

Sussex County Council Public/Media Packet

MEETING: May 16, 2017

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Sussex County Council 2 The Circle | PO Box 589 Georgetown, DE 19947 (302) 855-7743 MICHAEL H. VINCENT, PRESIDENT GEORGE B. COLE, VICE PRESIDENT ROBERT B. ARLETT IRWIN G. BURTON III SAMUEL R. WILSON JR.



2 THE CIRCLE | PO BOX 589 GEORGETOWN, DE 19947 (302) 855-7743 T (302) 855-7749 F sussexcountyde.gov ROBIN GRIFFITH CLERK

Sussex County Council

AGENDA

MAY 16, 2017

<u>10:00 A.M.</u>

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

- 1. Public Interview for Board of Adjustment Nominee Ellen Magee
- 2. Fiscal Year 2018 Budget Presentation
- 3. Discussion and Possible Introduction of Proposed Ordinances:

"AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2018"

"AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SEWER DISTRICTS"

- 4. Discussion and Possible Introduction of Proposed Ordinances relating to:
 - A. Marriage Bureau fees
 - B. Realty Transfer Tax distribution to municipalities which receive less than \$20,000 in Realty Transfer Tax



- C. First-time home buyer transfer tax exemption
- 5. Administrator's Report

Janelle Cornwell, Planning and Zoning Director

1. Discussion and Possible Introduction of a Proposed Commercial Zoning Expansion Ordinance

Hans Medlarz, County Engineer

- 1. City of Seaford
 - A. Approval of Biosolids Agreement
- 2. Lewes Board of Public Works
 - A. Approval of Biosolids Agreement
- 3. Piney Neck Land Lease Renewal (Davidson)
- 4. Wolfe Neck Administration Building Remediation Repairs
 - A. Recommendation to Award

Joe Wright, Assistant County Engineer, and Hans Medlarz, County Engineer

- 1. Pump Station 210 Force Main to Inland Bays Regional Wastewater Facility (IBRWF): Indian Mission and Beaver Dam Roads, Project 15-08A
 - A. Claims Settlement

Grant Requests

- 1. Delaware Community Foundation for the Georgetown-Millsboro Rotary Club's Flags for Heroes Project
- 2. Indian River School District Odyssey of the Mind Program for trip expenses
- **3.** Community Integrated Services, Inc. for expansion and enhancement in Sussex County

Introduction of Proposed Zoning Ordinances

Council Members' Comments

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

Possible Action on Executive Session Items

<u>Adjourn</u>

Sussex County Council meetings can be monitored on the internet at <u>www.sussexcountyde.gov</u>.

In accordance with 29 <u>Del. C.</u> §10004(e)(2), this Agenda was posted on May 9, 2017, at 5:10 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 listed may be considered out of sequence.

####

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 9, 2017

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 9, 2017, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

	Michael H. Vincent George B. Cole Robert B. Arlett Irwin G. Burton III Samuel R. Wilson Jr. Todd F. Lawson Gina A. Jennings David N. Rutt	President Vice President Councilman Councilman Councilman County Administrator Finance Director Assistant County Attorney	
Call to	The Invocation and Pledge of	Allegiance were led by Mr. Vincent.	
Order	Mr. Vincent called the meeting	ng to order.	
M 201 17 Amend and Approve Agenda	A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to amend the Agenda by deleting "Executive Session – Land Acquisition pursuant to 29 Del. C. §10004(b)" and by deleting "Possible Action on Executive Session Items", and to approve the agenda, as amended.		
Agenua	Motion Adopted: 5 Yeas.		
	Mr. Wi	lett, Yea; Mr. Burton, Yea; lson, Yea; Mr. Cole, Yea; ncent, Yea	
Minutes	The minutes of April 25, 2017	7 were approved by consent.	
Public	Public Comments		
Comments	citizens group that has been	ultz, and Charlie Pollard talked about a new formed, called Long Neck Strong. They talked coblem in the Long Neck area and their efforts ce in the area.	
M 202 17 Approve Consent	A Motion was made by Mr. following items listed under t	Arlett, seconded by Mr. Cole, to approve the he Consent Agenda:	
Agenda	1. Wastewater Agreemer Sussex County Project The Woods at Johnson AKA Fenwick Hamlet Johnson's Corner San	t No. 81-04 ns's Corner r, AKA Fox Haven – Phase 2	

M 202 17 (continued)	2. Wastewater Agreement No. 889-3 Sussex County Project No. 81-04 The Woods at Johnson's Corner AKA Fenwick Hamlet, AKA Fox Haven – Phase 4 Johnson's Corner Sanitary Sewer District		
	Sussex Coun Saddle Ridge	Agreement No. 1011-1 ty Project No. 81-04 e – Phase 1A x Planning Area	
	Sussex Coun Ocean View	Agreement 990-3 ty Project No. 81-04 Beach Club – Phase 2B ch Sanitary Sewer District	
	Motion Adopted:	5 Yeas.	
	Vote by Roll Call:	Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
Procla- mation/ Community Action Month	MONTH OF MAY	nted the Proclamation entitled "PROCLAIMING THE AS "COMMUNITY ACTION MONTH" to Kaneisha attendance representing First State Community Action	
E/D Director	Mr. Lawson announced the selection of William F. Pfaff as Sussex County's next Economic Development Director.		
M 203 17 Approve Selection of New	A Motion was made by Mr. Arlett, seconded by Mr. Cole, that Sussex County Council approves the selection of Mr. William F. Pfaff to the position of Economic Development Director for Sussex County, with a start date of May 22, 2017.		
Economic Develop-	Motion Adopted:	5 Yeas.	
ment Director/ William Pfaff	Vote by Roll Call:	Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
	Mr. Pfaff was in att	endance and addressed Council.	
Public Hearing/ Proposed Annexation	A Public Hearing was held on the Proposed Annexation of Lewes Crossing, Phase 8, Sussex County Unified Sanitary Sewer District, West Rehoboth Area. John Ashman, Director of Utility Planning, reported that the expansion was requested by Lewes Crossing Capital Partners LLC for a project known as Lewes Crossing, Phase 8, West Rehoboth Area of the		

Public Hearing/ project known as Lewes Crossing, Phase 8, West Rehoboth Area of the Sussex County Unified Sanitary Sewer District. He reported that there is Proposed
Annexation
of Lewesan existing connection available for the parcel, however, a prior phase of
Lewes Crossing will provide an alternate connection point for this phase;
that the expansion will include Parcel #334-5.00-222.01 and will consist of
19.53 acres, more or less; and that the project is proposed for 42 lots and
will be responsible for System Connection Charges of \$5,775.00 per EDU
based on current rates. Mr. Ashman reported that the annexation was
advertised and posted; no comments have been received either in support of
or in opposition to the expansion.

The Public Hearing and public record were closed.

M 204 17 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Resolution No. R 010 17 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) WEST REHOBOTH AREA, TO INCLUDE A PROPERTY SITUATED ON THE SOUTH SIDE OF COUNTY ROAD 23 (BEAVER DAM ROAD). THE PARCEL (334-5.00-222.01) IS LOCATED IN THE LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE" (LEWES CROSSING, PHASE 8).

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

Board of
AdjustmentMr. Lawson reported that Mr. Vincent would like to reappoint Mr. John
Mills to the Board of Adjustment (District 1 appointment).

M 205 17A Motion was made by Mr. Wilson, seconded by Mr. Arlett, that the SussexReappoint-
ment toCounty Council approves the appointment of Mr. John Mills to the Sussex
County Board of Adjustment, effective immediately, until such time as the
term expires in June 2019.

Motion Adopted: 5 Yeas.

Adjustment

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

Advertise-
ment ofMr. Lawson reported that the County has been approached regarding its
interest in selling the property it owns on Route 113 in Georgetown. Sussex
County Council purchased parcel number 135-19.00-63.00 in 2008. The
parcel is nearly 30 acres total in which the County paid \$2,410,557. The
parcel fronts Route 113 and East Trap Pond Road. Also, the County
Council purchased parcel number 135-19.00-59.03 in 2015. The parcel is 15
acres total in which the County paid \$198,612.00. This parcel is located on

Advertise- ment of	Parker Road and is contiguous to the Route 113 parcel.			
Property/ Route 113 (continued)	Mr. Lawson reported that, per the County's policy for disposition of real property, Council must approve the advertisement of real property.			
(continueu)	The Council discussed whether or not to advertise the property.			
M 206 17 Defer	A Motion was made by Mr. Cole, seconded by Mr. Burton, to defer action on the advertisement of property (Route 113, Georgetown).			
Action on Readvertise-	Motion Adopted: 4 Yeas, 1 Abstention.			
ment of Property	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Abstained; Mr. Cole, Yea; Mr. Vincent, Yea			
Adminis-	Mr. Lawson read the following information in his Administrator's Report:			
trator's Report	1. <u>Advisory Committee on Aging & Adults with Physical Disabilities for</u> <u>Sussex County</u>			
	The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet May 15 th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. Gary and Amy Feger, Certified Senior Advisors, CarePatrol of Delaware & Maryland Eastern Shore, will be speaking on "CarePatrol's Free Services in Sussex County." The Conference Planning Subcommittee will also meet at 11:30 a.m. to discuss the 2017 conference which will be held on October 18 th . A copy of the agenda for each meeting is attached.			
	2. <u>Mulberry Knoll Area Referendum</u>			
	The Sussex County Engineering Department will be conducting a referendum at Metropolitan Community Church, Rehoboth Beach, Delaware, on Saturday, May 13 th , from 9:00 a.m. until 1:00 p.m. The purpose of the referendum is to establish the Mulberry Knoll Area of the Sussex County Unified Sanitary Sewer District.			
	3. <u>Project Receiving Substantial Completion</u>			
	Per the attached Engineering Department Fact Sheet, Tidewaters received Substantial Completion effective May 4 th .			
	[Attachments to the Administrator's Report are not attachments to the minutes.]			

Request for Time Extension/ Subdivision Application No. 2007-28	Janelle Cornwell, Director of Planning and Zoning, reported that the Planning and Zoning Department received a request for an extension for Subdivision Application 2007-28, an application of Plantation Park Marina, Phase 2. This Subdivision Application was originally approved in 2007 and recorded on June 18, 2012 for the construction of single family dwellings; the expiration date is June 2017. Ms. Cornwell reported on the status of agency approvals for this application and noted that in accordance with Ordinance No. 2428, the Council may grant a time extension for up to six months.		
M 207 17 Approve Time	A Motion was made by Mr. Wilson, seconded by Mr. Arlett, that the Suss County Council approves a 6-month time extension for Subdivisi Application 2007-28, Plantation Park Marina, Phase 2.		
Extension/ Subdivision	Motion Adopted:	3 Yeas, 1 Nay, 1 Absent.	
Application No. 2007-28	·	Mr. Arlett, Yea; Mr. Burton, Nay; Mr. Wilson, Yea; Mr. Cole, Absent; Mr. Vincent, Yea	
	(Mr. Cole was out of t	the room during the vote.)	
Sussex Aero Roof Replace- ment Project	Hans Medlarz, County Engineer, reported on the bids received for the Sussex Aero Maintenance Roof Replacement Project, Project 17-22. Mr. Medlarz reported that due to the age of the building, deterioration of the roof has been an ongoing issue; attempts to repair sections of the roof were unsuccessful. Funds to replace the roof were requested and approved in the FY 2017 Budget. Mr. Medlarz reported that the lowest responsive bidder for the base bid and all alternate bids was J.O.B. Construction Co., Inc. with a total bid of \$41,879.00.		
M 208 17 Bid Award/ Sussex Aero Roof	A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that Contract 17-22, Sussex Aero Maintenance Roof Replacement, be awarded to J.O.B. Construction Co., Inc. of Bridgeville, DE, at the total bid amount of \$41,879.00.		
Replace- ment	Motion Adopted:	5 Yeas.	
Project	·	Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
Presenta- tion/ Trash Violation & Enforce- ment	Ryan Stuart, County Constable, and Michael Costello, Government Affairs Manager, provided a presentation on property maintenance complaints and enforcement. Their presentation included information on Code requirements relating to lot maintenance, parking and storing of vehicles, and prohibited accumulations. Also discussed were violation notices, service of violations notices, compliance timeline, and abatement. Their		

(continued)	presentation also included information on roadside littering and dumping including investigation and enforcement, clean-up responsibility, and clean- up assistance and volunteer programs. Also discussed was the role of State partners and how other jurisdictions are handling similar issues.		
Grant	1		
Requests	Mrs. Jennings presented grant requests for the Council's consideration.		
M 209 17 County- wide Youth	ty- from Countywide Youth Grants to Big Brothers Big Sisters of Delay the Sussex County Bowl for Kids' Sake fundraiser.		
Grant	Motion Adopted:	4 Yeas, 1 Absent.	
	Vote by Roll Call:	Mr. Arlett, Absent; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
M 210 17 Council- manic	A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$1,500.00 from Mr. Burton's Councilmanic Grant Account to the Milton Historical Society for the purchase of the David Atkins House.		
Grant	Motion Adopted:	4 Yeas, 1 Absent.	
	Vote by Roll Call:	Mr. Arlett, Absent; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
M 211 17 Council- manic	A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$1,200.00 (\$600.00 each from Mr. Burton's and Mr. Cole's Councilmanic Grant Accounts) to the Greater Lewes Foundation for festival expenses.		
Grant	Motion Adopted:	5 Yeas.	
	Vote by Roll Call:	Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	
M 212 17 Council- manic	A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$2,000.00 (\$1,000.00 each from Mr. Burton's and Mr. Wilson's Councilmanic Grant Accounts) to the Milton Little League for a field lighting project.		
Grant	Motion Adopted:	5 Yeas.	
	Vote by Roll Call:	Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea	

M 213 17A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$1,000.00Council-
manicfrom Mr. Cole's Councilmanic Grant Account to True Blue Jazz for festival
expenses.

