**Ms. Karen Tyre spoke in opposition of the application; that she is a property owner near the proposed property; that she sent it a letter dated**

**Public  
Hearing/  
CU2325  
(continued)**

**November 15, 2022 that stated her reasons of opposition; that the letter was provided to the Council members in an email yesterday; that she has concerns that the campground will create an increase in foot and vehicle traffic; that she has concerns about the wetlands; that the road has no shoulder and is very narrow; that the proposed campground would bring a party type activity to a quiet neighborhood; that there does not seem to be acceptable water and septic to accommodate the campground; that it would adversely affect property values; that this is a farming area with no commercial activity; that she questioned what type of septic system will service the campground.**

**The Public Hearing and public record were closed.**

**M 046 23  
Defer  
Action/  
CU2325**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR LESS”.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing/  
CU2327**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS” (property lying on the southwest side of Plantations Road [Rt. 1D], approximately 0.18 mile southeast of Robinsonville Road [S.C.R. 277]) (911 Address: 33508 Ritter Lake Road, Lewes) (Tax Parcel: 334-12.00-7.00) filed on behalf of Howard L. Ritter & Sons, Inc.**

**Jamie Whitehouse, Planning and Zoning Director presented the application.**

**The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 15, 2022, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 9 recommended conditions as outlined within the motion.**

**Public  
Hearing/  
CU2327  
(continued)**

**The Council found that Mr. David Hutt, Esq. with Morris James, spoke on behalf of the Application; that also present were two of the principals of Howard L. Ritter & Sons, Inc., Mr. Ronnie Ritter and Ms. Susan Ritter and Mr. Mark Davidson with Pennoni; that the Conditional Use request is for the continued sale and storage of stone, mulch, soil and related outdoor products, which he would generally refer to as “landscape materials”; that the property is situated just off of Plantations Rd.; that there is a pre-existing, non-conforming borrow pit on the site; that historically the sale of landscaping material has been performed from the property; that the current Application is not requesting the use for concrete crushing, the grinding of trees and stumps, or the dyeing of products for the creation of mulch products; that at one time, those activities were part of the Application; that after careful consideration of the requested Application, the Ritters amended their Application, to remove the request to grind, shred or dye material; that concrete crushing is no longer requested; that there has been multiple cases of misinformation provided by flyers, radio statements, social media posts; that there have been statements made stating the property has a history with DNREC’s Environmental Crimes Unit; that the proof for these statements seemed to stem from a FIOA request filed with DNREC requesting a list of all prior complaints; that seven items were listed as prior complaints for the property; that the document provided listed received complaints; that the submitted complaints do not confirm that any environmental crime was committed or found on the property; that the submitted complaints do not confirm a Notice of Violation, charge or fine was issued to the property owner; that the Planning & Zoning Department would lodge a complaint, if the complaint was filed with the office properly; that a good example would be, if five of his neighbors filed a complaint on him or his property, the Planning & Zoning staff would document and process the complaint; that in filing the complaint, does not confirm a violation was found; that a submitted complaint would not confirm a history of zoning violations for his property; that it would confirm his property had a history of neighbors complaining; that the example of this, is the circumstance for the first five complaints submitted; that for the first five items listed, DNREC did not contact the property owner to issue any type of violation; that there was no charge assessed for Howard L. Ritter & Sons, Inc.; that the other two complaint items were for a permit check; that this was for a site visit, conducted by DNREC, by the neighbors request; that there were a few minor violations found and a permit which needed to be applied for; that all of these issues were promptly complied with by the Applicant; that these issues do not create a history with DNREC’s Environmental Crimes Unit; that the second example of misinformation is an allegation that Ms. Susan Ritter stated that an industrial discharge to Goslee Creek had occurred; that this allegation was not true; that it appears the allegation was based upon a reference to the Notice of Intent (NOI) Stormwater Discharge Application, which is an application Howard L. Ritter & Sons filed with DNREC as part of the required permitting process; that on the application there are multiple boxes for the applicant’s name, address, etc.; that one of the required boxes, request a response for “Discharges To:”; that the**

Public  
Hearing/  
CU2327  
(continued)

response provided within that box was, two onsite ponds and Goslee Creek; that the provided response does not indicate there was an industrial discharge to Goslee Creek; that at no time did any of the Ritters state there was an industrial discharge to Goslee Creek; that the property in 1937 was primarily agricultural land; that in the 1940s the borrow pit operations began on the site; that by 1954, the borrow pit activities continued and the property continued to be surrounded by farmland; that by 1961, the borrow pit activities continued to increase; that the business for Howard L. Ritter & Sons began in 1975, where they leased the property; that the Ritters did not originally start the use of the borrow pit; that in 1975 the Ritters business included operating the borrow pit and the sale of items, such as stone and mulch, that were delivered to the site; that in 1989, development began along Plantations Rd.; that in 1997 you can see the Plantations community as it is coming along and the borrow pits are expanding; that by 2002 the surrounding area had experienced significant growth of residential housing which continued to increase up to present day; that the customers who have patronized the Ritters facility have included the State of Delaware, Sussex County, many municipalities located on the eastern side of the County, hundreds of local businesses and thousands of local residents and property owners within Sussex County; that the property totals a little over 50 acres; that two ponds have been excavated on the site as part of the borrow pit operations; that access to the site is from Ritter Lake Rd.; that Ritter Lake Rd. intersects with Plantations Rd.; that a Service Level Evaluation Request was filed with DelDOT; that the DelDOT response indicated the proposed use will have a diminutive impact, being it will generate less than 50 vehicle trips per day; that Plantations Rd. is within Phase 1 of DelDOT's planned improvements; that the property is zoned AR-1 (Agricultural Residential); that the properties located to the north, west and south are within the AR-1 Zoning District; that the properties to the east are located within MR (Medium-Density Residential); that there have been a number of Conditional Uses within the greater area; that two of those Conditional Uses are for the same use the Applicant is currently requesting; that over the past decade, Stockley Materials received two Conditional Uses for the same proposed use; that the 2045 Future Land Use Map, referenced in the 2019 Comprehensive Plan, reflects the property being within the Coastal Area; that the Coastal Area is one of the County's Growth Areas; that reflected on the 2020 State Strategies Map, the property is mostly within the Investment Level 2 area; that the location of the second pond, it located within the Investment Level 3 area; that the Level 2 areas are where the State anticipates growth in the near future; that the immediate neighbor to the east is a wastewater treatment facility, which was formally operated by Tidewater Environmental Services, Inc. (TESI); that now TESI is under ownership of Artesian; that immediately south of the wastewater treatment facility is a portion of the Plantations condominiums; that along the southern boundary of the site there is an agricultural area and wooded area, with single-family residences in that area; that along the western side of the property there is more agricultural land; that to the northwest side of the property there are two single-family residential communities, being



**Public  
Hearing/  
CU2327  
(continued)**

**Morning View and Maritima; that the property water service is provided by an onsite well; that sanity sewer service has been provided by porta johns for the history of the site; that the Sussex County Engineering Department has identified the property as being within the Tier II Service Area; that the Sussex County Engineering Department indicated there is capacity within the system to service the property, should the property owner wish to be annexed into the Sussex County Unified Sanitary Sewer System; that should County Council act favorably on the Application, the property will continue its present look, as the use has existed for decades; that storages bins are located at the end of Ritter Lake Rd.; that the storage bins are used for overflow and/or surplus for the primary components of the business; that at the rear of the site, there are additional storage bins which house different types of stone, mulch and other landscape materials; that there is a scale on the site, which is used to weigh materials; that all of the buildings would remain as the currently are; that the Plantation Condominiums are located approximately 300-ft away from the proposed use; that there is approximately 800-ft. between the business activities and the residential dwellings located to the southwest; that the communities of Morning View and Maritima, located to the north, are located 1,000-ft, away from the proposed activities and storage area; that Conditional Uses are defined as uses of a public or semi-public character, which require the exercise of planning judgement regarding location and site plan; that as part of the Commission's analysis, is to consider if the proposed use is desirable for the general convenience, orderly growth, prosperity and welfare of the County; that the historic use of the site, by thousands of consumers from government bodies to businesses and homeowners confirms the public or semi-public character of the uses; that the use is not uncommon, as it is performed by other businesses such as McCarthy Stone, The Rock Pile, Stockley Materials, LLC, and Mr. Mulch, which are located in various areas throughout Sussex County; that there were 42 letters of support received for this application; that is a remarkable and rare to have that number of letters of support received; hat one of the letters stated, that this is an economic engine for the community and should not be impeded, but helped to grow and prosper; that another letter stated that this is an integrable part of local business community here in Sussex County and has been for decades; that an email stated it is a local loyal business; that he believes actions speak louder than words; that when the neighbors protested the concrete crushing and the shredding and grinding of mulch, the Ritters revised their Application; that they made this revision despite being at that property, preforming the proposed use for decades, prior to those neighbors coming to the area; that the Ritters agreed to discontinue a very profitable part of their business; that there are not many businesses in Sussex County that process concrete; that the nearest place is located in the Town of Georgetown; that this means that there will be a lot of extra truck traffic; that the Ritter family requested the Council recommend approval of the Conditional Use with the conditions proposed, allowing the business to continue to provide the valuable services to all of the various consumers, of government agencies, local businesses or property owners within Sussex County.**

**Public  
Hearing/  
CU2327  
(continued)**

**Public comments were heard.**

**Mr. Brook Freeman spoke in support of the application; that he is adjacent to the site; that he has lived there all of this life; that he has witnessed all of the changes and the development that has come; that by eliminating the crushing and griding of the concrete at this site is putting more traffic on the roads; that he would like to request an amendment so that the operation of the concrete work can continue; that the noise and dust has been kept down; that the Ritter family has a lot of money invested in equipment that they have had to push off to the side; that there are thousands of yards of concrete that needs to be grinded; that there is still farm land around; that they have been great people.**

**Mr. Schaeffer questioned if the Council had the ability to amend the application. Mr. Moore replied that it was advertised with very specifics in the short title. In that advertisement, it did not indicate concrete, therefore, it would need to be readvertised and have new hearings.**

**The Public Hearing and public record were closed.**

**M 047 23  
Adopt  
Ordinance  
No. 2901/  
CU2327**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2901 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission as follows:**

- 1. There is an existing legally non-conforming, or grandfathered, borrow bit in operation on this property. This use as a borrow pit has been in existence for decades and pre-dated the Sussex County Zoning Code. This application does not affect these borrow pit operations, which are allowed to continue.**
- 2. This Conditional Use is for the sales and storage of stone, mulch, soil, and other related outdoor materials. There was evidence in the record that this use has also been in existence for years, and that it is closely related to the borrow pit operations. The continued sales and storage of these materials is appropriate in this location where the borrow pit also operates.**
- 3. This use provides a needed location for those types of materials for Sussex County residents and businesses, and they are important to the economy of Sussex County.**
- 4. There was opposition to this application regarding noise and traffic. However, most of this opposition was directed at the borrow pit operations, and those operations existed long before any residential development occurred nearby, and they are not part of this**

**M 047 23  
Adopt  
Ordinance  
No. 2901/  
CU2327  
(continued)**

**application. There must be an expectation of the potential for noise, dust, and traffic when building or moving into a house near an active borrow pit. There was no compelling testimony that this Conditional Use for the storage and sales of stone, dirt, and mulch will create a significant increase in noise, dust, or traffic from their site.**

- 5. This Conditional Use will not significantly increase the congestion of roads or streets in the area. DeDOT has stated that this use will only have a “diminutive” impact, which means that it will create less than 50 vehicle trips per day.**
- 6. Because the borrow pit is a legal, pre-existing and non-conforming use under the Zoning Code, it is not appropriate to impose conditions on those activities on this site.**
- 7. With appropriate Conditions of Approval, this use will not affect the nature of the area or neighboring properties.**
- 8. This recommendation is subject to the following conditions:**
  - a. This Conditional Use shall be limited to the storage and sale of mulch, stone, soil, and other related landscaping materials, in addition to the legally non-conforming, or grandfathered, borrow pit operations.**
  - b. The location of the storage areas for stone, mulch, soil, and related materials shall be identified on the Final Site Plan and clearly marked on the site itself.**
  - c. No manufacturing or industrial processes shall occur on the site. This prohibition includes the crushing, shredding, or grinding of any materials including specifically rock, stone, or concrete, and also includes the dyeing of mulch or similar materials.**
  - d. One lighted sign not to exceed 32 square feet per side shall be permitted.**
  - e. The hours of operation shall be from 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturdays. No receiving of materials before 8:00 a.m. shall be permitted.**
  - f. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
  - g. The Applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
  - h. All materials shall be stored in bins on a concrete or hot-mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties or adversely affect groundwater on the site.**
  - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**M 048 23  
Adjourn**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn  
at 2:45 p.m.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Respectfully submitted,**

**Tracy N. Torbert  
Clerk of the Council**

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

**Consent Agenda 1-31-2023**

**The Knoll**

**Existing Sewer Infrastructure Use Agreement – IUA 1161**

**IRONS KNOLL, LLC to pay \$26,332.00 for 27.00 EDUs**

**Holt's Landing Area**

## 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 John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: John J. Ashman   
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement*  
*The Knoll - IUA 1161*  
*File: OM 9.01*

DATE: January 31, 2023

The Existing Wastewater Infrastructure Use Agreement is an arrangement that 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 Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **IRONS KNOLL, LLC** for **The Knoll** project in the **Holt's Landing 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, **The Knoll** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **IRONS KNOLL, LLC** will contribute **\$26,332.00** for the financial catch-up contribution of the existing infrastructure to serve **27.00** Equivalent Dwelling Units. Payment of the contribution will be required prior to substantial completion of on-site collection system. System Connection Charges in place at the time of building permit request will still apply.



**EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT**

**The Knoll – IUA 1161**

THIS AGREEMENT (“Agreement”), made this 31<sup>ST</sup> day of JANUARY 2023, by and between:

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

IRONS KNOLL, LLC a Limited Liability Company and developer of a project known as **The Knoll**, hereinafter called the “Developer.”

**WITNESSETH:**

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 134-7.00-163.00 to be known as **The Knoll** (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Holt’s Landing 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 **27.00** 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 **\$26,332.00** 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 substantial completion of the on-site collection system.**
- (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 **35380 Atlantic Ave., Millville, Delaware 19967.**

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:

\_\_\_\_\_  
Tracy Torbert  
Clerk of the County Council

**FOR IRONS KNOLL, LLC**

By: Bradley A. Absper (Seal)  
Bradley A. Absper - Authorized Signatory

1/6/23 (DATE)

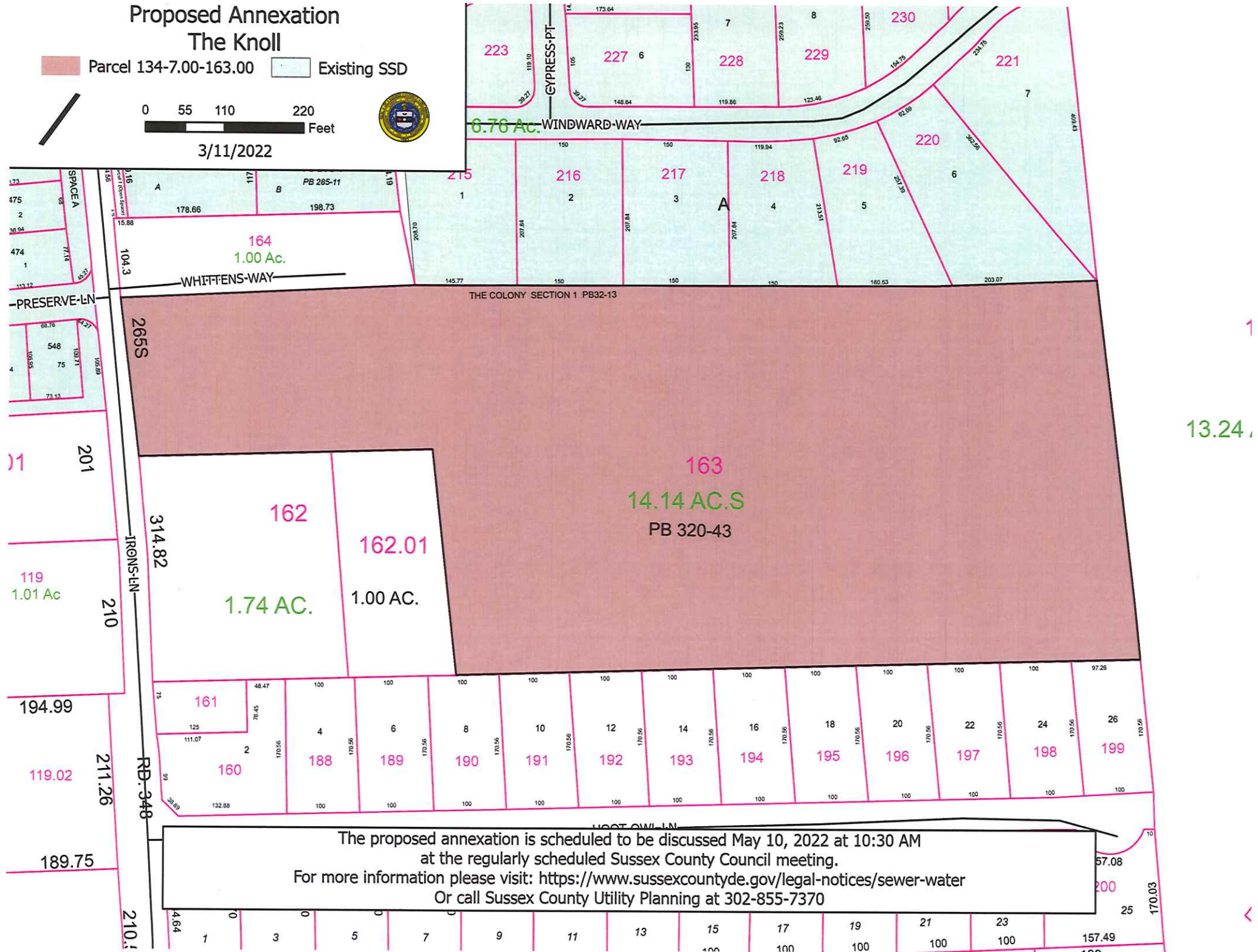
WITNESS: Richard

# Proposed Annexation The Knoll

Parcel 134-7.00-163.00 Existing SSD



3/11/2022



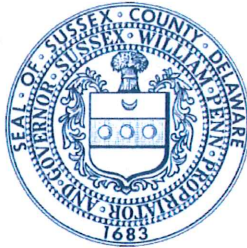
The proposed annexation is scheduled to be discussed May 10, 2022 at 10:30 AM  
at the regularly scheduled Sussex County Council meeting.  
For more information please visit: <https://www.sussexcountyde.gov/legal-notices/sewer-water>  
Or call Sussex County Utility Planning at 302-855-7370

13.24

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



**Sussex County**  
DELAWARE  
sussexcountype.gov

## Memorandum

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Todd F. Lawson   
County Administrator

RE: **MEMORANDUM OF UNDERSTANDING WITH DNREC RELATED TO THE WHITE CREEK DREDGING PROJECT**

DATE: January 27, 2023

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During Tuesday's meeting, Council is scheduled to review and approve a Memorandum of Understanding (MOU) between the County and the Department of Natural Resources and Environmental Control (DNREC) related to the White Creek dredging project. The MOU has been reviewed and approved to form by both the County legal team and the DNREC Deputy Attorney General. A copy of the MOU is attached.

The origins of this initiative began in 2019 when the County Council supported legislation to establish an accommodation tax in Sussex County for hotels, motels, and tourist homes. That legislation, House Bill 228, was approved by the General Assembly in June 2019 and signed into law in July 2019.

The funding from the accommodation tax is earmarked for beach nourishment, waterway dredging, economic development, tourism programs, recreational activities, water quality projects, and flood control projects. Thus far, the County has collected \$1.9M in funding.

The County Council agreed that waterway dredging should be its top priority for the initial use of this funding. In order to facilitate a dredging project, the most prudent and efficient approach is to partner with DNREC because the department already administers dredging projects throughout the State. The referenced MOU establishes the partnership with DNREC and spells out each party's roles and responsibilities for the pending White Creek dredging project only.



In particular, the MOU defines specific terms; outlines the project's scope; and the project's cost. Specifically, the project cost is \$4,685,000.00 and the County's contribution is \$1,000,000.00.

I will review the MOU details during Tuesday's meeting. Please let me know if you have any questions.

BAY  
MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

SUSSEX COUNTY, DELAWARE  
AND  
THE STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

WHEREAS, Sussex County, Delaware (the “County”) has appropriated funds for waterway management projects located in the County, including dredging projects; and

WHEREAS, the State of Delaware Department of Natural Resources and Environmental Control (“DNREC”), has received appropriated funds specifically authorized for dredging projects in the County; and

WHEREAS, the County and DNREC (each, a “Party” and collectively, the “Parties”) have each determined that the dredging of White Creek is a high priority; and

WHEREAS, the Parties have entered into this Memorandum of Understanding (“MOU”) to set forth the terms and conditions of an agreement whereby they will cooperate with each other to effect the dredging of White Creek; and

NOW, THEREFORE, the Parties hereby agree as follows:

- I. **DEFINITIONS.** The following terms shall have the meanings ascribed to them below:
  - a. Assawoman Canal shall mean a canal located west of Bethany Beach, Sussex County, Delaware that connects White Creek and Little Assawoman Bay.
  - b. Beneficial Use shall mean the placement of dredged materials on one or more parcels of designated degraded marsh lands for the purpose of restoration.
  - c. Effective Date shall mean the date on which the last Party executes this MOU.
  - d. Progress Payment shall mean a payment made by DNREC to the Contractor to compensate for work performed, and accepted as complete, over a specified period of time that is shorter than the entire length of the contract.

- e. Project shall mean the engineering, design, permitting, contracting, construction, monitoring, and project management for the dredging of White Creek and a portion of Assawoman Canal, and the beneficial use of dredged materials.
- f. Project Costs shall mean the actual cash expenditures made by DNREC in connection with the Project.
- g. Public Project Information Meetings shall mean meetings designed to provide Project information to the public.
- h. Total Project Cost shall mean the aggregate total of the actual cash expenditures made by DNREC in connection with the Project.
- i. White Creek shall mean a creek located northwest of Bethany Beach, Sussex County, Delaware that flows south to north into Indian River Bay, serving numerous marinas and boat ramps and connecting Assawoman Canal to Indian River Bay.

## **II. THE PROJECT**

- a. Project Goal. The goal of the Project is to improve navigation for commercial and recreational boaters that use the White Creek channel and the portion of Assawoman Canal north of the Central Avenue bridge to navigate in the Inland Bays.
- b. DNREC Exclusive Responsibility. DNREC shall have exclusive responsibility for managing all phases of the Project:
  - i. Phase I - initial planning, engineering, design and permitting;
  - ii. Phase II - project construction including the beneficial use of dredged materials;  
and
  - iii. Phase III - project monitoring commencing after construction.

DNREC shall retain the ultimate authority to determine in its sole discretion whether to proceed with the Project upon review of bids submitted for services.