Grant

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

M 214 17A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$2,000.00County-
widefrom Countywide Youth Grants to Del-Mar-Va Council, BSA for camp
scholarships (restricted to Sussex County youth).

Youth Grant Motion Adopted: 5 Yeas.

> Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

Burton introduced the Proposed Ordinance entitled "AN Mr. Introduction ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN of Proposed AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR Α Zoning LANDSCAPE BUSINESS WITH EOUIPMENT STORAGE TO BE Ordinances LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN **BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.740** ACRES, MORE OR LESS" (Conditional Use No. 2093) filed on behalf of John Huss (Tax I.D. No. 235-30.00-6.20) (911 Address: Not Available).

> Mr. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CEMETERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.7774 ACRE, MORE OR LESS" (Conditional Use No. 2094) filed on behalf of Robert Downs (Tax I.D. No. 235-21.00-163.01 (portion of) (911 Address: 15584 Walkabout Lane, Milton).

> Mr. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GAZEBOS AND SHED BUSINESS WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.040 ACRES, MORE OR LESS" (Conditional Use No. 2096) filed on behalf of Capitol Buildings Shed Outlet.

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Introduction of Proposed Zoning Ordinances (continued)	Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL FLOWER SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.35 ACRES, MORE OR LESS" (Conditional Use No. 2100) filed on behalf of Catherine Schultz.		
	The Proposed Ordinances will be advertised for Public Hearing.		
Council Marsaharan?	<u>Council Members' Comments</u>		
Members' Comments	Mr. Arlett commented on the County's participation in Mel's Race For A Cure that took place on Friday, May 5th, during the Live for Chocolate event hosted by Nanticoke Health Services in Seaford.		
M 215 17 Recess	At 12:17 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to recess until 1:30 p.m.		
	Motion Adopted: 5 Yeas.		
	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea		
M 216 17 Reconvene	At 1:36 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to reconvene.		
	Motion Adopted: 4 Yeas, 1 Absent.		
	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Absent; Mr. Vincent, Yea		
Rules	Mr. Rutt read the Rules of Procedure for public hearings.		
Public Hearing/ CZ 1815	A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.8573 ACRES, MORE OR LESS" (Change of Zone No. 1815) filed on behalf of Two Farms, Inc. (Tax I.D. No. 135-11.00-78.00) (911 Address: 24616 Lewes Georgetown Highway, Georgetown).		
	The Planning and Zoning Commission held a Public Hearing on the application on March 9, 2017 at which time action was deferred. On Marc 23, 2017, the Commission recommended approval of the application.		

Public
Hearing/
CZ 1815(See the minutes of the Planning and Zoning Commission dated March 9
and 23, 2017.)

(continued) Janelle Cornwell, Director of Planning and Zoning, provided a summary of the Commission's Public Hearing and recommendation of approval.

It was noted that an Exhibit Book was previously submitted and distributed to the Council.

The Council found that William Scott, Attorney for the Applicant, and Mike Reimann with Becker, Morgan Group, were in attendance and reported on the Traffic Impact Study that was completed, the infrastructure available for the project, landscaping proposed, additional screening that would be provided per the request of a nearby property owner, entrances, surrounding zonings and uses; stormwater improvements, and the proposed use of the site for a retail center consisting of 15,000 square feet. They stated that the proposed rezoning would have no adverse impact to neighboring or adjacent properties.

Mr. Reimann referenced a letter from DelDOT which was included in the Exhibit Book.

Mr. Burton commented on the proposed use of the property and the uses that are permitted in CR-1 zoning. He also raised questions regarding the traffic study and the entrance to the property.

In response to Mr. Burton's questions, it was stated that a retail center is proposed; however, it is possible it could be a Royal Farms store.

There were no public comments.

The Public Hearing and public record were closed.

M 217 17	A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt the		
Adopt	Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE		
Proposed	COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN		
Ordinance/	AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1		
CZ 1815	COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL		
	OF LAND LYING AND BEING IN GEORGETOWN HUNDRED,		
DENIED	SUSSEX COUNTY, CONTAINING 2.8573 ACRES, MORE OR LESS"		
	(Change of Zone No. 1815) filed on behalf of Two Farms, Inc.		
	Motion Denied: 3 Nays, 1 Yea, 1 Abstention.		

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Nay; Mr. Wilson, Nay; Mr. Cole, Abstained; Mr. Vincent, Nay PublicA Public Hearing was held on the Proposed Ordinance entitled "AN
ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF
SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL
DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR
A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST
FORK HUNDRED, SUSSEX COUNTY, CONTAINING 0.71 ACRES,
MORE OR LESS" (Change of Zone No. 1816) filed on behalf of Bruce
Fisher. (Tax I.D. No. 131-19.00-10.01) (911 Address: 20446 Camp Road,
Bridgeville).

The Planning and Zoning Commission held a Public Hearing on this application on March 23, 2017 at which time the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated March 23, 2017.)

Janelle Cornwell, Director of Planning and Zoning, provided a summary of the Planning and Zoning Commission's Public Hearing and recommendation of approval.

The Council found that Bruce Fisher was present on behalf of his application. He stated that he previously received Conditional Use approval for this site for offices; however, the Conditional Use approval has expired. He stated that, since that time, he has obtained a commercial entrance approval; that he will use the existing structure; and that he proposes the use to be for a professional office/retail business.

There were no public comments.

The Public Hearing and public record were closed.

M 218 17 Adopt Ordinance No. 2495 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 CZ 1816 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 0.71 ACRES, MORE OR LESS" (Change of Zone No. 1816) filed on behalf of Bruce Fisher.

Motion Adopted:5 Yeas.Vote by Roll Call:Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

Public

Hearing/

CZ 1817

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 141.086 ACRES, MORE OR LESS" (Change of Zone No. 1817) filed on behalf of Liborio Ellendale, LLC. (Tax I.D. No. 230-26.00-115.00, 115.04, 122.00; and 230-31.00-33.00, 33.01) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on March 9, 2017 at which time the Commission deferred action. On March 23, 2017, the Commission recommended approval, with conditions A-Q.

(See the minutes of the Planning and Zoning Commission dated March 9 and 23, 2017.)

Janelle Cornwell, Director of Planning and Zoning, provided a summary of the Planning and Zoning Commission's Public Hearing and recommendation of approval.

It was noted that an Exhibit Book was previously submitted and distributed to the Council.

The Council found that Zachary Crouch of Davis Bowen & Friedel, Inc. was present on behalf of the application. He stated that an application for this project was originally approved in 2009; however, due to the economic downturn, the RPC designation lapsed and there are new property owners. He noted, however, that the zoning for the site was previously approved and the subject parcels are zoned MR Medium Residential. Mr. Crouch reported that all agency approvals have been received; that the site plan is the same site plan as the one approved in 2009; that they went through the PLUS process again and that information is included in the Exhibit Book; and that 224 single family lots and 72 townhouses are proposed. Mr. Crouch presented information on phasing of the project, infrastructure, stormwater/tax ditch, amenities, landscape plan, open space including woodlands and parkland, sidewalks, and streetlighting,

Public comments were heard.

There were no public comments in support of the application.

Patrick Smith spoke in opposition to the project, expressing concerns about traffic and the lack of traffic lights, streetlights, sidewalks, shoulders, and fire hydrants. Mr. Smith stated that the Town of Ellendale cannot support 300 additional homes and that the project will not create jobs for the area.

PublicIt was clarified that the site is already zoned MR and therefore, 4 units per
acre are permitted.

(continued)

The Public Hearing and public record were closed.

M 219 17 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Ordinance No. 2496 entitled "AN ORDINANCE TO AMEND THE Adopt COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR Ordinance No. 2496/ **MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM** CZ 1817 DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 141.086 ACRES, MORE OR LESS" (Change of Zone No. 1817) filed on behalf of Liborio Ellendale, LLC, with the following conditions:

- A. The maximum number of lots or units shall not exceed 296. There shall be 224 single family lots and 72 townhouses.
- B. All entrances, intersections, interconnections, roadways and multimodal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
- C. A traffic calming device shall be installed for Joseph Court Road and shall be shown on the Final Site Plan.
- **D.** The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
- E. The RPC shall be served by central water.
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
- G. Sidewalks, street lighting and roadside trees shall be provided for the internal streets and their locations shall be shown on the Final Site Plan.
- H. The Park Area shown on the preliminary site plan shall be created for the community and the Town of Ellendale, with details provided as part of the Final Site Plan. The Final Site Plan shall also include at least 10 parking spaces for this Area.
- I. The Developer shall form a homeowner's association responsible for the maintenance of the streets, road, buffers, open space, stormwater management facilities and other common areas.
- J. There shall be active and passive recreational amenities provided. The active amenities shall include a centralized recreational area including a tot lot, clubhouse and swimming pool open to use by residents by the issuance of the 72nd Building Permit. All the amenities shall be shown on the Final Site Plan.
- K. The developer shall minimize tree removal. Conservation Easements shall be created as non-disturbance areas for the northerly and southerly upland forested areas with these areas shown on the Final Site Plan.

M 219 17	L.	A school bus stop and DART bus stop shall be provided. The location of
(continued)		the bus stop area shall be shown on the Final Site Plan.

- M. A 20-foot wide forested or landscaped buffers shall be installed along the entire perimeter of the site.
- N. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
- O. The Final Site Plan shall contain the approval of the Sussex Conservation District for design and location of all stormwater management areas and erosion and sediment control facilities.
- P. The Final Site Plan shall include a landscape plan for all of the open space and buffer area, showing all of the landscaping and vegetation to be included in those areas.
- Q. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted:5 Yeas.Vote by Roll Call:Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

M 220 17A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to adjourn at
2:39 p.m.

Motion Adopted: 5 Yeas.

Vote by Roll Call:

Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

Respectfully submitted,

Robin A. Griffith Clerk of the Council

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

ENGINEERING DEPARTMENT

ADMINISTRATION	(302
AIRPORT & INDUSTRIAL PARK	(302
ENVIRONMENTAL SERVICES	(302
PUBLIC WORKS	(302
RECORDS MANAGEMENT	(302
UTILITY ENGINEERING	(302
UTILITY PERMITS	(302
UTILITY PLANNING	(302
FAX	(302

TO:

VIEN I 2) 855-7718 2) 855-7774 2) 855-7730 2) 855-7703 2) 855-7703 2) 855-7717 2) 855-7719 2) 855-7719 2) 855-7799



Sussex County

DELAWARE

sussexcountyde.gov

HANS M. MEDLARZ, P.E.

COUNTY ENGINEER

JOSEPH WRIGHT, P.E.

ASSISTANT COUNTY ENGINEER

<u>Memorandum</u>

Sussex County Council The Honorable Michael H. Vincent, President The Honorable George B. Cole, Vice President The Honorable I.G. Burton, III The Honorable Robert B. Arlett The Honorable Samuel R. Wilson, Jr.