## **III. PROJECT FUNDING**

- a. Total Project Cost Estimate. As of the Effective Date, the Parties agree that the estimated Total Project Cost is approximately \$4,685,000.

- i. It is understood that estimates of the Total Project Cost may change as the Project progresses.
  - ii. When and if there are adjustments to the estimated Total Project Cost, DNREC shall communicate such adjustments to the County in writing.
- b. Contributions of the Parties. The Parties agree that DNREC shall bear the majority responsibility for all Project Costs and that the County's sole responsibility shall be to contribute the amount of one million dollars (\$1,000,000.00) ("County's Contribution") to reduce DNREC's total Project Costs. Upon the Project's award and execution of the dredging contract with a vendor ("Dredging Contract"), DNREC will invoice the County for the County's Contribution, and County shall pay the County's Contribution to DNREC within thirty (30) days of the County's receipt of such invoice. In the event that scoped dredging activities are not substantially completed at the termination of the Dredging Contract, the County may seek the refund of a portion of the County's Contribution by submitting a written request to the State. Specifically, within 30 days following receipt of a written request from the County, the State shall refund to the County that portion of the County's Contribution which remains unspent in the manner provided in Section III.c below.
- c. Expenditure of Funds. For each dollar of Project Costs expended until an aggregate total of \$4,685,000 of Project Costs have been spent, \$0.21 shall represent an expenditure of the County Contribution, and \$0.79 shall represent an expenditure of DNREC funds. Thereafter, each dollar of Project Costs expended shall represent solely an expenditure of DNREC. In the event that, upon completion of the Project, the Total Project Costs are less than \$4,685,000, the County shall be refunded the balance of the County Contribution that remains unspent.

#### **IV. MISCELLANEOUS**

1. The County is not, and shall not be, a party to any agreement between DNREC and its Consultants and/or Contractors.



2. DNREC shall comply with all applicable state and federal requirements for bidding, and contract award associated with the Project.
3. Notices by either Party shall be provided to the other Party in writing at the applicable address below:
  - a. If to the DNREC:

Delaware Department of Natural Resources and Environmental Control,  
Division of Watershed Stewardship  
285 Beiser Blvd, Suite 102  
Dover, DE 19904  
Attn: Terry L. Deputy, Director
  - b. If to the County:

Sussex County Council  
Attn: Todd F. Lawson, County Administrator  
2 The Circle  
P.O. Box 589  
Georgetown, DE 19947
4. This MOU shall be governed by the laws of the State of Delaware.
5. This MOU shall be binding on the Parties' successors and assigns.
6. This MOU may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
7. This MOU represents the entire agreement between the Parties regarding the Project and may not be amended or modified except by written agreement signed by both Parties.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereunto have caused this Memorandum of Understanding to be executed and made effective as of the Effective Date.

**THE STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL:**

WITNESS:

\_\_\_\_\_  
Name: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Shawn M. Garvin  
Secretary

DATE: \_\_\_\_\_

**SUSSEX COUNTY, DELAWARE:**

WITNESS:

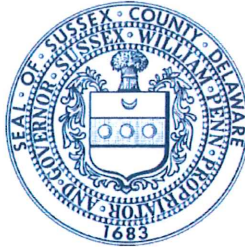
\_\_\_\_\_  
Name: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael H. Vincent  
President

DATE: \_\_\_\_\_


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



**Sussex County**  
DELAWARE  
sussexcountyde.gov

## Memorandum

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

FROM: Todd F. Lawson  
County Administrator 

RE: **MEMORANDUM OF UNDERSTANDING WITH THE BAY BEACH ASSOCIATION RELATED TO THE WATER RESOURCES DEVELOPMENT ACT IMPLEMENTATION**

DATE: January 27, 2023

---

During Tuesday's meeting, Council is scheduled to review and approve a Memorandum of Understanding (MOU) between the County and the Bay Beach Association (BBA) related to the federal Water Resources Development Act implementation. A copy of the MOU is attached.

Recall, the BBA is an organization representing the Delaware Bay coastal communities in Kent and Sussex counties. BBA representatives made a presentation to the County Council during its January 10<sup>th</sup> meeting.

The BBA was formed to advocate on behalf of its members to preserve and protect the unique character of the Delaware Bay shoreline by focusing on the preservation of the coastal ecosystems that are at risk due to sea level rise, more frequent coastal storms, wildfires, and saltwater intrusion.

The BBA is seeking the counties' assistance in hiring a consultant to lead their advocacy work with a specific focus on the newly passed WRDA legislation. As you are aware, the WRDA bill contains specific initiatives designed to assist the Delaware coastal regions. BBA is seeking \$30,000 per county; Kent County Levy Court has voted to approve their contribution.

The MOU establishes the roles and responsibilities of each party, including the deliverables required by the BBA. Sussex County will pay its contribution via the



Greater Lewes Foundation, which will manage the payments to BBA. The County will pay on a monthly basis and can terminate the agreement at any time and cease payments. The term of the BBA MOU is for one year and any extension past the twelfth month will require County Council approval.

I will review the MOU details during Tuesday's meeting. Please let me know if you have any questions.

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

SUSSEX COUNTY, DELAWARE  
AND  
BAY BEACH ASSOCIATION

WHEREAS, Sussex County, Delaware (the “County”) is home to the Delaware Bay coastal communities known as Lewes, Broadkill Beach, Prime Hook, and Slaughter Beach; and

WHEREAS, the Bay Beach Association (the “BBA”) was formed to collectively preserve and protect the unique character of the Delaware Bay coast by focusing on the preservation of the coastal ecosystems that are at risk due to sea level rise, more frequent coastal storms, wildfires, and saltwater intrusion; and

WHEREAS, the BBA seeks to advocate on behalf of the coastal communities in both Kent and Sussex Counties to address the long-standing lack of funding to nourish Delaware Bay beaches and maintain navigable waterways; and

WHEREAS, the BBA seeks to communicate and coordinate with federal and state agencies to help mitigate the risks coastal communities face from Mother Nature; and

WHEREAS, the County and the BBA (each, a “Party” and collectively, the “Parties”) have each determined that these efforts to improve the protection of the Delaware Bay beaches is a high priority; and

WHEREAS, the Parties have entered into this Memorandum of Understanding (“MOU”) to set forth the terms and conditions of an agreement whereby they will cooperate with each other to implement specific action items set forth below; and

NOW, THEREFORE, the Parties hereby agree as follows:

I. **DEFINITIONS.** The following terms shall have the meanings ascribed to them below:

- 1) DNREC shall mean the Department of Natural Resources and Environmental Control.
- 2) Effective Date shall mean the date on which the last Party executes this MOU.

- 3) Project shall mean the consultation, management, and advocacy to be made on behalf of the stakeholder communities to enhance the conditions of the Delaware Bay beaches.
- 4) Project Costs shall mean the actual funding expenditures made by Sussex County to BBA in connection with the Project.
- 5) WRDA shall mean the Water Resources Development Act of 2022.
- 6) USACE shall mean the United States Army Corps of Engineers.

## II. THE PROJECT.

- 1) Project Scope. The scope of the Project includes working directly with all stakeholders, including the local communities, the State of Delaware, DNREC, and the USACE to pursue funding and direct assistance to protect and enhance the conditions of the Delaware Bay beaches.
- 2) Project Deliverables. BBA, with the assistance of its consultant, will work to accomplish the following deliverables for this Project (in no particular order):
  - (1) Work with USACE staff to develop implementation guidance mandated by WRDA, including:
    - (a) the new emergency authorities following hurricanes, Nor'easters, and other damaging events;
    - (b) the implementation of shoreline and riverbank protection and restoration projects; and
    - (c) the USACE expanded authority to enhance resilience and increase benefits of shore protection during emergency repair and restoration.
  - (2) Assist the USACE and DNREC to protect and restore federal lands in Sussex and Kent Counties;
  - (3) Work with the federal delegation to ensure funding is appropriated for the necessary projects utilized by the BBA;
  - (4) Work with the USACE staff and project managers to determine Delaware Bay sand resources, feasibility of sand mining for beach replenishment, determine

impacts of dredging on historic and biological resources, and the economic return on investment in community storm protection and resiliency;

- (5) Along with DNREC and USACE, manage public outreach on the pending projects including project designs, and construction schedules;
- (6) Assist the local municipalities and unincorporated communities represented by Kent and Sussex Counties to participate as the nonfederal partner as needed for select initiatives; and
- (7) Host quarterly progress meetings and provide quarterly progress reports with BBA members and other federal and state stakeholders and interested parties related to the project deliverables.

### **III. PROJECT FUNDING.**

- 1) Total Project Cost Estimate. As of the Effective Date, the Parties agree that the cost to the BBA is projected to be \$5,000.00 per month.
- 2) Contributions of the Parties. The Parties agree that Sussex County shall contribute \$2,500.00 per month. Sussex County shall pay the County's Contribution to the Greater Lewes Foundation on a monthly basis.
- 3) Total Project Funding Term. The Parties agree that the County shall provide twelve monthly payments as of the Effective Date and payments will cease after the twelfth County payment. Any further payment extension shall require Sussex County Council approval.

### **IV. MISCELLANEOUS.**

- 1) Sussex County is not, and shall not be, a party to any agreement between BBA and its Consultants and/or Contractors.
- 2) Sussex County reserved the right to terminate this MOU and withhold any payments due should the project deliverables not be met.

3) Notices by either Party shall be provided to the other Party in writing at the applicable address below:

(i) If to the BBA:

Bay Beach Association  
Attn: Kathleen M. Lock  
518 Bay Avenue  
Milford, DE 19963

(ii) If to the County:

Sussex County Council  
Attn: Todd F. Lawson, County Administrator  
2 The Circle  
P.O. Box 589  
Georgetown, DE 19947

- 4) This MOU shall be governed by the laws of the State of Delaware.
- 5) This MOU shall be binding on the Parties' successors and assigns.
- 6) This MOU may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
- 7) This MOU represents the entire agreement between the Parties regarding the Project and may not be amended or modified except by written agreement signed by both Parties.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the parties hereunto have caused this Memorandum of Understanding to be executed and made effective as of the Effective Date.

**THE BAY BEACH ASSOCIATION:**

WITNESS:

\_\_\_\_\_  
Name: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Kathleen M. Lock  
Acting Chair

DATE: \_\_\_\_\_

**SUSSEX COUNTY, DELAWARE:**

WITNESS:

\_\_\_\_\_  
Name: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael H. Vincent  
President

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

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

## Proposed Salt Air Expansion of the Sussex County Unified Sanitary Sewer District (Millville Area)

### PUBLIC HEARING FACT SHEET

- County Council approved permission to prepare and post notices for the public hearing on December 13, 2022, for an expansion of the Sussex County Unified Sanitary Sewer District (Millville Area)
- The project is proposed at 95 single family homes and has preliminary subdivision approval.
- The parcels are located in the Tier 2 Area for sewer service however they are not contiguous to the existing boundary. The owner/developer has entered into agreements with the intervening property owners and the department has received letters from those parcels requesting their parcels be annexed, based on the agreed upon conditions with the developer.
- The only parcel we did not receive a request letter from was parcel 104.00 therefore we are proposing to only include the front section encompassing the driveway at this time to maintain a contiguous path to the existing sewer district boundary.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates and subject to an Infrastructure Use Agreement.
- The Engineering Department advertised January 18, 2023, January 25, 2023 and on the County webpage.
- The area was posted on January 10, 2023.



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 589  
GEORGETOWN, DELAWARE 19947

Salt Air Properties, LLC

2500 Wrangle Hill Rd Suite 101

Bear, DE 19701

(302) 838-8830

Mr. John Ashman  
Sussex County Administrative Office Building  
3rd Floor, Room 324  
2 The Circle, P.O. Box 589  
Georgetown, DE 19947

December 13, 2022

Dear Mr. Ashman,

Salt Air Properties LLC is the Developer and Applicant for a proposed residential subdivision to consist of 95 single family homes. The subject project is situated at 34137 Omar Road, Frankford, DE 19945. As part of our land use application, we have requested annexation into Sussex County's North Millville Sanitary Sewer District. Salt Air Properties has entered into agreements with the four adjacent and contiguous property owners along Omar Road to include their respective property as part of our annexation request to Sussex County Council.

Our land use application has recently received preliminary (with conditions) approval from the Planning & Zoning Commission and we are currently in the process of submitting the construction plan sets to the County for their continued review and commentary. The expectation is to have the full review process to continue during the next 6-9 months and achieve final Record Plan approval sometime during the 3Q of 2023. With this in mind, we would anticipate our site improvement construction schedule to commence within 90-120 days of receiving final Record Plan approval. This timeline would contemplate having the new (expanded) sanitary sewer infrastructure installed and in service by late 2024, allowing for our new subdivision and the four subject property owners along Omar Rd to connect by end of 2024 or early 2025. Notwithstanding the status of our proposed new residential subdivision, the four existing properties on Omar Rd. that are included in the annexation will be provided a sewer connection to the County's central sewer system by no later than June 30, 2025, and the two parcels with the connection/payment agreements will have System Connection Charges paid and connection completed

Thank you for your assistance with this request and please let us know if any further information is needed at this time.

Respectfully,



Robert L. Sipple, Jr  
Managing Member  
Salt Air Properties, LLC

PROPOSED SALT AIR EXPANSION  
AFFIDAVIT FOR PUBLIC HEARING

STATE OF DELAWARE )(

:

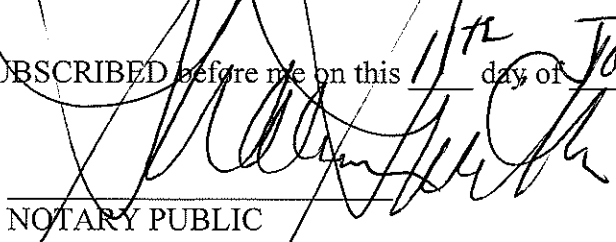
COUNTY OF SUSSEX )(

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 January 10, 2023 he was a Planning Tech for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On January 10, 2023 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 DPL Pole 59615/99935 in the easterly ROW of Hickory Manor Road,
  - 2. On a post in front of DPL Pole 59771/99752 in the northerly ROW of Omar Road, 595'± southwest of Vines Creek Road,
  - 3. On a post in front of DPL Pole 59710/99739 in the southerly ROW of Omar Road 1,270'± southwest of Vines Creek Road,
  - 4. On a post in front of DPL Pole 59636/99736 in the southerly ROW of Omar Road 1,990'± southwest of Vines Creek Road,
  - 5. On a post in front of a Yield Sign in the westerly ROW of Irons Lane at the intersection with Atlantic Avenue,
  - 6. On a post in front of a Stop Sign in the easterly ROW of Whites Neck Road at the intersection with Old Mill Road,
  - 7. On a post in front of a STOP sign at the intersection of Hiawatha Boulevard and Vines Creek Road,
  - 8. On a post in front of a STOP sign at the intersection of West Beach Road and Shawnee Drive.

  
PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 11<sup>th</sup> day of Jan A.D., 2023

  
NOTARY PUBLIC

My Commission Expires 6/14/2024



# **PUBLIC NOTICE**

## **PROPOSED SALT AIR EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (MILLVILLE AREA)**

**NOTICE IS HEREBY GIVEN** that the Sussex County Council voted on **December 13, 2022**, to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Millville Area, to include the Salt Air subdivision and 4 other parcels on Omar Road, being situate in Baltimore 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 northeasternmost property corner of lands Now-or-Formerly (N/F) of Millville Volunteer Fire Company, said point further being on the southerly property line of lands N/F of Gregory T. White & Patricia P. White; thence proceeding by and with said SCUSSD boundary in a southerly, easterly and southerly direction a total distance of 850'± to a point, said point being on the northerly Right-of-Way (ROW) of Omar Road; thence proceeding by and with said ROW in a southerly and westerly direction a distance of 1,986'± to a point, said point being the southwesternmost property corner of lands N/F of Salt Air Properties, LLC; thence leaving said ROW and following by and with said Salt Air Properties in a northerly, easterly and northerly direction a distance of 1,770'± to a point, said point being the northeasternmost property corner of lands N/F of Salt Air and a point on the western boundary of other lands of Salt Air; thence proceeding with said other lands of Salt Air property in a northeasterly and easterly direction a distance of 640'± to a point; thence continuing with said other lands of Salt Air property in a southerly direction a distance of 2,090'± to a point, said point being the southwesternmost property corner of lands N/F of Michael A. Stoffa; thence leaving said Salt Air lands and proceeding with said Stoffa lands in an easterly direction, crossing Hannah Drive and a northwesterly direction a distance of 451'± to a point, said point being on the westerly property line of lands N/F of Millville Volunteer Fire Company; thence leaving said Stoffa lands and proceeding with said Fire Company in a northwesterly and northeasterly direction a distance of 882'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-11.00 and Sussex County property assessment records. The annexation contains 42 acres more or less.

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

**The public hearing will be held on this issue at 10:15 a.m. on January 31, 2023 in the Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware 19947.** 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) 855-7370).

Hans M. Medlarz, P.E.  
County Engineer

# Salt Air (Hunters Creek)

## Proposed Expansion of the SCUSSD

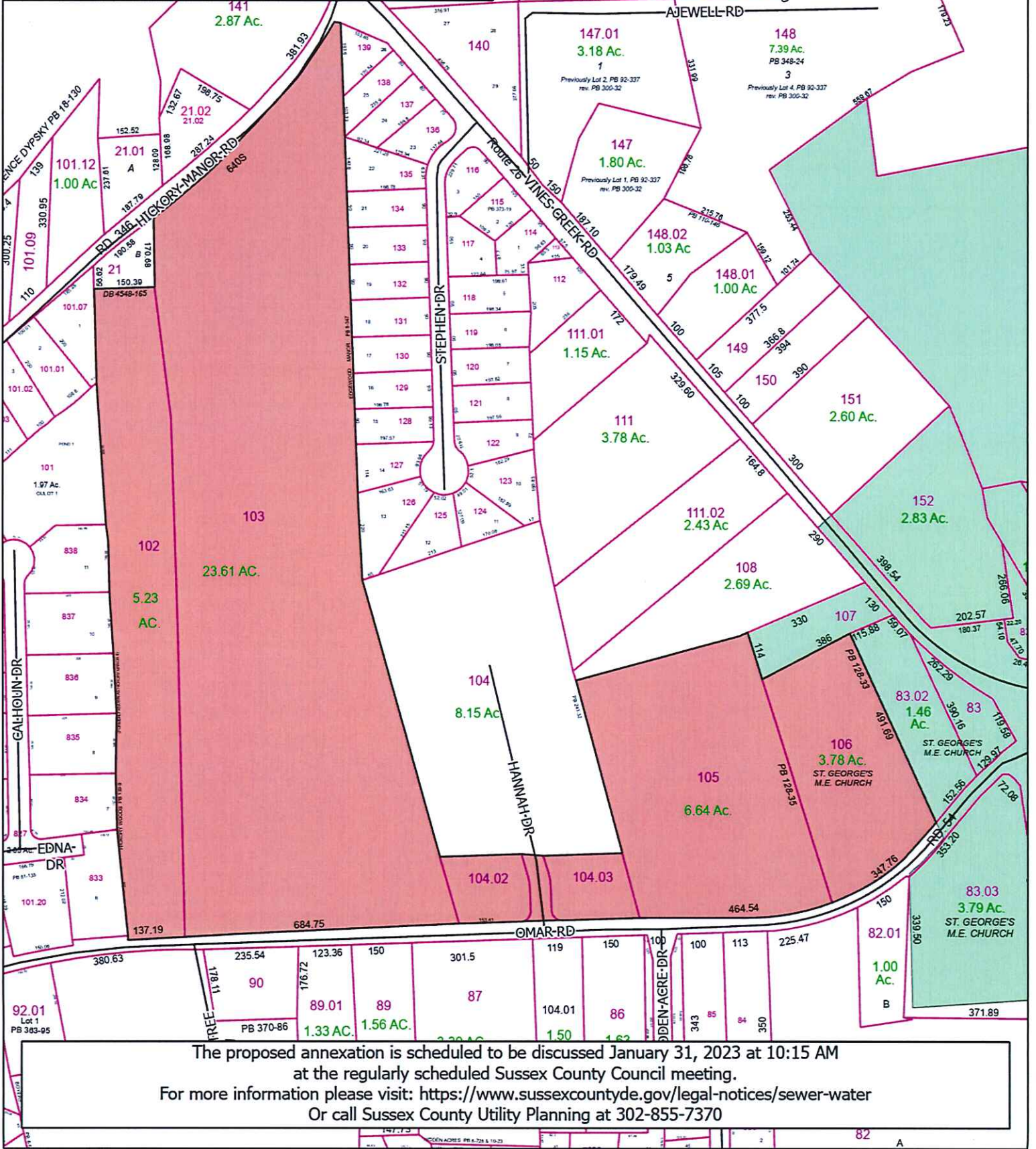
Existing SSD    Parcels of Interest



0 105 210 420 Feet



1/5/2023



The proposed annexation is scheduled to be discussed January 31, 2023 at 10:15 AM at the regularly scheduled Sussex County Council meeting. For more information please visit: <https://www.sussexcountyde.gov/legal-notice/sewer-water> Or call Sussex County Utility Planning at 302-855-7370

## RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MILLVILLE AREA, TO INCLUDE THE PROPOSED SALT AIR SUBDIVISION AND SEVERAL ADJOINING PARCELS LOCATED IN THE BALTIMORE 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 Omar Road, 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 in the area of Omar Road and further described as follows:

**Beginning** at a point, said point being on the SCUSSD boundary, said point also being the northeasternmost property corner of lands Now-or-Formerly (N/F) of Millville Volunteer Fire Company, said point further being on the southerly property line of lands N/F of Gregory T. White & Patricia P. White; thence proceeding by and with said SCUSSD boundary in a southerly, easterly and southerly direction a total distance of 850'± to a point, said point being on the northerly Right-of-Way (ROW) of Omar Road; thence proceeding by and with said ROW in a southerly and westerly direction a distance of 1,986'± to a point, said point being the southwesternmost property corner of lands N/F of Salt Air Properties, LLC; thence leaving said ROW and following by and with said Salt Air Properties in a northerly, easterly and northerly direction a distance of 1,770'± to a point, said point being the northeasternmost property corner of lands N/F of Salt Air and a point on the western boundary of other lands of Salt Air; thence proceeding with said other lands of Salt Air property in a northeasterly and easterly direction a distance of 640'± to a point; thence continuing with said other lands of Salt Air property in a southerly direction a distance of 2,090'± to a point, said point being the southwesternmost property corner of lands N/F of Michael A. Stoffa; thence leaving said Salt Air lands and proceeding with said Stoffa lands in an easterly direction, crossing Hannah Drive and a northwesterly direction a distance of 451'± to a point, said point being on the westerly property line of lands N/F of Millville Volunteer Fire Company; thence leaving said Stoffa lands and proceeding with said Fire Company in a northwesterly and northeasterly direction a distance of 882'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-11.00 and Sussex County property assessment records.

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

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.