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

RE: Inland Bays Regional Wastewater Facility Biosolids Handling Agreements for Lewes Board of Public Works & City of Seaford

DATE: May 16, 2017

On August 30, 2016 Council approved a comprehensive expansion project to the Inland Bays Regional Wastewater Facility (IBRWF). The project contained among other aspects, a regional biosolids handling facility capable of consistently producing a Class A biosolids product. The proposed facility will operate most efficiently with third party loadings in addition to all County owned facilities contributions allowing for extended continuous annual operations.

The City of Rehoboth Beach provides wastewater treatment for the Dewey Beach and Henlopen Acres areas of the Unified Sanitary Sewer District. In a cooperative engineering effort, the City has integrated in their facility upgrade design the transfer of Class B biosolids to IBRWF for final treatment. The associated underlying biosolids agreement will be integrated in the new wastewater treatment agreement which is in the final development stage awaiting State construction permit issuance for the City's improvement/outfall projects.

The Engineering Department is now presenting a request for the approval of the twenty (20) year agreements with the Lewes Board of Public Works and the City of Seaford for the transportation and treatment of Class B biosolids to IBRWF. County facilitated transportation is anticipated from the respective municipal wastewater facility to the IBRWF at the actual transportation cost per mile. Treatment expenses will be calculated on a dry ton basis using actual previous years' maintenance and operation expenses hence developing an accurate, fair and consistent rate.

The two Agreements are virtually identical and have been developed in conjunction with the Assistant County Attorney and the prospective partners. It has been reviewed and approved in principle by the Lewes Board of Public Works and the City of Seaford staff.



The design is currently ongoing and the facility will be sized for all anticipated contributions. The Engineering Department anticipates a fully operational facility with these improvements in place by January 2019. Until then all prospective partners will continue their respective independent operations.

BIOSOLIDS HANDLING AGREEMENT BETWEEN SUSSEX COUNTY AND CITY OF SEAFORD

THIS AGREEMENT (the "Agreement"), made this _____ day of ______ 2017 ("Effective Date"), by and between Sussex County (the "County") and City of Seaford ("COS").

WITNESSETH:

WHEREAS, the County owns a wastewater treatment facility known as the Inland Bays Regional Wastewater Facility ("IBRWF"); and

WHEREAS, the County intends to construct a Class A biosolids treatment facility at the IBRWF ("Biosolids Facility"); and

WHEREAS, once the IBRWF Biosolids Facility is complete, COS desires to dispose of its biosolids produced at the COS wastewater treatment facility located on 400 Nanticoke Avenue in Seaford, Delaware at the Biosolids Facility for treatment and disposal.

NOW, THEREFORE, in consideration of the mutual covenants and other consideration contained herein, the sufficiency of such consideration being hereby acknowledged, the parties hereto agree as follows:

1. <u>Definitions</u>. The parties agree to the following definitions for the purposes of this Agreement:

- a) Treatment: shall mean those processes as are necessary to provide a Class A biosolids that can be land applied or otherwise beneficially used by the County in compliance with future Limited Distribution Permit(s) to be issued by the State of Delaware.
- b) Biosolids: shall mean the sludges generated by biological treatment of wastewater that is not recycled back to the biological facility. Class A biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(a). Class B biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(b).

2. <u>Term</u>. The term of this Agreement shall commence on the Effective Date of this Agreement and shall remain in effect for twenty (20) years from the Effective Date, unless earlier terminated for default as provided herein or terminated by thirty (30) days' written notice by either party for any reason. The County shall give notice on the date that the County is ready and able to accept biosolids from COS, but due to factors outside of its control, the County will not commit to a firm date for opening the Biosolids Facility for operation. The County estimates that it will be ready and able to start accepting biosolids at the IBRWF by January 1, 2019. Until the opening date of the Biosolids Facility, COS will maintain the current composting operation.

3. <u>Transportation</u>. The County agrees to transport the biosolids from the City of Seaford to the Biosolids Facility via roll on – roll off container truck. In order to initiate transport, COS shall send electronic notice to the County's staff member(s) designated to receive orders at the Biosolids Facility. Within three (3) business days after receipt, the County shall send a truck to the COS treatment facility. Once placed in the container, the biosolids become the responsibility of the County to transport. In its sole discretion and based on an economic evaluation, the County may elect to subcontract transportation services, with sixty (60) days' written notice to COS. Upon written notice from the County, the costs related to this subcontract shall be charged to COS through a revised rate that covers the direct costs of the subcontract plus five percent (5%) for the County's administrative expenses. This fee shall be substituted for the payment provisions related to the transportation costs in Section 5 of this Agreement. The County shall comply with its procurement requirements to select a subcontractor.

4. <u>Treatment</u>. The County agrees to accept for further treatment up to four hundred (400) dry tons per year of dewatered biosolids with a minimum 16% solids content up to a maximum of 24% solids content, provided that the County reserves the right to refuse any truckloads of biosolids that exceed the concentrations of parameters set forth in Exhibit A which is attached and incorporated by reference herein. The County reserves the right to refuse truckloads that are not within the mandatory range of 16% to 24% solids content. The biosolids provided by COS shall primarily consist of Class B biosolids, but a portion of the delivery may also contain primary sludge. The operation and maintenance of facilities not owned by the County and before the point of acceptance by the County, will be responsibility of COS. Upon written request from COS, the County shall grant an additional allowance of one hundred (100) dry tons of biosolids per year, for a total of five hundred (500) dry tons per year.

5. <u>Payment.</u> The County shall invoice COS on a quarterly basis for the biosolids treatment and transportation charges incurred in the previous quarter in accordance with below.

- (a) The transportation fee will be initially one dollar (\$1.00) per mile for the first calendar year of the Biosolids Facility operations, which shall begin on the date that COS begins sending biosolids to the IBRWF. The one-way mileage of twenty-six (26) miles, from facility to facility, will be used for this and all mileage calculations. At the end of the first calendar year, the actual transportation cost covering fuel, vehicle maintenance, equipment depreciation, and personnel time will be calculated annually based upon actual miles traveled by the County's truck in the process of picking up biosolids for all associated facilities. At the end of the first calendar year under full operation, the County will calculate the actual transportation cost per mile and invoice COS based on the actual mileage rate for the second year. The transportation rate subsequently shall be revised annually for the years remaining in this Agreement.
- (b) The treatment fee will be three hundred dollars (\$300.00) per dry ton during the first calendar year which shall begin on the date that COS begins sending biosolids to the IBRWF. At the end of the first calendar year, the County will calculate the previous year's maintenance and operation expenses of handling, treating and disposing of each dry ton in its Biosolids Facility and will submit a revised rate to COS that shall become applicable in the following calendar year. The annually revised rate will be set on this same day each year based upon the overall costs of maintenance and operations at the Biosolids Facility during the previous calendar year divided by the number of total of dry tons processed during the previous calendar year. Thus, beginning on January 1st of the second year after COS biosolids are accepted at the IBRWF Biosolids Facility, COS will pay for the dry tons sent to the Biosolids Facility based on a dry ton rate which will be revised annually for the years remaining in this Agreement.
- (c) COS shall pay any invoice within forty-five (45) days of the mailing date. Late payments shall be assessed a one percent (1%) late fee,

compounded monthly and shall be considered a breach of this Agreement as long as the payments remain outstanding.

6. <u>Biosolids Standards.</u> Prior to commencement of transfers to the Biosolids Facility, COS shall ensure that all biosolids meet the requirements of the standards set forth in Exhibit A. If necessary, COS agrees to revise its industrial pretreatment permit(s) in order to meet said standards prior to releasing biosolids to the Biosolids Facility.

7. <u>Calculation of Dry Tons.</u> The solids content of each truckload of dewatered Class B biosolids received from COS shall be determined as follows: 1) the County will weigh the truckload received from COS at its Biosolids Facility on its calibrated IBRWF scales; and 2) the County will take a grab sample from each truck and test it in order to determine the moisture content. The equation of NET WEIGHT x % SOLIDS x .01 = DRY TONS will be used for this calculation. The weight of the entire truckload will be deemed to have that same percentage as determined in the sample results. A receipt for each delivery noting the results of the weighing and sampling will be provided to COS within a reasonable timeframe after delivery of each load. COS may send a representative to observe any of these steps, in its discretion.

8. Termination.

(a) Should COS breach or fail to comply with any of the provisions of the Agreement, the County may in writing order COS to remedy such breach. COS shall cure said breach or failure to comply within thirty (30) days from receipt of notice from the County. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then COS must inform County of such fact and County will determine a reasonable time to cure. In the event that COS does not cure within thirty (30) days or the time designated by the County, whichever time period is applicable, this Agreement may be terminated immediately upon County's written notice of such termination. Any costs or expenses that the County incurs as the result of COS's breach of this Agreement shall be reimbursed to the County within thirty days of sending a detailed invoice. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions contained in this Agreement but shall include all other remedies available to it at law or in equity.

(b) Should the County breach or fail to comply with any of the provisions of the Agreement, COS may in writing order the County to remedy such breach. The County shall cure said breach or failure to comply within thirty (30) days from receipt of notice from COS. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the County must inform COS of such fact and COS will determine a reasonable time to cure. In the event that the County does not cure within thirty (30) days or the time designated by COS, whichever time period is applicable, this Agreement may be terminated immediately upon COS's written notice of such termination. Any costs or expenses that COS incurs as the result of the County within thirty days of sending a detailed invoice. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions contained in this Agreement but shall include all other remedies available to it at law or in equity.

9. <u>Inspection of Records</u>. With at least three business days' written notice, each party hereto, by a duly authorized representative, shall have the right at any time during business hours to inspect the books and records of the other party to the extent necessary to ascertain the accuracy of any information used in the calculations of the payments to be made under this Agreement, including but not limited to, the transportation and treatment charges.

10. <u>Permit Compliance</u>. The County will immediately notify COS if permit compliance issues are experienced at the IBRWF facility as a result of the biosolids sent to IBRWF by COS. The County shall provide notice of any compliance issues in writing to COS. Upon receipt of the notice, COS will take immediate steps to remedy the issues. If COS is unable to immediately correct such compliance issues, COS shall make verbal contact with the County and shall submit a written plan of correction to the County for approval within a reasonable timeframe, as determined by the County, from discovery of the compliance issue and/or receipt of the County's notice, whichever first occurred. Failure of COS to comply with a correction plan shall constitute a default of this Agreement and shall be a basis to terminate the Agreement in accordance with Section 8.

11. <u>Compliance with Applicable Laws</u>. The parties agree to comply with all applicable permits, statutes, ordinances, rules, orders, policies, regulations and requirements of the Federal, State, County and City Governments and any and all Courts, Departments and Bureaus that may apply to this Agreement. Further, COS

agrees to comply with any reasonable instructions of the County with regard to the preparation of its biosolids to the County for transport.

12. <u>Assignment</u>. COS shall not assign or transfer any interest in this Agreement to any entity(s) or person(s) whatsoever without first receiving the County's written consent.

13. <u>Notice</u>. Any notice provided for herein, unless otherwise noted, shall be given by hand or registered or certified mail, postage prepaid and addressed to, if for the County: Sussex County Engineer, Sussex County Department of Engineering, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947 and if for COS: City Manager, P.O. Box 1100, Seaford, DE 19973. The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party.

14. <u>Amendments/Modification</u>. No amendments or modifications to this Agreement shall be binding unless in writing and signed by the County and COS.

15. <u>Binding on Heirs</u>. This Agreement shall be binding upon and for the benefit of the heirs, executors, administrators, and successors of the County and COS in like manner as upon the original parties, except as provided by mutual written agreement.

16. <u>Integration</u>. This document comprises the entire Agreement between the parties hereto relative to this matter and supersedes any prior agreements or representations, whether verbal or in writing.

17. <u>Laws of Delaware</u>. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to principles of conflict of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Sussex County, Delaware, or if under federal jurisdiction, in the District Court of the State of Delaware.

18. <u>Signature Authority</u>. Both the County and COS represent and warrant that they have the full and complete authority to execute this Agreement on behalf of their respective organizations.

19. <u>Opportunity to Consult with Legal Counsel</u>. The parties acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Agreement.