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

(302) 855-7370 T  
(302) 854-5391 F

[hans.medlarz@sussexcountype.gov](mailto:hans.medlarz@sussexcountype.gov)



# Sussex County

DELAWARE  
[sussexcountype.gov](http://sussexcountype.gov)

## Memorandum

**TO:** Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

**FROM:** Hans Medlarz, County Engineer  
John J. Ashman, Director of Utility Planning

**RE:** *Underserved Community Polling Letters  
East Bridgeville (Morningside Village)  
File: WS 7.02*

**DATE:** January 31, 2023

Morningside Village was issued a Notice of Violation from DNREC in October of 2014. This required the HOA to develop and have an agreed upon a long-term plan to properly fund the O&M of their onsite system and the Engineering Department has been involved in helping to provide a solution ever since. The County's Environmental Services have been on-site to help remedy some issues and provide guidance for the operation of the onsite septic system.

Previously the Utility Planning Division circulated sewer district area petitions as well as polling letters in Morningside. Additionally, Staff participated in an onsite community meeting in an effort to collect additional responses. However, in the end we were unable to achieve the required fifty (50) petitions. SERCAP also assisted in polling letters and petitions which stalled when the HOA expressed intent to turn the system over to the nonprofit utility Diamond State Wastewater. After reviewing the request, Diamond State withdrew and to date the HOA has not identified a different long-term plan.

Currently DNREC, SERCAP and the County continue to work towards providing financial assistance to the HOA when repairs are necessary however this does not meet the DNREC's requirements of a long-term plan. The Engineering Department now is proposing to gage the interest in service beyond Morningside to the neighboring communities. The results of the polling letters could determine the actual boundary based on substantial interest.



Any scenario will require a pumpstation and a forcemain connecting to the existing main on Oak Road. This infrastructure used to convey effluent from the Bridgeville plant to the spray fields.

As part of DNREC's under-served communities initiative the Engineering Department contacted DNREC's Environmental Finance branch, and they stated "the State would likely fund this project with Bond Bill funds" but they were not going to guarantee it until actual estimated cost of the project were established and a Notice of Intent submitted.

Given the environmental circumstances the Department is requesting Council's concurrence to distributing polling letters to all properties in the target area.

# Permission to Prepare and Post Notices East Bridgeville Area

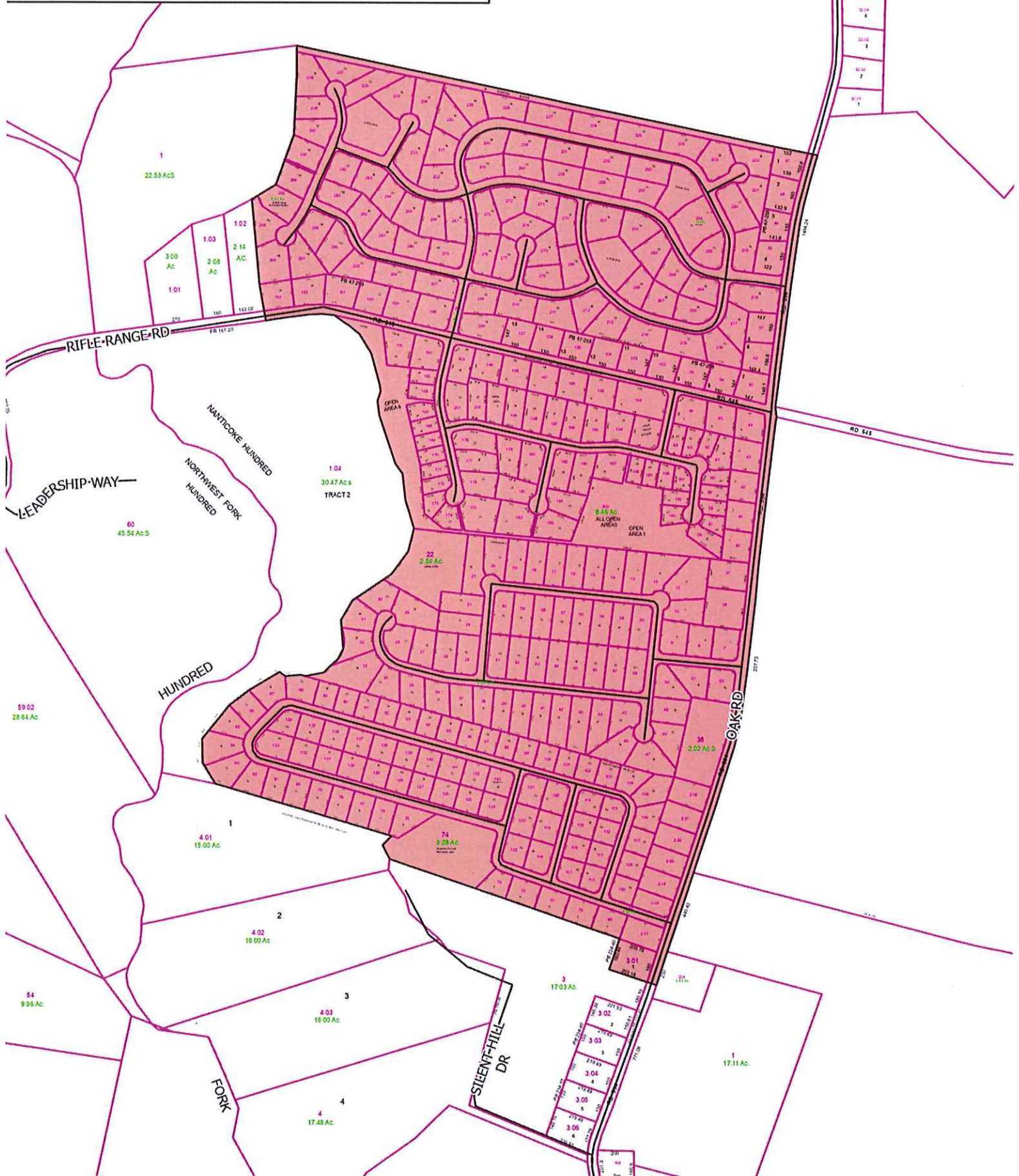


0 215 430 860  
Feet

1/17/2023



31  
67 Ac.



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

(302) 855-7370 T  
(302) 854-5391 F

[hans.medlarz@sussexcountyde.gov](mailto:hans.medlarz@sussexcountyde.gov)



# Sussex County

DELAWARE  
[sussexcountyde.gov](http://sussexcountyde.gov)

## Memorandum

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable John L. Rieley, Vice President  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable Mark G. Schaeffer

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

RE: ***FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002***  
***A. Balancing Change Order No. 1 and Granting of Final Acceptance***

DATE: January 31, 2023

The Delaware Emergency Management Agency (DEMA) solicits eligible projects submitted through sub-applicants i.e., local governments for the Hazard Mitigation Grant Program. April of 2010 County Council approved this Program in principle. DEMA reviews all pre-applications for eligibility and determines which projects will move forward in the application process. Eligible project sub-applications will be required to be submitted to FEMA for further review and concurrence.

The Wien application for tax parcel 234-25.00-2.00 with an address of 25867 Berry Street was originally submitted to FEMA in April of 2017 with a 25% applicant cost share. The application was amended in January 2020 and accepted by FEMA with a Federal Cost Share of 100% not to exceed \$165,000.00.

The structure to be raised, above base flood elevation (BFE), is the one-story portion of the improvements. It is connected in a non-structural fashion to the two-story portion. The property has been owned by Mr. Wien since 1972 and he currently uses it as his primary residence.

This house is situated on one of three privately owned waterfront parcels completely surrounded by the Bay City Mobile Home Park. The home was significantly flooded February 5, 1998 and since then it has been flooded multiple times. In August of 2017 FEMA designated the property in the Severe Repetitive Loss category.



The property is designated by FEMA as flood zone AE with a BFE of 6 feet which was confirmed by FEMA. Furthermore, FEMA agreed to extend the project completion deadline for a final year to April 2023. On June 14, 2021, County Council approved to sponsor the FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002 under the 100% Federal cost share arrangement.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to Davis, Bowen & Friedel, Inc. and on July 13, 2022 Council approved scope of Amendment No. 4 for design, bidding, construction documents and construction administration services associated with the FEMA project on an hourly basis in the not to exceed amount of \$37,500.00.

Invitations to bid were publicly advertised in various forms and on March 17, 2022, one (1) bid was received from East Coast Structural Movers in the base bid amount of \$186,750.00. The bid contained a foundation alternate no. 2 for a deduct of \$28,600.00. On April 26, 2022, Council awarded the project to East Coast Structural Movers, Inc. in the amount of \$158,150.00. Despite the reduced award, the project was still above the maximum allowed FEMA limit. To close the gap, Mr. Wien contributed \$25,000.00 and the Engineering Department assumed the construction administration.

The notice to proceed for the 120-day project was issued for August 17<sup>th</sup>. The completion date was extended due to weather delays to December 31<sup>st</sup> and the project was substantially complete by January 10<sup>th</sup>. During construction, Mr. Wien requested several modifications some of which could be accommodated within the scope and without triggering a change order. Others were clearly outside of the scope as bid. The contractors were not interested in any change order for additional work but agreed to a credit change order for the deletion of the back deck. The contractors have now completed the Engineering Department's punch list, but not the out-of-scope items requested by Mr. Wien.

In summary the Engineering Department recommends acceptance of balancing Change Order No. 1 in the credit amount of \$8,200.00, the granting of final project acceptance and release of any unused funds to Mr. Wien after receipt of all federal funds.



**SUSSEX COUNTY  
CHANGE ORDER REQUEST**

**A. ADMINISTRATIVE:**

1. Project Name: **Residential Home Elevation**
2. Sussex County Project No. G22-04
3. Change Order No. 1
4. Date Change Order Initiated - 1/31/23
5.
  - a. Original Contract Sum \$158,150.00
  - b. Net Change by Previous Change Orders \$ 0
  - c. Contract Sum Prior to Change Order \$158,150.00
  - d. Requested Change (\$8,200.00)
  - e. Net Change (No. of days)
  - f. New Contract Amount \$149,950.00
6. Contact Person: Hans Medlarz, P.E.  
Telephone No. (302) 855-7718

**B. REASON FOR CHANGE ORDER (CHECK ONE)**

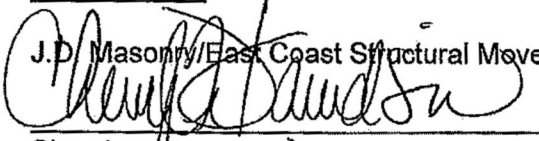
1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

- 6. Factors Affecting Time of Completion
- 7. Other (explain below):

C. **BRIEF DESCRIPTION OF CHANGE ORDER:**  
Deletion of back deck.

D. **JUSTIFICATION FOR CHANGE ORDER INCLUDED?**  
Yes  No

E. **APPROVALS**

1. J.D. Masonry/East Coast Structural Movers, Contractor  
 1/26/2023  
Signature Date

Cheryl A. Davidson  
Representative's Name in Block Letters

2. Sussex County Engineer  
 1/26/23  
Signature Date

3. Sussex County Council President  
\_\_\_\_\_  
Signature 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
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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 John L. Rieley, Vice President  
The Honorable Cynthia Green  
The Honorable Douglas B. Hudson  
The Honorable Mark Schaeffer

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

RE: ***Wolfe Runne Sewer Expansion***  
***A. George, Miles & Buhr, LLC – Closeout Amendment No. 1***  
***B. Davis, Bowen & Friedel, Inc. – Standalone EJCDC Engineering Agreement***

DATE: January 31, 2023

The Wolfe Runne community has been included in the Sussex County Unified Sanitary Sewer District (West Rehoboth Area) since March 1990. On December 16, 2017 and January 27, 2018, the Engineering Department made presentations to the Community which outlined the potential costs associated with connecting to the County Sewer System. Subsequently, the Department received a letter from the Wolfe Runne Homeowners Association (HOA) dated March 6, 2018 which provided results of a formal ballot vote conducted by the HOA in the prior month. The HOA reported that 81% of lot owners voted in favor of transitioning from private on-site septic systems to the central County sewer. Based on this outcome the HOA requested, on behalf of the residents, that a capital project be considered integrating the Community into the County's system.

The Department presented the information on April 17, 2018, and Council granted permission for a United States Department of Agriculture (USDA) funding application. On September 27, 2019, USDA issued a letter of conditions outlining loan and grant funding associated with the Wolfe Runne Sewer Extension Project, as administered by the Rural Utilities Service. The funding was subsequently approved and assistance in the amount of \$3,092,000.00 obligated as of September 30, 2019.

The procurement process for 5-year Professional Service Contracts began in January 2019 with issuance of RFP 19-22, Miscellaneous Engineering Services. Subsequently Council selected three (3) firms to provide professional services: Davis, Bowen & Friedel (DBF); George Miles and Buhr (GMB); and KCI Technologies, Inc. (KCI). Additionally, the motion authorized the Engineering Department to negotiate Base Professional Service Agreements





for a five-year period of July 1, 2019, through June 30, 2024. Project-based contract amendments under the base agreements, or individual project-specific agreements if required by a funding source, were each to be brought to Council for authorization.

GMB was asked to develop a standalone project-based agreement for professional services as required by USDA's letter of conditions. As requested, GMB provided the EJCDC type base professional services agreement for a traditional gravity sewer design and permitting services, excluding any lift stations, associated with the Wolfe Runne Sewer Expansion Project S20-13. On November 19, 2019, Council approved George, Miles & Buhr, Inc.'s agreement with a not-to-exceed value of \$204,003.00.

The project area proved difficult to serve with gravity sewer since it has two low points at the end of separate cul-de-sacs Ketch and Cutter Courts. The dual design approach had to include a small lift station in connection with the existing gravity system each one serving one of the small sewer sub-sheds. The lift station design was not included in GMB's services since we initially believed the entire subdivision could be served via the existing gravity system on Gills Neck Road.

To maximize the reach the connection to the existing system required a key easement on the unimproved lot 66. Contact was made with the owner and an appraisal prepared. The efforts culminated in a final meeting with the owner and his professional representative on August 4, 2021. In the end the easement could not be secured and with HOA Board's input on February 17, 2022, the effort shifted to the adjacent fully improved lot 65. The owners were cooperative, but utility conflicts forced an alignment not approved by their mortgage company. The ultimate failure of the original design approach was communicated to the Board at their April 27, 2022, meeting. Several members followed up at a subsequent meeting when the County committed to investigate alternative design options.

The results of this investigation were presented at another Board / open Membership meeting on September 14, 2022. During said meeting the Board expressed support of the presented alternative vacuum system approach. On October 26, 2022, the Engineering Department conveyed the desired design change to USDA staff who were generally supportive but advised that the environmental & engineering reports had to be updated as well as a supplemental funding application to be filed. The documents were filed by the end of 2022 and USDA issued comments which were reviewed in a meeting with the Agency on January 10, 2023. They are currently being addressed.

The supplemental funding has tight underwriting deadlines requiring the alternative design and permitting to be completed in no more than three (3) months. GMB reviewed the available staffing and declined to design the alternate. Subsequently, we approached DBF who indicated they were able to meet the anticipated schedule. Therefore, the Departments requests approval of GMB's Amendment No. 1 in the amount of \$29,057.72 for compensation of the lift station design and DBF's EJCDC agreement for the alternate design in the amount of \$98,000.00 both subject to USDA concurrence.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 19, 2019.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No.   1**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement: November 19, 2019

Owner: Sussex County

Engineer: George, Miles & Buhr, LLC

Project: Wolfe Runne, Project# S20-13

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Additional engineering services for the design of a sewage pump station to serve the portions of the Wolfe Runne development unable to connect to the County's sewer collection system via gravity. Estimated service area is 47 EDUs.***

Agreement Summary:

Original agreement amount:	<u>\$ 204,003.00</u>
Net change for prior amendments:	<u>\$ 0.00</u>
This amendment amount:	<u>\$ 29,057.72</u>
Adjusted Agreement amount:	<u>\$ 233,060.72</u>

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

Sussex County

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

Print

name: Michael H. Vincent

Title: President, Sussex County Council

Date Signed: \_\_\_\_\_

ENGINEER:

George, Miles & Buhr, LLC

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

Print

name: James C. Hoageson

Title: Sr. Vice President

Date Signed: 1/19/2023

PREVIOUSLY APPROVED FORM



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by





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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of January 31, 2023 (“Effective Date”) between  
Sussex County (“Owner”) and  
Davis, Bowen & Friedel, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Wolfe Runne Sewer Extension Project

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Survey, Design and Permitting Phase Services for the above-referenced project to provide county sanitary sewer to the residents of the Wolfe Runne Subdivision and described further in the attached Exhibit “A” of this Agreement.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer’s services;
  2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, **and the terms, if any, contained in the Amendment. Invoices will include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. **The Owner will approve or disapprove said invoices in a timely fashion and will make payments within 30 days of receipt of an invoice that is determined by Owner as accurate and correct.**

#### 4.02 *Non-Payment of Undisputed Invoices*

- ~~A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.~~
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

- ~~1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and~~
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. ~~Owner waives any and all claims against Engineer for any such suspension.~~ **Engineer otherwise does not have the right to suspend services under this Agreement, except as set forth in Section 6.06.**
- ~~C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.~~
- ~~D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs.

Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;

- b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
  - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

## 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.



#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. **Engineer shall not commence services or work until Engineer has obtained, at Engineer's own expense, all of the insurance as required hereunder and such insurance has been approved by the Owner; nor shall Engineer allow any Consultant to commence services on any subcontract until all insurance required of the subcontractor has been so obtained and approved by Engineer. Approval of insurance required of Engineer will be granted only after submission to Owner of original certificates of insurance, in the most current ACORD format, evidencing the required liability insurance, signed by authorized representatives of the insurers or, at Owner's request certified copies of the required liability insurance policies.**
- B. **Liability insurance as required hereunder shall be in force throughout the term of the Agreement and for three (3) years after the date of final payment by the Owner for Engineer's services under this Agreement. Original certificates of insurance signed by authorized representatives of the insurers or, at Owner's request, certified copies of insurance policies, evidencing that the required liability insurance is in effect, shall be maintained with Owner throughout the term of this Agreement and for three (3) years after final payment by the Owner for Engineer's services under this Agreement.**
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation and employers' liability insurance, commercial general liability, business auto liability, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. **Engineer shall require all Consultants to maintain during the term of this Agreement, commercial general liability insurance, business auto liability insurance, workers' compensation and employers' liability insurance, umbrella excess liability insurance and professional liability insurance to the same extent required of Engineer in Exhibit G. ENGINEER shall furnish Consultants certificates of insurance to Owner.**

- D. **All insurers underwriting Engineer's or Consultant's insurance must be allowed to do business in the state of Delaware and acceptable to Owner. The insurers must have a Financial Strength Rating of A- or better, and a Financial Size Category of VII or higher in the latest evaluation by A.M. Best Company, unless Owner grants specific approval for an exception.**
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. **To the extent commercially available**, Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. **To the extent commercially available**, Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. **All insurance required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal, or any material change or reduction in coverage until thirty (30) days prior written notice has been given to Owner** (not less than ten (10) days' notice is required for non-payment of premium). Therefore, a copy of the endorsements to the required policies that confirm the insurer is obligated to send notice to Owner as required herein, must accompany all certificates of insurance.
- G. **No acceptance and/or approval of any insurance by Owner shall be construed as relieving or excusing Engineer from any liability or obligation imposed upon them by the provisions of this Agreement.**
- H. **If Engineer or any Consultant does not meet the insurance requirements of this Agreement, Engineer shall forward a written request to Owner for a waiver in writing of the insurance requirements(s) not met or approval in writing of alternate insurance coverage or self-insurance arrangements. If Owner denies the request, Engineer or Consultant must comply with the insurance requirements as specified in Exhibit G. Nothing in this provision shall be construed to allow Engineer or Consultant to permit the required insurance coverage to lapse during this Agreement.**
- I. **Any deductibles or retentions of \$25,000 or greater shall be disclosed by Engineer, and are subject to Owner's written approval. Any deductible or retention amounts elected by Engineer or its Consultant's or imposed by Engineer's or Consultant's insurer(s) shall be the sole responsibility of the Engineer, and are not chargeable as expenses.**
- J. **If the Owner is damaged by the failure or neglect of the Engineer to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Engineer shall bear all reasonable costs, damages, and other losses properly attributable thereto.**

- K. Insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants under Engineer's or Consultant's liability insurance as specified in Exhibit G, including, but not limited to, umbrella and/or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance. Any cross suits or cross liability exclusion shall be deleted from Engineer's liability insurance policies required herein.
- L. Insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants as specified herein shall be primary, and any other insurance, coverage or indemnity available to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants shall be excess of and non-contributory with insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants as specified herein.
- M. If any liability insurance purchased by Engineer or by any Consultant has been issued on a "claims- made" basis, Engineer must comply with the following additional conditions. The limits of liability and the extensions to be included remain the same.
  - 1. The retroactive date (if any) of such "claims-made" coverage can be no later than the earlier of the date of this Agreement or the commencement of the Engineer's services under this Agreement.
  - 2. The Engineer or Consultant shall agree to provide certificates of insurance evidencing the above coverages for a period of three (3) years, or the applicable statute of limitations or repose under Delaware law, after final payment by the Owner for the Engineer's or Consultant's services or work under this Agreement. Such certificates shall evidence a retroactive date no later than the earlier of the date of this Agreement or the commencement of the Engineer's services under this Agreement; or
  - 3. The Engineer or Consultant shall purchase an extended (minimum three (3) years), or the applicable statute of limitations or repose under Delaware law, reporting period endorsement for each such "claims-made" policy in force as of the date of final payment by the Owner for the Engineer's services under this Agreement and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance and a copy of the endorsement itself. Such certificate and copy of the endorsement shall evidence a retroactive date no later than the earlier of the date of this Agreement or the commencement of the Engineer's or Consultant's services under this Agreement.
- N. If Engineer fails to provide evidence of required liability insurance as required in Exhibit G, the Owner shall be permitted, without prejudice to any other right or remedy, to obtain equivalent insurance to protect Owner's interests, at the expense of Engineer. Such expense shall be deducted from the Engineer's compensation.
- O. If and when required based on the decision of the Owner, Engineer will purchase the necessary pollution liability insurance with limits as required by Owner.

## 6.06 *Suspension and Termination*

### A. *Suspension:*

1. *By Owner:* Owner may suspend **its services under an amendment** for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services **for any Amendment** under this Agreement if Owner has failed to pay Engineer for **undisputed** invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
    - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. **Termination for nonpayment by Owner shall not be permitted, except in accordance with Section 4.02.**
    - b. by Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow

Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

## 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## **ARTICLE 7 – DEFINITIONS**

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.



4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and

allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and

start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
  35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
  38. ***Agency*—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.**
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **Not Used**

- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. **Not Used**
- J. Exhibit J, Special Provisions. **Not Used**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 *Federal Requirements*

- A. **Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No**

amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other matters are closed.
- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.**

Owner: Sussex County

Engineer: Davis, Bowen & Friedel, Inc.

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

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

Print name: Michael Vincent

Print name: Ring W. Lardner, P.E.

Title: President, Sussex County Council

Title: Principal

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate No. (if required):

State of: Delaware 15647/CA 303

Address for Owner's receipt of notices:

P.O. Box 589  
Georgetown, DE 19947

Address for Engineer's receipt of notices:

1 Park Avenue  
Milford, DE 19963

Designated Representative (Paragraph 8.03.A):

Hans Medlarz, P.E.