20. <u>Time Calculations</u>. Time is of the essence. The term "day" as used herein shall mean calendar day, unless specifically defined as a "business day."

21. <u>Legal Construction</u>. The parties acknowledge that each had the ability to negotiate terms and conditions, and this Agreement shall not be construed against the party who prepared and drafted the Agreement documents. If one or more of the provisions of the Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.

22. <u>Headings and Subheadings</u>. The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Agreement.

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

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

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

[signature pages follow]

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

SUSSEX COUNTY

(Seal)

Michael H. Vincent President, Sussex County Council

WITNESS

Approved as to Form:

stant County Attorney

STATE OF) DELAWARE) ss.

SUSSEX COUNTY

Be it remembered that on this _____ day of ______, 2017, personally came before me, a notary public in and for the State and County aforesaid, MICHAEL H. VINCENT, known or satisfactorily proven to me to be the President and of the Sussex County Council, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the County.

As given under my hand and seal of office this day and year aforesaid.

Notary Public Name:

CITY OF SEAFORD

(Seal)

WITNESS Print Name:

David Genshaw Mayor, City of Seaford

STATE OF) DELAWARE SUSSEX COUNTY)

Be it remembered that on this ______ day of ______, 2017, personally came before me, a notary public in and for the State and County aforesaid, DAVID GENSHAW, known or satisfactorily proven to me to be the Mayor of the CITY OF SEAFORD, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the above-named entity.

As given under my hand and seal of office this day and year aforesaid.

Notary Public	
Name:	

SUSSEX COUNTY BIOLSOLIDS AGREEMENTS

EXHIBIT A

May 8, 2017

Any sludges accepted at the Sussex County Inland Bays Regional Wastewater Facility shall not exceed dry weight metal concentration limits of 40CFR,503 or the State of Delaware's as amended.

	Concentration mg / kg (dry weight)	
	State of Delaware	40 CFR, 503
As	41	41
Cd	39	39
Cr	1200	1200
Cu	1500	1500
Pb	300	300
Hg	17	17
Мо	39	
Ni	420	420
Se	36	100
Zn	2800	2800

BIOSOLIDS HANDLING AGREEMENT BETWEEN SUSSEX COUNTY AND LEWES BOARD OF PUBLIC WORKS

THIS AGREEMENT (the "Agreement"), made this _____ day of 2017 ("Effective Date"), by and between Sussex County (the "County") and Lewes Board of Public Works (the "LBPW").

WITNESSETH:

WHEREAS, the County owns a wastewater treatment facility known as the Inland Bays Regional Wastewater Facility ("IBRWF"); and

WHEREAS, the County intends to construct a Class A biosolids treatment facility at the IBRWF ("Biosolids Facility"); and

WHEREAS, once the IBRWF Biosolids Facility is complete, LBPW desires to dispose of its biosolids produced at the LBPW wastewater treatment facility located on Massachusetts Avenue in Lewes, Delaware at the Biosolids Facility for treatment and disposal.

NOW, THEREFORE, in consideration of the mutual covenants and other consideration contained herein, the sufficiency of such consideration being hereby acknowledged, the parties hereto agree as follows:

1. <u>Definitions</u>. The parties agree to the following definitions for the purposes of this Agreement:

- a) Treatment: shall mean those processes as are necessary to provide a Class A biosolids that can be land applied or otherwise beneficially used by the County in compliance with future Limited Distribution Permit(s) to be issued by the State of Delaware.
- b) Biosolids: shall mean the sludges generated by biological treatment of wastewater that is not recycled back to the biological facility. Class A biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(a). Class B biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(b).

2. <u>Term</u>. The term of this Agreement shall commence from the date that the last party hereto executes this Agreement and shall remain in effect for twenty (20) years from the Effective Date, unless earlier terminated for default as provided herein or terminated by thirty (30) days' written notice by either party for any reason. The County shall give notice on the date that the County is ready and able to accept biosolids from LBPW, but due to factors outside of its control, the County will not commit to a firm date for opening the Biosolids Facility for operation. The County estimates that it will be ready and able to start accepting biosolids at the IBRWF by January 1, 2019. Until the opening date of the Biosolids Facility, LBPW has agreed to make interim biosolids disposal arrangements outside of this Agreement.

3. <u>Transportation</u>. The County agrees to transport the biosolids from the Lewes Board of Public Works to the Biosolids Facility via roll on – roll off container truck. In order to initiate transport, LBPW shall send electronic notice to the County's staff member(s) designated to receive orders at the Biosolids Facility. Within three (3) business days after receipt, the County shall send a truck to the LBPW treatment facility. In its sole discretion, as based on an economic evaluation, the County may elect to subcontract transportation services, with sixty (60) days' written notice to LBPW. Upon written notice from the County, the costs related to this subcontract shall be charged to LBPW through a revised rate that covers the direct costs of the subcontract plus five percent (5%) for the County's administrative expenses. This fee shall be substituted for the payment provisions related to the transportation costs in Section 5 of this Agreement. The County shall comply with its procurement requirements to select a subcontractor.

4. <u>Treatment</u>. The County agrees to accept for further treatment up to two hundred and fifty (250) dry tons per year of digested Class B biosolids with a minimum 16% solids content up to a maximum of 24% solids content, provided that the County reserves the right to refuse any truckloads of biosolids that exceed the concentrations of parameters set forth in Exhibit A which is attached and incorporated by reference herein. The County also reserves the right to refuse truckloads that are not within the mandatory range of 16% to 24% solids content. In addition, operation and maintenance of facilities not owned by the County and before the point of acceptance by the County, will be responsibility of LBPW. Once placed in the container, the biosolids become the responsibility of the County. 5. <u>Payment.</u> The County shall invoice LBPW on a quarterly basis for the biosolids treatment and transportation charges incurred in the previous quarter in accordance with below.

- (a) The transportation fee will be initially one dollar (\$1.00) per mile for the first calendar year of the Biosolids Facility operations, which shall begin on the date that LBPW begins sending biosolids to the IBRWF. At the end of the first calendar year, the actual transportation cost covering fuel, vehicle maintenance, equipment depreciation, and personnel time will be calculated annually based upon actual miles traveled by the County's truck in the process of picking up biosolids for all associated facilities. At the end of the first calendar year under full operation, the County will calculate the actual transportation cost per mile and invoice LBPW based on the actual mileage rate for the second year. The transportation rate subsequently shall be revised annually for the years remaining in this Agreement.
- (b) The treatment fee will be three hundred dollars (\$300.00) per dry ton during the first calendar year which shall begin on the date that LBPW begins sending biosolids to the IBRWF. At the end of the first calendar year, the County will calculate the previous year's maintenance and operation expenses of handling, treating and disposing of each dry ton in its Biosolids Facility and will submit a revised rate to LBPW that shall become applicable in the following calendar year. The annually revised rate will be set on this same day each year based upon the overall costs of maintenance and operations at the Biosolids Facility during the previous calendar year divided by the number of total of dry tons processed during the previous calendar year. Thus, beginning on January 1st of the second year after LBPW biosolids are accepted at the IBRWF Biosolids Facility, LBPW will pay for the dry tons sent to the Biosolids Facility based on a dry ton rate which will be revised annually for the years remaining in this Agreement.
- (c) LBPW shall pay any invoice within forty-five (45) days of the mailing date. Late payments shall be assessed a one percent (1%) late fee, compounded monthly and shall be considered a breach of this Agreement as long as the payments remain outstanding.

6. <u>Biosolids Standards.</u> Prior to commencement of transfers to the Biosolids Facility, LBPW shall ensure that all biosolids meet the requirements of the standards set forth in Exhibit A. If necessary, LBPW agrees to revise its industrial pretreatment permit(s) in order to meet said standards prior to releasing biosolids to the Biosolids Facility.

7. <u>Calculation of Dry Tons.</u> The solids content of each truckload of digested Class B biosolids received from LBPW shall be determined as follows: 1) the County will weigh the truckload received from LBPW at its Biosolids Facility on its calibrated IBRWF scales; and 2) the County will take a grab sample from each truck and test it in order to determine the moisture content. The weight of the entire truckload will be deemed to have that same percentage as determined in the sample results. A receipt for each delivery noting the results of the weighing and sampling will be provided to LBPW within a reasonable timeframe after delivery of each load. LBPW may send a representative to observe any of these steps, in its discretion.

8. <u>Termination</u>.

- (a) Should LBPW breach or fail to comply with any of the provisions of the Agreement, the County may in writing order the LBPW to remedy such breach. LBPW shall cure said breach or failure to comply within thirty (30) days from receipt of notice from the County. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then LBPW must inform County of such fact and County will determine a reasonable time to cure. In the event that LBPW does not cure within thirty (30) days or the time designated by the County, whichever time period is applicable, this Agreement may be terminated immediately upon County's written notice of such termination. Any costs or expenses that the County incurs as the result of LBPW's breach of this Agreement shall be reimbursed to the County within thirty days of sending a detailed invoice, and this obligation survives termination of this Agreement. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions contained in this Agreement but shall include all other remedies available to it at law or in equity.
- (b)Should the County breach or fail to comply with any of the provisions of the Agreement, LBPW may in writing order the County to remedy such breach. The County shall cure said breach or failure to comply within thirty (30) days from receipt of notice from the LBPW. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the County must inform LBPW of such fact and LBPW will determine a

reasonable time to cure. In the event that the County does not cure within thirty (30) days or the time designated by LBPW, whichever time period is applicable, this Agreement may be terminated immediately upon LBPW's written notice of such termination. Any costs or expenses that LBPW incurs as the result of the County's breach of this Agreement shall be reimbursed to LBPW by the County within thirty days of sending a detailed invoice. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions contained in this Agreement but shall include all other remedies available to it at law or in equity.

9. <u>Inspection of Records</u>. With at least three business days' written notice, each party hereto, by a duly authorized representative, shall have the right at any time during business hours to inspect the books and records of the other party to the extent necessary to ascertain the accuracy of any information used in the calculations of the payments to be made under this Agreement, including but not limited to, the transportation and treatment charges.

10. <u>Permit Compliance</u>. The County will immediately notify LBPW if permit compliance issues are experienced at the IBRWF facility as a result of the biosolids sent to IBRWF by LBPW. The County shall provide notice of any compliance issues in writing to LBPW. Upon receipt of the notice, LBPW will take immediate steps to remedy the issues. If LBPW is unable to immediately correct such compliance issues, LBPW shall make verbal contact with the County and shall submit a written plan of correction to the County for approval within a reasonable timeframe, as determined by the County, from discovery of the compliance issue and/or receipt of the County's notice, whichever first occurred. Failure of LBPW to comply with a correction plan shall constitute a default of this Agreement and shall be a basis to terminate the Agreement in accordance with Section 8.

11. <u>Compliance with Applicable Laws</u>. The parties agree to comply with all applicable permits, statutes, ordinances, rules, orders, policies, regulations and requirements of the Federal, State, County and City Governments and any and all Courts, Departments and Bureaus that may apply to this Agreement. Further, LBPW agrees to comply with any reasonable instructions of the County with regard to the preparation of its biosolids to the County for transport.

12. <u>Assignment</u>. LBPW shall not assign or transfer any interest in this Agreement to any entity(s) or person(s) whatsoever without first receiving the County's written consent.

13. <u>Notice</u>. Any notice provided for herein, unless otherwise noted, shall be given by hand or registered or certified mail, postage prepaid and addressed to, if for the County: Sussex County Engineer, Sussex County Department of Engineering, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947 and if for LBPW: General Manager, 107 Franklin Avenue, Lewes, DE 19958. The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party.

14. <u>Amendments/Modification</u>. No amendments or modifications to this Agreement shall be binding unless in writing and signed by the County and LBPW.

15. <u>Binding on Heirs</u>. This Agreement shall be binding upon and for the benefit of the heirs, executors, administrators, and successors of the County and LBPW in like manner as upon the original parties, except as provided by mutual written agreement.

16. <u>Integration</u>. This document comprises the entire Agreement between the parties hereto relative to this matter and supersedes any prior agreements or representations, whether verbal or in writing.

17. <u>Laws of Delaware</u>. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to principles of conflict of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Sussex County, Delaware, or if under federal jurisdiction, in the District Court of the State of Delaware.

18. <u>Signature Authority</u>. Both the County and LBPW represent and warrant that they have the full and complete authority to execute this Agreement on behalf of their respective organizations.