Title: County Engineer

Phone Number: (302) 855-7718

E-Mail Address: [hans.medlarz@sussexcountyde.gov](mailto:hans.medlarz@sussexcountyde.gov)

Designated Representative (Paragraph 8.03.A):

Ring W. Lardner, P.E.

Title: Principal

Phone Number: (302) 424-1441

E-Mail Address: [rwl@dbfinc.com](mailto:rwl@dbfinc.com)

This is **EXHIBIT A**, consisting of [ 17 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A1.01 Preliminary Design Phase*

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
  3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
  4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
  5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.



6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

### **BASIC SERVICES**

Our office will utilize the survey as prepared by George, Miles & Buhr, LLC (GMB) and geo-technical work performed by others to develop an existing condition plan for design of the proposed vacuum sewer system. Utilizing the above survey information along with design information provided by the vacuum sewer vendor, our office will prepare the project construction documents and obtain construction permits for providing sewer to the Wolfe Runne Subdivision. Our services shall include:

- Preparation of plans, profiles, and details for the proposed vacuum sewer collection system and discharge force main. Preparation of Architectural, Mechanical, Electrical and Civil Site plans and details for the new vacuum pump station. Preparation of project Specifications and bidding documents. Preparation of a maximum of four (4) easement exhibits and associated legal descriptions as may be necessary for the project. All work will be in accordance with the latest Sussex County and/or State standards and includes design / review meetings with the County.
- Preparation of submittals to Sussex County, Sussex Conservation District, Delaware Department of Natural Resources and Environmental Control (DNREC), DelDOT and USDA for obtaining agency

comments. *(Please note the County will be responsible for any fees associated with agency submittals.)*

- Address agency comments and resubmit for obtaining final plan approval.
  - Assist the County during the bid process. These services may include, attending a pre-bid meeting, responding to requests for information, preparation of addendums, bid tabulation, bid review and award.
10. Furnish [ 2 ] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [ 30 ] days of authorization to proceed with this phase, and review them with Owner. Within [ 7 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [ 2 ] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [ 15 ] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

#### A1.02 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
  3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
  4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables: [ Obtain all agency approvals and any other directives indicated in the Proposal or Amendments.] **The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.**
10. Furnish for review by Owner, its legal counsel **and Agency**, and other advisors, [ 2 ] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [ 30 ] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [ 7 ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [ 5 ] final copies of such documents to Owner within [ 15 ] days after receipt of Owner's comments and instructions.
12. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Construction Certifications (Exhibit A, Attachment 6) for this purpose.**

13. **Services required to determine and certify that to the best of the Engineer’s knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer’s knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, Bidding Documents, Shop Drawings, Change Orders and Partial Payment Estimates are either produced in the United States or are the subject of an approved waiver under AIS, Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The deminimis and minor components waiver {add project specific waivers as applicable} apply to this contract.**
- B. Engineer’s services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables- **and all final design phase deliverables have been accepted by Owner.**
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer’s services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer’s services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer’s compensation has been established under this Agreement is [ 1 ]. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### A1.03 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents

have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.**
3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
4. Consult with Owner as to the qualifications of prospective contractors.
5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
- ~~6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~
  - a. **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.**
  - b. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.**
7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: [ Assist County on an as needed basis and any other directives included in the Proposal or Amendments.] **Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.**

10. **Provide copies of Manufacturers' Certifications to the Bidders on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.**
  11. **Provide copies of Manufacturers' Certifications to the Contractor on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents including any bid Addenda and Change Orders. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

#### A1.04 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  2. ***Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.***
  3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
  4. *Pre-Construction Conference:* Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
  5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly,

or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* **Maintain** and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of

the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. **The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work*: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
  11. *Compatibility with Design Concept*: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
  12. *Clarifications and Interpretations*: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
  13. *Non-reviewable Matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
  14. *Field Orders*: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
  15. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
  16. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.



17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any other iron and steel products included in any submittal by the General Contractor, must include a Manufacturer's Certification letter to verify the products were produced in the United States. Copies of Manufacturer's Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.**
19. *Inspections and Tests:*
- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
  - d. **Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.**
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in

whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **Review Change Proposals to ensure compliance with AIS and subsequent statutes mandating domestic preference.**

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

~~22.~~ *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds,

certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.**

23. *Substantial Completion*: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks*: Perform or provide the following other Construction Phase tasks or deliverables: [ TBD, See Amendments for additional information. ]
  - a. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**
25. *Final Notice of Acceptability of the Work*: Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
  - a. **Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and a copy of Contractor's Certification to the Agency. Provide a list of manufacturers of American Iron and Steel Products used in the project and include manufacturers name and location, and product(s) to the Agency.**
26. *Standards for Certain Construction-Phase Decisions*: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any

proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### A1.05 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
  - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  - 3. Perform or provide the following other Post-Construction Phase tasks or deliverables: [ TBD, see Amendments for additional information ]
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## **PART 2 – ADDITIONAL SERVICES**

#### A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
  - 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining

approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2- **but only if the Owner's request is made after completion of the Study and Report Phase.**
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:

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**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
  12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
  13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
  14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
  15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
  16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
  17. ~~Preparing Record Drawings, and furnishing such Record Drawings to Owner. Deleted~~
  18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
  19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
  20. Preparation of operation, maintenance, and staffing manuals.
  21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
  22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

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Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~ **Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the construction Contract.**
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God

endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.



This is **EXHIBIT B**, consisting of [ 4 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.

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**Exhibit B – Owner's Responsibilities**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [ TBD ]

**B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration,**

and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. Sign change orders (i.e. C-941 of EJCDC ) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.
- C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- D. Where the Owner directly procures American Iron and Steel products,
  - 1. Include American Iron and Steel clauses in the procurement contracts;
  - 2. Obtain Manufacturers' Certifications; and
  - 3. Provide copies to Engineers and Contractors.

**Guidance Notes: Where the Owner Provides their own engineering and/or construction services the Owner is responsible for all provisions included in this Bulletin.**

This is **EXHIBIT C**, consisting of [ 7 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **January 31, 2023**].

## **Payments to Engineer for Services and Reimbursable Expenses** **COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### **C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
  2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
  3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
  4. **The total compensation for services under Paragraph C2.01 is estimated to be \$ 98,000.00 for Preliminary and Final Design and Bidding and Negotiating Phase Services. Construction and Post Construction Phase Services will be performed by amendment to this contract once construction bids are received.**
  5. Owner may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner **and Agency**. See also C2.03.C.2 below.
  6. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer’s Consultants' charges.
  7. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of

Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of [6/11/2019]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

#### C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of [ 1 ].

#### C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [ 1 ].
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
  1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's

convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET RPR-2:  
Resident Project Representative – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment**

**A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:**

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$[ ] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a [ ] day construction schedule.
2. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$[ ] per hour.**

**B. Compensation for Reimbursable Expenses:**

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of [ 1 ].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of [6/11/2019 ]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**



C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [ 1 ].
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

**COMPENSATION PACKET AS-1:  
Additional Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment**

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
  2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [ 1 ].
  4. The Reimbursable Expenses Schedule will be adjusted annually (as of [ 6/11/2019 ]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [ 1 ].

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors at include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

This is **Appendix 1 to EXHIBIT C**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

## **Reimbursable Expenses Schedule**

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Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

Use Sussex County On-Call Services Schedule of Rates, effective June 11, 2019

This is **Appendix 2 to EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [January 31, 2023].

## **Standard Hourly Rates Schedule**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

**Use Sussex County On-Call Services Schedule of Rates, effective June 11, 2019**

This is **EXHIBIT D**, consisting of [ 5 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 1 - SERVICES OF ENGINEER**

#### *D1.01 Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.



- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. **Maintain all Manufacturers' Certifications in the project file and on-site during construction to ensure compliance with AIS and subsequent statutes mandating domestic preference, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. ~~Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~ **Deleted**
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
  - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
  - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
  - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
  - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
  - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
  - 8. Authorize Owner to occupy the Project in whole or in part.





**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

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**To:** \_\_\_\_\_

**Owner**

**And To:** \_\_\_\_\_

**Contractor**

**From:** \_\_\_\_\_

**Engineer**

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

This is **EXHIBIT G**, consisting of [ 4 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [January 31, 2023].

## **Insurance**

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 *Insurance*

- A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows: **Engineer shall purchase and maintain such liability and other insurance coverages for not less than the limits as is specified below or required by law, whichever is greater. The insurance shall provide coverage for the services to be performed under this Agreement, whether it is to be performed by the Engineer, or any Consultant or anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.**

**1. By Engineer:**

- a. **Workers' Compensation insurance with statutory benefits as required by any state or Federal law, including standard "other states" coverage and employers' liability insurance with minimum limits:**

**\$100,000 each accident for bodily injury by accident;  
\$100,000 each employee for bodily injury by disease; and  
\$500,000 policy limit for bodily injury by disease.**

**Engineer shall secure a waiver of subrogation in favor of the Owner.**

- b. **Commercial general liability insurance which insures against claims for bodily injury, personal and advertising injury and property damage including loss of use arising out of or in connection with services under this Agreement. The minimum limits of liability for this insurance are as follows:**

**\$1,000,000 combined single limit - each occurrence  
\$1,000,000 combined single limit – personal and advertising injury  
\$2,000,000 combined single limit - general aggregate  
\$2,000,000 combined single limit – products/completed operations aggregate**

**This insurance shall include coverage for all of the following:**

- 1. Any general aggregate limit shall apply per project basis;**
- 2. Liability arising from premises and operations;**
- 3. Liability arising from the actions of independent Consultants;**
- 4. Liability arising from completed operations with such coverage to be maintained for three (3) years after final payment ;**
- 5. CONTRACTUAL liability including protection for Engineer from bodily**

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Exhibit G – Insurance.

**injury and property damage claims arising out of liability assumed under this Agreement;**

- 6. Liability arising from the explosion, collapse and underground (XCU) hazards; and**
- 7. Waiver of subrogation in favor of the Owner.**

**c. Excess or Umbrella Liability with minimum limits of:--**

**\$5,000,000 each occurrence;**

**\$5,000,000 aggregate other than completed operations and auto liability; and**

**\$5,000,000 completed operations aggregate.**

**This insurance shall include all of the following coverages on the applicable schedule of underlying insurance:**

- 1. commercial general liability;**
- 2. business auto liability; and**
- 3. employers' liability.**

**The Owner and its appointed and elected officials, employees, agents, directors and officers shall be named as additional insureds on the Engineer's commercial general liability and umbrella excess or excess liability insurance policies with respect to liability arising in whole or in part out of the Engineer's services provided under this Agreement. Such coverage shall extend to cover the additional insured(s) for liability arising out of the following:**

- 1. On-going operations;**
- 2. Bodily injury or property damage claims related to the Owner's general supervision of services as provided by the Engineer under this Agreement; and**
- 3. Completed operations.**

**Business Auto Liability Insurance:**

**\$1,000,000 combined single limit or split liability limits of bodily injury at \$1,000,000 each person, \$1,000,000 each accident and property damage of \$1,000,000 each accident.**

**This insurance shall include coverage for all of the following:**

- 1. Liability arising out of the ownership, maintenance or use of any auto;**
- 2. CONTRACTUAL liability including protection for Engineer from bodily injury and property damage claims arising out of liability assumed under this Agreement;**
- 3. Waiver of subrogation in favor of the Owner.**