19. <u>Opportunity to Consult with Legal Counsel.</u> The parties acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Agreement.

20. <u>Time Calculations</u>. Time is of the essence. The term "day" as used herein shall mean calendar day, unless specifically defined as a "business day."

21. <u>Legal Construction</u>. The parties acknowledge that each had the ability to negotiate terms and conditions, and this Agreement shall not be construed against the party who prepared and drafted the Agreement documents. If one or more of the provisions of the Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.

22. <u>Headings and Subheadings</u>. The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Agreement.

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

24. <u>No Third Party Beneficiaries</u>. Neither the provisions of this Agreement nor the performance of the parties hereunder is intended to benefit, nor shall inure to the benefit, of any third party.

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

[signature pages follow]

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

SUSSEX COUNTY

(Seal)

Michael H. Vincent President, Sussex County Council

WITNESS

Approved as to Form:

Assistant County Attorney

STATE OF) DELAWARE) ss. SUSSEX COUNTY)

Be it remembered that on this _____ day of _

2017, personally came before me, a notary public in and for the State and County aforesaid, MICHAEL H. VINCENT, known or satisfactorily proven to me to be the President and of the Sussex County Council, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the County.

As given under my hand and seal of office this day and year aforesaid.

Notary Public Name:

LEWES BOARD OF PUBLIC WORKS

(Seal)

C. Wendell Alfred President, Lewes BPW

WITNESS Print Name:_____

STATE OF) DELAWARE) ss. SUSSEX COUNTY)

Be it remembered that on this _____ day of ______, 2017, personally came before me, a notary public in and for the State and County aforesaid, C. Wendell Alfred, known or satisfactorily proven to me to be the President of LEWES BOARD OF PUBLIC WORKS, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the above-named entity.

As given under my hand and seal of office this day and year aforesaid.

Notary Public	
Name:	

SUSSEX COUNTY BIOSOLIDS AGREEMENTS

EXHIBIT A

May 8, 2017

Any sludges accepted at the Sussex County Inland Bays Regional Wastewater Facility shall not exceed the dry weight metal concentration limits of 40 CFR, Part 503 or the dry weight concentration limits set by the State of Delaware, as may be hereafter amended, whichever is lower.

	Concentration mg / kg (dry weight)		
	State of Delaware	40 CFR, Part 503	
As	41	41	
Cd	39	39	
Cr	1200	1200	
Cu	1500	1500	
Pb	300	300	
Hg	17	17	
Мо	39		
Ni	420	420	
Se	36	100	
Zn	2800	2800	

ENGINEERING DEPARTMENT

ADMINISTRATION AIRPORT & INDUSTRIAL PARK ENVIRONMENTAL SERVICES PUBLIC WORKS RECORDS MANAGEMENT UTILITY ENGINEERING UTILITY PERMITS UTILITY PLANNING FAX



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOSEPH WRIGHT, P.E. ASSISTANT COUNTY ENGINEER

Memorandum

TO: Sussex County Council The Honorable Michael H. Vincent, President The Honorable George B. Cole, Vice President The Honorable Samuel R. Wilson, Jr. The Honorable I.G. Burton, III The Honorable Robert B. Arlett

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

(302) 855-7718

(302) 855-7774

(302) 855-7730

(302) 855-7703

(302) 854-5033

(302) 855-7717

(302) 855-7719

(302) 855-1299

(302) 855-7799

RE: PINEY NECK LAND LEASE SPRAY IRRIGATION & AGRICULTURAL OPERATIONS APPROVAL OF LEASE AGREEMENT

DATE: May 16, 2017

Sussex County has been operating the Piney Neck Regional Wastewater Facility located at Piney Neck Road in Dagsboro for over 20 years. It disposes its effluent via by spray irrigation on nearby lands. On April 15, 1997, County Council approved two (2) lease agreements between the County and Mr. & Mrs. Davidson (The Davidsons). Under one lease, Sussex County leases the farming rights of 74 acres of a spray irrigation site next to the Piney Neck Regional Wastewater Facility to the Davidsons, which they farm at their expense. Under the other lease, the Davidsons lease 19 acres of land to Sussex County for applying treated wastewater through a fixed-point spray irrigation system. These leases were approved for a duration of twenty (20) years and expire May 19, 2017.

The Engineering Department in cooperation with the Assistant County Attorney coordinated with the Davidsons the revision of the two leases into one, condensing and revising the terms and conditions. In consideration for the lease of the Davidsons' property, both parties agreed upon an initial \$6,900.00 lease payment per year, with a 2% annual increase. The compensation is based on the most recent five-year average of the Delaware cash rents for irrigated cropland published by the Department of Agriculture. (copy attached) This lease is for a twenty-five (25) year term. If approved, the Department has proposed to expand the fixed head irrigation system on the Davidson's property under the Fiscal Year 2018 budget.

The Sussex County Engineering Department requests approval of the updated lease agreement with the Davidsons for farming rights and for continued spray irrigation as part of Piney Neck Regional Wastewater Facility operations.







2016 Delaware Cash Rents for Cropland: 2012 – 2016²

		Non-irrigated Lan	d	
	New Castle County	Kent County	Sussex County	Delaware
Year	Year dollars per acre			
2012 ¹	82.20	83.41	72.54	78.80
2013 ¹	85.95	92.09	77.64	84.21
2014 ¹	91.25	90.72	74.68	85.43
2016 ³	94.00	89.50	88.50	90.00

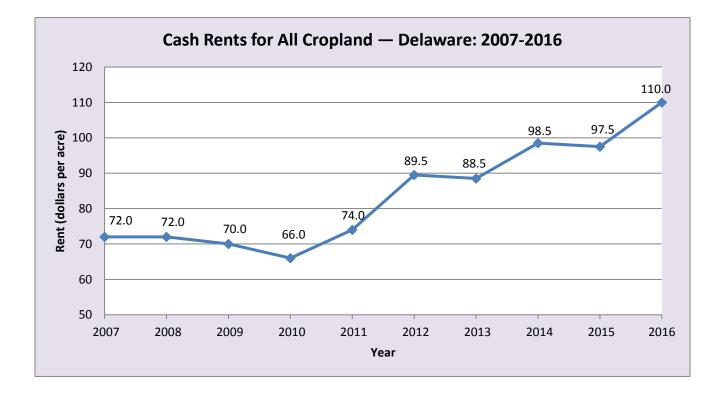
Irrig	gated	Land

	New Castle County	Kent County	Sussex County	Delaware
Year	dollars per acre			
2012 ¹	130.43	133.38	125.45	127.56
2013 ¹	138.85	135.03	126.80	129.32
2014 ¹	136.53	142.68	124.00	131.63
2016 ³	130.00	155.00	150.00	150.00

¹ Rent per acre weighted by number of acres rented at that dollar amount.

² Survey not done in 2015.

³Federally conducted survey.



Delaware Agricultural Statistics Service, 2320 S. DuPont Hwy., Dover DE 19901 For more information call 302-698-4537 or 800-282-8685 Delaware Department of Agriculture

PINEY NECK REGIONAL WASTEWATER FACILITY AGRICULTURAL AND SPRAY IRRIGATION LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease" or "Agreement"), made by and between SUSSEX COUNTY (the "County") and NORMAN E. DAVIDSON, JR. and BENITA BANKS DAVIDSON (the "Davidsons").

WITNESSETH:

WHEREAS, the County owns a regional wastewater treatment facility known as the Piney Neck Regional Wastewater Facility located at 29535 Piney Neck Road in Dagsboro, Delaware which treats its effluent by spray irrigation on nearby lands; and

WHEREAS, the Davidsons own a parcel of land with Tax Parcel No. 233-6.00-123 which the County wishes to lease a portion thereof consisting of approximately 46 ±acres, as depicted on Exhibit A, which is attached and incorporated by reference herein (referred to as "Davidsons' Property" or "Davidsons' Premises"); and

WHEREAS, the County owns a parcel of land with Tax Parcel No. 233-6.00-124 which the Davidsons wish to lease a portion thereof consisting of approximately 68 ±acres (and excluding the County maintenance base on the eastern side of the property), designated on Exhibit B, attached hereto and hereby incorporated by reference (hereinafter referred to as "County's Property" or "County's Premises"); and

WHEREAS, the County wishes to lease the Davidsons' Property from the Davidsons in order to perform spray irrigation of the effluent from its Piney Neck Regional Wastewater Facility; and

WHEREAS, the Davidsons wish to lease the County's Property from the County in order to conduct its agricultural operations on said property while the County simultaneously conducts spray irrigation on the County's Property to serve the Piney Neck Regional Wastewater Facility; and

WHEREAS, the parties agree to lease the Davidsons' Property and the County's Property (collectively, "Properties") in accordance with the below terms and conditions.

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

1. <u>County's Property</u>. The County hereby agrees to lease the County's Property to the Davidsons subject to the terms and conditions hereinafter set forth, excepting and reserving therefrom unto the exclusive use of the County all of the residue and remaining portions of said tract and also all fishing, trapping, and hunting rights over and upon the whole of the County's Property and also reserving the right unto the County to go and come to and from every and all parts and portions of the whole of said property at any and all times. Provided further, in the exercise of any and all of the reserved rights of the County, the County shall not interfere with or damage the planting, tilling, and cultivation of the presently arable and tillable farmland hereby demised unto the Davidsons, or interfere with or damage any of the growing, matured, harvested or unremoved crops thereon or produce thereof.

2. <u>Davidsons' Property</u>. The Davidsons hereby agree to lease the Davidsons' Property to the County, including all improvements thereon, subject to the terms and conditions hereinafter set forth, excepting and reserving therefrom unto the exclusive use of the Davidsons and their family members and invited guests, all fishing, trapping, and hunting rights over and upon the whole of the Davidsons' Property between the hours of 8:00am to 4:00pm Monday to Friday. Such fishing, trapping, and hunting rights may be reasonably limited as the County sees fit for safety and welfare reasons. The Davidsons further reserve their rights to enter the Davidsons' Property for purposes of conducting the Loblolly tree farming operations required by this Agreement.

3. <u>Term.</u> This Lease for the County's Property and the Davidsons' Property shall become effective on 12:01am on May 20, 2017 ("Effective Date"). The term of the Lease shall commence on the Effective Date and automatically expire twenty-five (25) years therefrom, on May 20, 2042, without further notice to either party. To the extent that Title 10, Section 6703 of the Delaware Code applies, the parties expressly agree to waive the notice requirements of that section and acknowledge that this Lease will expire on the date set forth in this Paragraph.

4. Purposes.

- a) *Davidsons' Property*. The County's use of the Davidsons' Property shall be for the purposes related to the disposal operations of the Piney Neck Regional Wastewater Facility. The County intends to use the Davidsons' Property for purposes of spray irrigation of the treated effluent from Piney Neck Regional Wastewater Facility, and the Davidsons specifically authorize the County to undertake any actions or measures on the Davidsons' Property in connection with its spray irrigation operations which are required to maintain compliance with its applicable wastewater permits.
- b) *County's Property*. The Davidsons' use of the County's Property is for the purposes of crop agriculture in accordance with the terms set forth herein. The Davidsons acknowledge and agree that their use of the County's Property is subject to and limited to the extent necessary for the County to conduct its spray irrigation operations. The parties acknowledge and agree that the County is required to conduct its spray irrigation activities on the County's Property in accordance with its applicable permits. The Davidsons agree that they may not assign this Lease or any interest nor use treated effluent for any purpose other than irrigation. Notwithstanding anything to the contrary herein, the Davidsons guarantee for the full term of the Lease to grow forage crops on the County's Property.

Improvements. Each party hereby grants the right to construct any improvements 5. on their leased lands necessary to meet the above-referenced purposes. Any plans to construct improvements must be submitted to the party owning the subject property for prior written approval and any such improvements shall be constructed in accordance with applicable laws, regulations, and policies. Upon expiration or termination of this Lease, the permanent structures and fixtures shall remain with the respective property on which it is located and any removable property, such as equipment, materials, and other personal property that is not affixed to the subject property, shall be removed prior to or immediately after the termination of this Lease. Any removable property or fixtures that are not removed within thirty (30) days after the termination of this Lease shall be considered abandoned and are permitted to be removed by the respective property owner and disposed of, sold, or otherwise utilized in the respective property owner's sole discretion. In addition, the County reserves the right on the County's Property, without prior approval from the Davidsons, to construct additional structures, lines, or other appurtenances or to install additional equipment as necessary to maintain its spray irrigation operations on the County's Property.

The County shall install spray irrigation equipment on the area marked as "Section 2" on the Davidsons' Property, at the County's sole expense and in accordance with the Proposed Spray Irrigation Site Plan approved on April 1, 1998 and prepared by Citadel Engineering, Inc. which is attached as Exhibit C. As set forth herein, the County shall maintain and repair the spray irrigation equipment, after the spray irrigation equipment is installed and is ready for operation.

6. <u>Rental Payment</u>. Rent shall be paid by County to the Davidsons in the amount of six thousand and nine hundred dollars (\$6,900.00) per lease year in additional consideration for the lease of the Davidsons' Property, beginning on the Effective Date of this Agreement and due each anniversary of the Effective Date throughout the term of this Lease. In year two (2) of this Lease and each year thereafter, the annual rent for the Davidsons' Property will increase by two percent (2%). The County's first annual rental payment shall be due on the Effective Date of this Agreement.

7. <u>Warranties</u>. Each party represents and warrants to the other party that it has good title to its respective properties to which it claims ownership and that it has the rights to lease the property to the other party leasing the subject property. The County represents and warrants that it has and/or will obtain all approvals, licenses, or permits necessary for its purposes on the Properties and will conduct such operations in accordance with those approvals and permits and in accordance with its Spray Irrigation Management Plan.

8. <u>Recordkeeping and Inspection Rights</u>. Each party shall maintain records with respect to their operations on the property that each party is leasing from the other party, as required by law or the applicable permits or approvals. Each party shall mail copies of any records or reports that either party is required to submit to any federal, state, or local authority regarding the respectively leased Properties. Both parties shall have the same rights of inspection, examination, and copying of records and reports maintained by the other party in connection with its activities on the Properties as possessed by any federal, state, or local regulatory body or authority.

9. <u>Rights of Access for Spray Irrigation and the Monitoring Wells</u>. The Davidsons grant to the County the rights of ingress and egress over and across the Davidsons' Property, as may be necessary for the County's spray irrigation operations. In addition, the Davidsons grant the right of ingress and egress to the County for the purposes of accessing any monitoring wells located on the Davidsons' Property or other property

owned by the Davidsons. The locations of those monitoring wells are shown on the attached Exhibit D, which is attached hereto and incorporated herein by reference.

10. <u>The Davidsons' Access Rights with Respect to the County's Property</u>. The County grants to the Davidsons the rights of ingress and egress over and across the County's Property, as may be necessary for the Davidsons' farming operations. The Davidsons retain and expressly reserve the right to occupy and use the County's Property not otherwise reasonably required by County in connection with the operation of a spray irrigation facility for the purposes set forth in this Agreement.

11. <u>The Davidson's Farming Operations on the County's Property</u>. The Davidsons agree to the following provisions with respect to its operations on the County's Property:

- a) To use and occupy the presently arable and tillable portion of the County's Property for farming and agricultural purposes only;
- b) To attend and cultivate all such presently arable and tillable farmland on the County's Property, in a timely, workmanlike manner, following all such approved and accepted practices, and using all proper fertilizers, manure, limes, crops harvested, cover crops, and other materials;
- c) To maintain the fertility, the limestone content and the plant food content of the soil, and also to protect and preserve the presently arable and tillable farmland from the adverse forces and effects of erosion, noxious weeds, fungi, insects and other pests;
- d) To timely plant all necessary cover crops thereon in order to preserve the tillable soil thereof against the forces of erosion and maintain the nitrogen content;
- e) To not erect any buildings or other improvements of any kind, or use or occupy the presently arable and tillable lands on the County's Property for any purposes other than the tilling and cultivating of the tillable soil, in keeping with the practices of good husbandry, without otherwise first obtaining the written consent of the County;
- f) To inoculate and otherwise follow the standard disease and pest control treatments for all seeds, seedlings and plants used upon the presently arable and tillable lands

of the County's Property, and take all usual and customary precautions to prevent noxious weeds, or other noxious plant life from going to seed or otherwise spreading thereon, to eliminate and eradicate all Johnson Grass therefrom, and to prevent crop destroying insects, fungi or other pests from infiltrating the tillable soil; and

g) To submit prior to the growing season, a vegetative management plan, providing a list of crops and locations, commercial fertilizer and chemical additions. The County shall have the right to disapprove growing a crop in order to comply with applicable rules, regulations, ordinances and laws. Such farming operations will be conducted at the Davidsons' sole expense. The Davidsons shall ensure that harvested crops are promptly removed from the site. A winter cover crop must be planted and established on the County's Property.

The Davidsons' Tree Farming Operations on the Davidson Property. The parties 12. acknowledge and agree that as part of successful spray application irrigation techniques, a compatibly managed farming operation is necessary. The Davidsons shall undertake and maintain the cultivation of Loblolly Pines on the Davidsons' Property and manage these operations cooperatively with the spray irrigation system, unless the Davidsons receive prior written approval from the County for the cultivation of another crop or tree type and such change is approved through the applicable permitting process. The tree farming operations shall be conducted at the Davidsons' sole expense. The County's spray operations shall be conducted in accordance with the applicable Spray Irrigation Management Plan and subject to the limitations set forth in this Agreement. In addition, the Davidsons shall submit on a yearly basis to the County a "Forestry Management Plan," including a record of all site management activities undertaken such as the planting, harvesting of crops and/or trees, commercial fertilizer, and chemical additions. Supplemental additions of commercial fertilizers shall be limited to amounts necessary to meet crop needs as specified in the vegetative management plan. Effective management shall be provided such that crops harvested on the spray irrigation site are removed from the site. Any leaks associated with such conditions shall be reported to the County and repaired immediately. Connections or additions to the system other than those indicated on the approved plans will not be allowed without prior approval by DNREC and the County. The Davidsons shall submit a written report to the County for its review and approval of any proposed changes to the spray irrigation system. Any planned physical alterations or additions to the system or to the activities on said property must be

approved in writing in advance by the County. The County shall be responsible for all analyses, including groundwater monitoring and soil analyses.

13. <u>Maintenance and Utilities</u>. The parties shall have the following responsibilities for the maintenance and utilities of the respective properties as follows:

- a) *Davidsons' Property*: The County shall provide the necessary maintenance services to ensure that the Davidsons' Property is kept in a clean, well-maintained condition and in a good state of repair in accordance with its purposes throughout the term of the Agreement. Such maintenance services shall be performed in a good and workmanlike manner. The County shall be responsible for maintenance, repairs, or improvements to the spray irrigation equipment and facilities, which are installed for the purposes of the County's spray irrigation operations.
- b) *County's Property*: The Davidsons shall provide the necessary maintenance services to ensure that the County's Property is kept in a clean, well-maintained condition and in a good state of repair in accordance with its purpose throughout the term of the Agreement. Such maintenance services shall be performed in a good and workmanlike manner. The Davidsons shall not be responsible for maintenance or repairs to the spray irrigation equipment and facilities, which are installed for the purposes of the County's spray irrigation operations.
- c) Utilities: Each party shall contract for and shall be solely liable for all costs associated with utilities necessary for each party's respective operations on the Properties, including but not limited to electric, natural gas, and water, subject to the exception noted below in this Paragraph. The party shall contract for and be solely liable for all costs associated with the utilities necessary for its operations. The parties shall pay all charges for their respective utilities in a timely fashion. In accordance with this provision, the County shall be responsible for the utility installation and all costs and charges associated with the spray irrigation operations on the County's Property and the Davidsons' Property, and the Davidsons' Property. Notwithstanding anything to the contrary herein, the County shall pay the costs and expenses associated with the response associated with the spray herein, the County shall be response associated with the farming operations on the County's Property and the Davidsons' Property.

supplying electricity to the Davidsons' farming operations on the County's Property.

14. Insurance

- a) Evidence of Insurance: The County and the Davidsons shall each maintain the following insurance coverage throughout the term of this Lease, and upon the imminent expiration of a policy, a certificate evidencing the renewal or replacement coverage shall be sent at least ten (10) days prior to the expiration date. The parties agree to provide certificates of insurance and required endorsements to the other, evidencing all policies required below at execution of this Lease. Such insurance shall be written by insurers licensed to do business in Delaware with a current Best's Insurance Reports rating of "A-VII" or better, unless otherwise approved by the other party. Such policies shall be endorsed, and shall provide that no cancellation can take effect unless thirty (30) days' prior written notice has been given to the other party. Any requirement herein for additional insured coverage shall be defined to include additional insured coverage for the named party and its officials and employees.
- b) Property Insurance: Each party shall secure and maintain, at its own expense, all risk (special form) property insurance which insures against direct physical loss of or damage to its own real and personal property including fixtures, fixed equipment, and mobile equipment located on the leased premises, with limits not less than the lessee party's interest in or liability for such property. Each party shall also secure all risk (special form) time element insurance satisfactory to protect its interests for loss of income or extra expense arising from direct physical loss of or damage to the party's own real and personal property, fixtures, fixed equipment and mobile equipment located on the leased premises.

To the fullest extent permitted by law, the County and the Davidsons waive any right of recovery from the other for any loss or damage to the property (or resulting loss of income or extra expense) of the other, by reason of any loss of or damage to the Davidsons' or the County's Property required to be insured against under this Lease, regardless of the cause of origin, including the negligence of the other party. To the fullest extent permitted by law, the Davidsons' and County's property insurers shall not hold any right of subrogation against the other party. Any

property insurance deductible amount(s) selected shall be the sole responsibility of the selecting party.

- c) *Liability Insurance*. Each party shall secure and maintain, at its own expense, commercial general liability insurance or farm liability insurance for the property which it leases from the other party that insures against bodily injury and property damage arising from the lessee party's operations including maintenance or use (including the property owner's operations incidental thereto) of the leased premises and including the endorsements noted below, with a combined single limit of \$1,000,000 per occurrence and a general aggregate limit of \$1,000,000. Each party shall provide the following endorsements: 1) an endorsement that the other party is an additional insured; 2) an endorsement that this insurance shall be primary and any coverage or indemnity available to the other party shall be contributory; and 3) an endorsement for blanket contractual liability coverage.
- d) Workers' Compensation and Employers' Liability: In the event the Davidsons employ farm laborers in conducting operations on the County's Property and so long as the Davidsons are exempt from compulsory workers' compensation coverage, the Davidsons shall secure and maintain, at its own expense, farm employers' liability insurance with a limit of \$500,000 per occurrence. Should the Davidsons not be exempt from compulsory workers' compensation as respects employed farm laborers, the Davidsons shall secure and maintain workers' compensation and employers' liability insurance. The workers' compensation insurance must satisfy the Davidsons' statutory workers compensation obligation to its employees in Delaware. Employer's liability insurance must be secured with minimum limits of \$100,000 for bodily injury by accident, \$100,000 each employee for bodily injury by disease, and a \$500,000 policy limit for bodily injury by disease.

The County shall secure and maintain, at its own expense, workers' compensation insurance and employer's liability insurance. The workers' compensation insurance must satisfy the statutory workers compensation requirements for Delaware. Employers' liability insurance must be secured with minimum limits of \$100,000 for bodily injury by accident, \$100,000 each employee for bodily injury by disease, and a \$500,000 policy limit for bodily injury by disease.

15. Indemnification.

- a) *The Davidsons' Indemnification*. To the extent permitted by law, the Davidsons shall defend, indemnify, and hold the County, its employees, officials, or agents harmless from and against any and all claims (including attorneys' fees) arising from the Davidsons' operations, ownership, maintenance or use of either the County's Property or the Davidsons' Property or their operations incidental thereto, unless such claims arise solely from the negligence of the County.
- b) The County's Indemnification. To the extent permitted by law, the County shall defend, indemnify, and hold Owner harmless from and against bodily injury and property damage claims (including attorneys' fees) arising from the County's delivery of effluent to the leased premises or County's operations incidental thereto, unless such claims arise solely from the negligence of the Davidsons. The above provisions of this subparagraph are not intended to waive, alter, or otherwise amend the immunity of the parties under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act. Additionally, the above provisions are not intended to violate any constitutional principles of the State of Delaware or United States. To the extent that any of the above obligations of this paragraph are determined by court or arbitration order or other judicial action to waive, alter, or otherwise amend such immunity or to be constitutionally prohibited or otherwise not in accordance with the laws in effect at the time of any such claim, liability, cost or expense, the offending language shall be struck from this Agreement by such authority and considered invalid and unenforceable to the extent necessary to allow the application of such immunity to any claims, losses, damages, or suits asserted against either party or to the extent necessary to correct such violation of the law. The parties agree that any claims, liabilities, damages, costs and expenses that are permitted under this Paragraph shall be subject to the provisions of the County and Municipal Tort Claims Act, including the limitations on damages.

c) The obligations of this Paragraph shall survive termination of this Agreement.