**Professional Liability – required limits of liability:**

**Each Claim Made** **\$[2,000,000]**

e. ~~Workers' Compensation:~~ ~~Statutory~~

d. ~~Employer's Liability~~

1) ~~Bodily injury, each accident:~~ ~~[\$ 100,000 ]~~

2) ~~Bodily injury by disease, each employee:~~ ~~[\$ 100,000 ]~~

3) ~~Bodily injury/disease, aggregate:~~ ~~[\$ 500,000 ]~~

e. ~~General Liability~~

1) ~~Each Occurrence (Bodily Injury and Property Damage):~~ ~~[\$ 1,000,000 ]~~

2) ~~General Aggregate:~~ ~~[\$ 2,000,000 ]~~

f. ~~Excess or Umbrella Liability~~

1) ~~Per Occurrence:~~ ~~[\$5,000,000 ]~~

2) ~~General Aggregate:~~ ~~[\$5,000,000 ]~~

g. ~~Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):~~

~~[\$1,000,000 ]~~

h. ~~Professional Liability~~

1) ~~Each Claim Made~~ ~~[\$2,000,000 ]~~

2) ~~Annual Aggregate~~ ~~[\$2,000,000 ]~~

i. ~~Other (specify):~~ ~~[\$ [ ] ]~~

**2. By Owner:**

a. ~~Workers' Compensation:~~ ~~Statutory~~

b. ~~Employer's Liability~~

1) ~~Bodily injury, Each Accident~~ ~~[\$ [ ] ]~~

2) ~~Bodily injury by Disease, Each Employee~~ ~~[\$ [ ] ]~~

3) ~~Bodily injury/Disease, Aggregate~~ ~~[\$ [ ] ]~~

c. ~~General Liability~~

1) ~~General Aggregate:~~ ~~[\$ [ ] ]~~

2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ ~~[\$ [ ] ]~~

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**Exhibit G – Insurance.**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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d. Excess Umbrella Liability

- 1) Per Occurrence: \_\_\_\_\_ \$[ ]
- 2) General Aggregate: \_\_\_\_\_ \$[ ]

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\_\_\_\_\_ \$[ ]

f. Other (specify): \_\_\_\_\_ \$[ ]

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

- a. [ ]  
Engineer
- b. [ ]  
Engineer's Consultant
- c. [ ]  
Engineer's Consultant
- d. [ ]  
{other}

2. ~~During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.~~

3. ~~The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.~~

This is **EXHIBIT H**, consisting of [ 1 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

***[NOTE TO USER: Select one of the two alternatives provided.]***

### H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by ***mediator***. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT K**, consisting of [ 2 ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ January 31, 2023 ].

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

**The Effective Date of this Amendment is: \_\_\_\_\_.**

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_\_ Additional Services to be performed by Engineer
- \_\_\_\_ Modifications to services of Engineer
- \_\_\_\_ Modifications to responsibilities of Owner
- \_\_\_\_ Modifications of payment to Engineer
- \_\_\_\_ Modifications to time(s) for rendering services
- \_\_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Schaeffer.  
yes. 1/23.

### Council Grant Form

<b>Legal Name of Agency/Organization</b>	<del>Lewes Community Garden</del> Greater Lewes Foundation. ✓
<b>Project Name</b>	Garden Expansion and Improvement
<b>Federal Tax ID</b>	51-0400365 ✓
<b>Non-Profit</b>	Yes
<b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b>	No
<b>Organization's Mission</b>	To create a sustainable community garden in the greater Lewes, Delaware area by sharing knowledge, experience and friendship. Our goal is to provide accessible garden opportunities to all ages, abilities and incomes. Members use organic practices to maintain the gardens and protect the environment as we learn from each other, growing nutritious vegetables which are shared with the larger community.
<b>Address</b>	35201 Seaport Loop
<b>Address 2</b>	
<b>City</b>	Lewes
<b>State</b>	DE
<b>Zip Code</b>	19958

<b>Contact Person</b>	Louis Papp
<b>Contact Title</b>	Fundraising Chair
<b>Contact Phone Number</b>	3026450230
<b>Contact Email Address</b>	<a href="mailto:loudot2@verizon.net">loudot2@verizon.net</a>
<b>Total Funding Request</b>	\$1000
<b>Has your organization received other grant funds from Sussex County Government in the last year?</b>	No
<b>If YES, how much was received in the last 12 months?</b>	N/A
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	Yes
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	28.5
<b>Program Category (choose all that apply)</b>	Educational, Health and Human Services, Other

<b>Program Category Other</b>	environment
<b>Primary Beneficiary Category</b>	Elderly Persons (62 +)
<b>Beneficiary Category Other</b>	
<b>Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program</b>	25000
<b>Scope</b>	The funds being requested are to expand and improve our community garden. Our young organization has grown in 4 years from a founder's membership of 6 to 43 gardeners and 11 volunteers. With many homeowners in the area having limited outdoor space, the desire for community gardening has been over whelming. We currently have 29 individuals on our waiting list wishing to join. We also need to rebuild some of our facilities and redesign an antiquated website for better communications, organization and promotion.
<b>Religious Components</b>	Not applicable
<b>Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)</b>	0.00

**Description** Website Redesign

**Amount** 1,500.00

**Description** Pollinator garden and fence

**Amount** 500.00

**Description** New large permanent LCG sign

**Amount** 750.00

**Description** Build 8 (4'x8') raised beds with soil

**Amount** 600.00

**Description** Rebuild compost bin

**Amount** 50.00

**Description** Waterproof picnic table and kiosk

**Amount** 100.00

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 3,500.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -3,500.00



**Name of Organization** Lewes Community Garden

**Applicant/Authorized Official** Louis Papp

**Date** 01/22/2023

**Affidavit** Yes

**Acknowledgement**

If you feel this is not a valid submission please log into D3Forms to update this submissions status.  
Please feel free to email [clientservices@d3corp.com](mailto:clientservices@d3corp.com) with any questions.

Green.  
Yes. 1/24.

**Council Grant Form**

<b>Legal Name of Agency/Organization</b>	Woodbridge Youth Football Pop Warner Little Scholars, Inc. ✓
<b>Project Name</b>	Youth Football - Woodbridge.
<b>Federal Tax ID</b>	51-0348574 ✓
<b>Non-Profit</b>	Yes
<b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b>	No
<b>Organization's Mission</b>	To provide the fundamentals of football on tear for the youth in our community. Two in courage and develop our use to strive for personal, educational, and athletic excellent and become well-disciplined student athletes both the field and in the community.
<b>Address</b>	PO Box 871
<b>Address 2</b>	
<b>City</b>	Bridgeville
<b>State</b>	DE
<b>Zip Code</b>	19933
<b>Contact Person</b>	Danniell Hicks

**Contact Title** Treasurer

**Contact Phone Number** 3028640665

**Contact Email Address** [woodbridgeayf@gmail.com](mailto:woodbridgeayf@gmail.com)

**Total Funding Request** 4000

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

**If YES, how much was received in the last 12 months?** N/A

**Are you seeking other sources of funding other than Sussex County Council?** Yes

**If YES, approximately what percentage of the project's funding does the Council grant represent?** 10

**Program Category (choose all that apply)** Educational

**Program Category**  
**Other**

**Primary Beneficiary Category** Youth

**Beneficiary Category**  
**Other**

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 3

**Scope** The program will help aid in the purchase of equipment for the youth in the program. We are in a low income location and it isn't always feasible for the purchase of shoulder pads and helmets along with uniforms for the kids safety.

**Religious Components**

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 10,000.00

**Description** Equipment Cost

**Amount** 15,000.00

**Description** Uniforms

**Amount** 20,000.00

**Description** Concessions

**Amount** 18,000.00

**Description** Referees

**Amount** 12,000.00

**Description** other

**Amount** 6,000.00

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 71,000.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -61,000.00

**Name of Organization** Woodbridge Youth Football

**Applicant/Authorized  
Official**                      Danniell Hicks

**Date**                                      01/19/2023

**Affidavit**                                      Yes

**Acknowledgement**

If you feel this is not a valid submission please log into D3Forms to update this submissions status.  
Please feel free to email [clientservices@d3corp.com](mailto:clientservices@d3corp.com) with any questions.

To Be Introduced: 01/31/23

Council District 2: Mrs. Green  
Tax I.D. No.: 530-16.00-11.00 & 12.00  
911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 167 ACRES, MORE OR LESS**

WHEREAS, on the 13<sup>th</sup> day of January 2023, a zoning application, denominated Change of Zone No. 2003 was filed on behalf of KAR Farming Company, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2003 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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 [AR-1 Agricultural Residential District] and adding in lieu thereof the designation HI-1 Heavy Industrial District 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 Northwest Fork Hundred, Sussex County, Delaware, and lying on the west side of Sussex Highway (Route 13) and the north side of E. Newton Road (S.C.R. 584) at the intersection of Sussex Highway and E. Newton Road and being more particularly described in the attached legal description prepared by Karins and Associates, said parcels containing 167 ac., 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: 01/31/23

Council District 4: Mr. Hudson

Tax I.D. No.: 134-17.00-39.00

911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CHANGE OF ZONE NO. 1557 (ORDINANCE NO. 1763) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 63.71 ACRES, MORE OR LESS**

WHEREAS, on the 16<sup>th</sup> day of May 2022, a zoning application, denominated Change of Zone No. 1987 was filed on behalf of Longview Jefferson Creek, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 1987 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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 [Medium Density Residential - Residential Planned Community District] and adding in lieu thereof the designation Medium Density Residential - Residential Planned Community District 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 Baltimore Hundred, Sussex County, Delaware, and lying on the southeast side of Double Bridges Road (S.C.R. 363) approximately 0.32 mile southwest of Muddy Neck Road (S.C.R. 361) known as The Preserve at Jefferson Creek, and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc. said parcel containing 63.71 ac., 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: 01/31/23

Council District 4: Mr. Hudson  
Tax I.D. No. 533-4.00-23.00  
911 Address N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS**

WHEREAS, on the 11<sup>th</sup> day of April 2022, a conditional use application, denominated Conditional Use No. 2365 was filed on behalf of Frankford Community Energy Initiative II, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2365 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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, Articles XI and IV, Subsection 115-22 and 115-79, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2365 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 Baltimore Hundred, Sussex County, Delaware, and lying on the east side of Dupont Boulevard (Rt. 113), approximately 250 feet south of Lazy Lagoon Road (S.C.R. 380) and being more particularly described in the attached legal description prepared by Becker Morgan Group, Inc., said parcel containing 49.25 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: 01/31/23

Council District 2: Mrs. Green  
Tax I.D. No.: 430-17.00-62.00  
911 Address: 17490 Cedar Corners Road, Bridgeville

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS**

WHEREAS, on the 20<sup>th</sup> day of May 2022, a conditional use application, denominated Conditional Use No. 2372 was filed on behalf of Augusto Morales Morales; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2372 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2372 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 Nanticoke Hundred, Sussex County, Delaware, and lying on the west side of Cedar Corners Road (S.C.R. 638), approximately 0.8 mile south of Redden Road (Rt. 40) and being more particularly described in the attached legal description prepared by Wolfe & Associates, LLC, said parcel containing 5.00 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: 01/31/23

Council District 3: Mr. Schaeffer

Tax I.D. No. 234-7.00-111.00 & 112.00

911 Addresses: 20565 & 20581 John J. Williams Highway, Lewes

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS

WHEREAS, on the 29<sup>th</sup> day of April 2022, a zoning application, denominated Change of Zone No. 1985 was filed on behalf of Love Creek Acquisition, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 1985 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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 [Agricultural Residential District] and adding in lieu thereof the designation Marine District 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 south side of John J. Williams Highway (Rt. 24) approximately 0.28 mile east of Camp Arrowhead Road and being more particularly described in the attached legal description prepared by Schab & Barnett, P.A. and James C. Reed, P.A., said parcel containing 5.1 ac., 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.