16. <u>First Right of Refusal</u>. In the event that the Davidsons decide to sell the Davidsons' Property or any portion thereof, the Davidsons shall first offer this property to the County for the price and under the same terms as the intended sale or for the appraised amount established by an independent appraiser under the same terms as the intended sale, whichever is less. After the receipt of an offer from a third party, the Davidsons may

select the appraiser, and the County will reimburse the Davidsons for any costs related to obtaining the appraisal. The County shall have thirty (30) days beginning on the date of receipt of copies of the appraisal and the offer to accept or reject this offer. This provision shall remain in effect through the term of this Lease, and at the expiration or termination of the Lease, shall have no further force or effect.

17. Termination.

- a) Breach of Agreement by County. Should the County breach or fail to comply with any of the provisions of the Agreement, the Davidsons may in writing order the County to remedy such breach. The County shall cure said breach or failure to comply within thirty (30) days from receipt of the written notice from the Davidsons. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the County will commence to cure the default within thirty (30) days, proceeding to cure the default in a prompt and continuous manner. The failure to timely remedy the breach in accordance with this provision may, at the Davidsons' option, result in the termination of the County's lease for the Davidsons' Property. In the event that the lease of the Davidsons' Property is terminated hereunder, this Agreement shall remain in effect for purposes of continuing the lease of the County's Property to the Davidsons, and the portions of this Agreement applicable to the Davidsons' lease of the County's Property will remain in full force and effect.
- b) Breach of Agreement by the Davidsons. Should the Davidsons breach or fail to comply with any of the provisions of the Agreement, the County may in writing order the Davidsons to remedy such breach. The Davidsons shall cure said breach or failure to comply within thirty (30) days from receipt of the written notice from the County. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the Davidsons will commence to cure the default within thirty (30) days, proceeding to cure the default in a prompt and continuous manner. The failure to timely remedy the breach in accordance with this provision may, at the County's option, result in the termination of the Davidsons' lease of the County's Property. In the event that the lease of the County's Property is terminated hereunder, this Agreement shall remain in effect for purposes of continuing the lease of the Davidsons' Property to the County, and the portions of this Agreement applicable to the County's lease of the Davidsons' Property will remain in full force and effect.

c) *Remedies*. The remedies of this Lease available to the non-breaching party shall be cumulative and not limited to the provisions contained in this Lease, but shall include all other remedies available to it at law or in equity.

18. <u>Compliance with Applicable Laws</u>. In its respective use of the Properties, each party agrees to comply with all applicable statutes, ordinances, rules, orders, policies, regulations and requirements of the Federal, State, and County Governments and any and all Courts, Departments and Bureaus that may apply to the Premises, including, but not limited to all environmental requirements.

19. <u>Assignment</u>. Neither party is permitted to assign this Agreement or sublease the Properties or any part of the Properties to any entity(s) or person(s) whatsoever without first receiving the written consent of other party.

20. <u>Encumbrances</u>. Neither party shall mortgage or encumber any part of the subject property under their ownership or this Agreement and shall keep the subject property under their ownership and any improvements thereon free and clear of all liens and claims of liens or encumbrances.

21. <u>Property Condition</u>. Each party hereby acknowledges that it has inspected the subject property that it is leasing from the other party, that it has had the opportunity to perform any testing or inspections, that it is familiar with its condition, and that neither party has made any warranties or representations as to the condition of the property that they are leasing to the other party.

22. <u>Agreements of Record</u>. This Agreement shall be subject to the terms of any easements, restrictions, or other agreements of record now against both the County's Property and the Davidsons' Property. Neither party may enter an easement or restriction on the properties subject to this Lease that affects the operations of the other party or affects the subject property after the Effective Date of this Agreement without first receiving the written consent of the other party.

23. <u>Notice</u>. Any notice provided for herein shall be given by hand or registered or certified mail, postage prepaid and addressed to, if for the County: Sussex County Engineer, Sussex County Department of Engineering, 2 The Circle, Georgetown, Delaware 19947 and if for the Davidsons: Norman E. Davidson, Jr. and Benita Banks

Davidson, 30377 Power Plant Road, Dagsboro, Delaware 19939. The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party.

Condemnation. If at any time during the term of this Lease, the whole of either 24. property shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such an event, when possession of the subject property shall be taken by the condemning authority, the term hereby granted and all rights of party leasing the property from the owner hereunder shall immediately terminate. In the event of any partial condemnation, the party leasing the subject property from the owner may elect to terminate the portion of this Agreement pertaining to the lease of the property subject to the condemnation or to continue to lease the remaining acreage. The party leasing from the owner shall be entitled to an apportionment of the award reimbursing it for expenditures which it might have made on account of any improvements or alterations made or erected on the condemned property which have not been fully amortized. The party leasing from the owner may file such claims against the condemning authority as are permitted by law for the loss of its leasehold interest, business dislocation damages, moving expenses or other damages caused by such taking or appropriation. In the event the lease is continued of the remaining acreage after a partial condemnation, there shall be no reimbursement or adjustment to any terms of this Agreement, other than the adjustment of rental payment, if applicable, that is attributable to the portion of the condemned property and the adjustment to the respective Exhibit to show the revised leased area. If the lease of one property is terminated in its entirety by operation of this Paragraph, the portion of this Agreement pertaining to the lease of the property unaffected by the condemnation shall continue to be in full force and effect.

25. <u>Amendments/Modification</u>. No amendments or modifications to this Lease shall be binding unless in writing and signed by both parties.

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

27. <u>Integration</u>. This document comprises the entire Agreement between the parties hereto relative to this matter and supersedes any prior agreements or representations, whether verbal or in writing.

28. <u>Laws of Delaware</u>. The Lease shall be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to its conflicts of law principles. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Delaware.

29. <u>Quiet Enjoyment</u>. The parties, upon the due performance of all the terms, covenants, conditions, and agreements herein contained to be kept and performed set forth herein as the party's obligations, shall at all times during the term hereby granted, peaceably and quietly enjoy the property which the party is leasing from the other party, subject to the limitations set forth in this Agreement.

30. <u>Signature Authority</u>. The individuals signing on behalf of the County and the Davidsons represent and warrant that they have the full and complete authority to execute this Agreement.

31. <u>Opportunity to Consult with Legal Counsel</u>. The parties acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Agreement.

32. <u>Time</u>. Time is of the essence. The term "day" as used herein shall mean calendar day, unless specifically defined as a "business day," which shall be deemed to exclude weekends and State-recognized holidays.

33. <u>No Waste, Nuisance or Unlawful Use</u>. Neither party shall commit or allow any waste or nuisance to be committed on the property which they are leasing from the other party, including but not limited to an odor nuisance from the spray irrigation operations. The lessee of each property also shall not use or allow the County's Property or Davidsons' Property, as applicable, to be used for any unlawful purpose.

34. <u>Legal Construction</u>. The parties acknowledge that each had the ability to negotiate terms and conditions, and this Agreement shall not be construed against the party who prepared and drafted the Agreement documents. If one or more of the provisions of the Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the

Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.

35. <u>Headings and Subheadings</u>. The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Lease or alter their rights set forth herein.

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

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

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

[signature/notary pages follow]

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

SUSSEX COUNTY

(Seal)

Michael H. Vincent Sussex County Council President

Approval as to Form:

WITNESS

Assistant County Attorney

THE DAVIDSONS

_(Seal)

Norman E. Davidson, Jr.

(Seal)

Benita Banks Davidson

WITNESS

WITNESS

16

STATE OF DELAWARE

) ss. SUSSEX COUNTY)

Be it remembered that on this _____ day of _____, 2017, personally came before me, a notary public in and for the State and County aforesaid, <u>Michael H. Vincent</u>, known or satisfactorily proven to me to be the President and of the Sussex County Council, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the County.

As given under my hand and seal of office this day and year aforesaid.

Notary Public	
Name:	

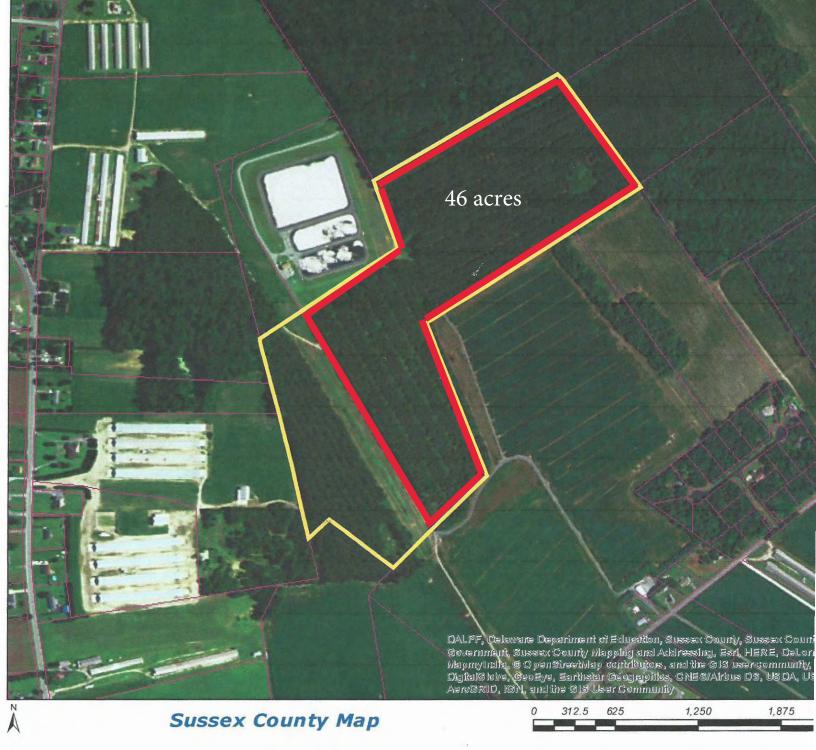
STATE OF) DELAWARE) ss. SUSSEX COUNTY)

Be it remembered that on this _____ day of ______, 2017, personally came before me, a notary public in and for the State and County aforesaid, <u>Norman E. Davidson, Jr. and Benita Banks Davidson</u>, known or satisfactorily proven to me to be the party to the foregoing Agreement, and acknowledged that, in his/her capacity as such, s/he executed this Agreement in his/her own hand.

As given under my hand and seal of office this day and year aforesaid.

Notary Public		-	
Name:	_		

Davidson Property- Lease Acreage (outlined in red)



Tax Map 233-6.00-123

Exhibit A

Sussex County Owned Property

DAL; ;, de k ware de parine i tor Estrato i , si seez Collify, si seez Collif Coverine r', statez Collify Mapping and Avdre si g, si i, Hiar S, de Lo n Mapmy Edia, © Opelisite Map collificitis, and the OR user community, Digital labe, Geolife, Barlis hife eographies, CX Es Albie DS, USDA, US Actoring, DX, and the OP User community

1,250

1,875

625

312.5

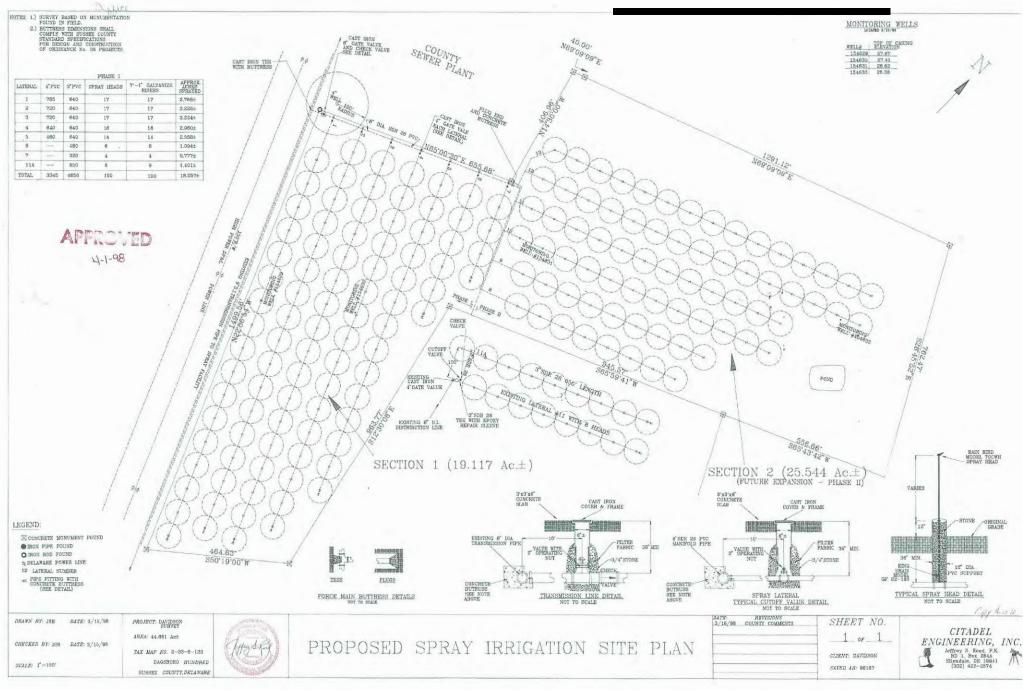
Sussex County Map

NA

Tax Map 233-6.00-124



Exhibit C





Sussex County Map

625 1,250 1,875 312.5

Tax Map 233-6.00-123



ENGINEERING DEPARTMENT

ADMINISTRATION AIRPORT & INDUSTRIAL PARK ENVIRONMENTAL SERVICES PUBLIC WORKS RECORDS MANAGEMENT UTILITY ENGINEERING UTILITY PERMITS UTILITY PLANNING FAX



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOSEPH WRIGHT, P.E. ASSISTANT COUNTY ENGINEER

<u>Memorandum</u>

TO: Sussex County Council The Honorable Michael H. Vincent, President The Honorable George B. Cole, Vice President The Honorable Samuel R. Wilson, Jr. The Honorable I.G. Burton, III The Honorable Robert B. Arlett

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

(302) 855-7718

(302) 855-7774

(302) 855-7730

(302) 855-7703

(302) 854-5033

(302) 855-7717

(302) 855-7719

(302) 855-1299

(302) 855-7799

RE: WOLFE NECK RWF Administration Building Remediation and Repairs Request for Proposal Results and Award

DATE: May 16, 2017

The Wolfe Neck and Inland Bays Regional Wastewater Facilities were constructed in the mid 1990's utilizing the same architectural set of construction documents for the administration buildings. Both buildings have been plagued with significant leakage caused by incorrect flashing installation over and around the windows for years. The continuous water damage caused an extensive mold problem at the Wolfe Neck building triggering remedial action by Serv-Pro on an emergency basis. The building had to be vacated on February 13th of this year after more mold was discovered throughout the building. In the interim, the Environmental Services team is operating out of a pole barn, hence time is of the essence to restore the administration building to its full functionality.

The necessary repairs were difficult to procure without a detailed architectural plan but the Engineering Department, in cooperation with Environmental Services could secure three (3) quotations based on a written scope and subsequent site visits of the prospective vendors. (see attached quotation summary) The lowest, responsive proposal for the base scope of work was submitted by Willow Construction, LLC of Easton, Maryland in the amount of \$48,900.00. During the solicitation process it became apparent that the concrete block building should also be pressure washed, completely re-caulked and sealed to further improve the weather tightness. Willow Construction, LLC offered an alternate to provide that service on a time and material basis with an amount not to exceed \$7,000.00. The Sussex County Engineering Department recommends awarding the project to Willow Construction, LLC for the base scope and the unsolicited time and material building sealing alternate.



The costs for the Wolfe Neck administration building repairs will provide a basis to determine the exact costs for repairs at the Inland Bays building, as they are of identical construction. Once these costs are known, the Department will approach Council for consideration of a change order to remediate the leakage at the Inland Bays administration building before mold growth causes another emergency. Furthermore, part of the laboratory counter space had to demolished to remove the mold. The Environmental Services team is separately procuring the replacement of the countertops.

ENGINEERING DEPARTMENT

ADMINISTRATION	
AIRPORT & INDUSTRIAL PARK	
ENVIRONMENTAL SERVICES	
PUBLIC WORKS	
RECORDS MANAGEMENT	
UTILITY ENGINEERING	
UTILITY PERMITS	
UTILITY PLANNING	
FAX	

(302) 855-7718 (302) 855-7774 (302) 855-7730 (302) 855-7703 (302) 854-5033 (302) 855-7717 (302) 855-7719 (302) 855-1299 (302) 855-7799





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOSEPH WRIGHT, P.E. ASSISTANT COUNTY ENGINEER

WOLFE NECK ADMIN BUILDING REMEDIATION REPAIRS

BIDDER	BID AMOUNT
Willow Construction*	\$48,900.00
Green Diamond Builders	\$53,211.00
Wertz & Co.	\$69,670.00

*Apparent Low Bidder



ENGINEERING DEPARTMENT

ADMINISTRATION AIRPORT & INDUSTRIAL PARK ENVIRONMENTAL SERVICES PUBLIC WORKS RECORDS MANAGEMENT UTILITY ENGINEERING UTILITY PERMITS UTILITY PLANNING FAX



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOSEPH WRIGHT, P.E. ASSISTANT COUNTY ENGINEER

<u>Memorandum</u>

- TO: Sussex County Council The Honorable Michael H. Vincent, President The Honorable George B. Cole, Vice President The Honorable Samuel R. Wilson, Jr. The Honorable I.G. Burton, III The Honorable Robert B. Arlett
- VIA: Hans Medlarz, P.E., County Engineer

(302) 855-7718

(302) 855-7774

(302) 855-7730

(302) 855-7703

(302) 854-5033

(302) 855-7717

(302) 855-7719

(302) 855-1299

(302) 855-7799

- FROM: Joseph Wright, P.E. Assistant County Engineer
- RE: PUMP STATION 210 FORCE MAIN TO IBRWF: INDIAN MISSION AND BEAVER DAM ROADS PROJECT NO. 15-08A CLAIMS SETTLEMENT
- DATE: May 16, 2017

The Contract 15-08A, construction of the 24-inch diameter force-main along Indian Mission and Beaver Dam Roads, connecting Pump Station 210 with the Inland Bays RWF was first bid on September 10, 2015. Unfortunately, there were discrepancies with the bids and Council agreed to reject all bids on September 29, 2015. The project documents were modified and re-bid on December 3, 2015. Council ultimately awarded the contract to Allan Myers, Inc, the lowest responsible bidder in an amount of \$3,977,377 on December 15, 2015. The second and third lowest bids were \$1.15 and \$2.2M higher respectively. Those bids lined up better with the Engineer's estimate at \$2.03M higher than the low bidder. This information is presented to provide background and perspective on the significantly lower bid price for the contract, thus allowing no room for the contract to accept any scope items not strictly and clearly represented in the bid documents. Quickly contractual disputes developed with multiple areas of disagreements primarily relating to the three following major areas:

1. <u>Groundwater Elevation:</u> Subsurface conditions near the Inland Bays RWF were substantially wetter than the contractor expected reflecting, in his opinion a changed condition from the information presented in the bid documents. The claim for this work was approximately \$130,000 and the suggested payment for contingency items/materials documented as completed/installed is \$97,180 (Items C-1 and C-4). Interpretation of



specific information was debated over weeks but the work continued and there is no disagreement that the contingency materials incorporated in the work benefited the County.

- 2. <u>Unsuitable Trench Backfill:</u> The contract documents required the backfill material in the road right-of-way to be high quality Type C material however, the encountered material did not meet the required quality criteria preventing re-use of a significant amount. At some point, agreement was reached to utilize imported material and payment was made from that point forward, in accordance with the documents. The amount in dispute is \$111,040 (Item C-2—Type C Borrow and Modified Type C) for material imported prior to reaching an agreement for utilizing imported materials as well as the costs associated with drying, mixing with imported materials and re-using acceptable excavated materials.
- 3. <u>Utility Conflicts:</u> During the design phase, efforts were made to obtain the best information possible regarding the existence and location of all utilities. Plans reflected information obtained directly from the utility companies (primarily Verizon and Mediacom but also Delmarva Power to a lesser extent) Information was further verified by our design team with additional subsurface testing to determine depths and locations. In construction, utility lines were actually encountered in greater numbers and direct conflict with the design. The contractor attempted to work around existing lines with an advance crew not anticipated in their bid and yet still had delays to their installation progress in varying degrees. Records were kept regarding extra costs that could be documented but the effect on productivity due to utility interference is very difficult for either party to exactly defend/document. The \$191,800 payment of Item C-5 (Crew Hour Downtime) is a substantial decrease from the contractor's requested amount of \$508,686.

The contractor, after months of negotiating these outstanding issues, requested settlement or proceeding to mediation. It is the position of the Engineering Department that the County's best interests are served by settling these outstanding issues in the total amount of \$400,020, thus eliminating an uncertain possibility of paying substantially more in contract costs plus significant costs in attorney, expert witness and engineering fees. The \$400,020 is within the contingency provided in the contract and thus will not require additional funds to be budgeted and results in completion close to the initial time frame, allowing us to continue with the overall completion of the tie-in from PS210 to IBRWF, at a cost approximately \$2M less than initially estimated.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is dated as of May 16, 2017 ("Effective Date") and is entered into by and among Allan Myers MD, Inc. ("Myers) and Sussex County, a political subdivision of the State of Delaware (the "County"). Myers and the County shall collectively be referred to in this Settlement Agreement as the "Parties" and each individually as a "Party".

Background

Myers and the County entered into Contract 15-08A (the "Contract") pursuant to which Myers agreed to install 24" force main and other related work, all as further specified in the Contract, for a project referred to as the Pump Station 210 Force Main To IBRWF: Indian Mission and Beaver Dam Roads (the "Project").

Myers submitted certain requests for additional compensation to the County for alleged additional work at the Project. Such requests shall be referred to in this Settlement Agreement as the "Disputed Work" and are listed in Exhibit A to this Settlement Agreement. The amounts submitted by Myers for reimbursement are also submitted in Exhibit A. The County disputes that it owes any sums to Myers for the Disputed Work.

To avoid the time and expense of litigation, and without any admission of fault and/or liability, the Parties desire to resolve their differences and settle their disputes as further specified in this Settlement Agreement.

Now therefore, in consideration of the terms and conditions set forth in this Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Myers and the County hereby agree as follows:

1. <u>Settlement Amount: Time Extension</u>.

a. The County shall pay to Myers \$400,020.00 (the "Settlement Amount"), and shall do so on or before May 31, 2017. For billing purposes only, the Parties have agreed to a breakdown of the Settlement Amount, and such breakdown is included in Exhibit A.

b. The County and Myers hereby agree that Myers is entitled to a time extension of 66 Days. Accordingly, the Substantial Completion Date is extended to June 4, 2017.

2. <u>Release by Myers</u>. Upon receipt of the Settlement Amount, Myers on its own behalf and on behalf of its employees, officials, directors, affiliates, and agents release the County, and its elected and appointed officials, employees, and agents from any and all actions, causes of actions in law, equity, indemnity or otherwise, suits, debts, liens, contracts, promises, liabilities, claims, demands, costs (including attorneys' fees), or expenses of any nature, even if unknown, contingent or unforeseen (collectively referred to as "Claims"), which Myers has

or may hereafter have in relation to or arising out of the Disputed Work.

3. <u>No Admission of Liability</u>. This Settlement Agreement represents the resolution of disputed claims. Nothing contained in this Settlement Agreement shall be construed as an admission of liability on the part of any of the Parties to the Settlement Agreement for any purpose.

4. Miscellaneous:

- a. <u>Successors in Interest</u>. This Settlement Agreement shall inure to the benefit of and bind each Party to the Settlement Agreement, and their respective successors and assigns.
- b. <u>Severability: Construction</u>. If any provision of this Settlement Agreement is held invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision may be severed and the remainder of the Settlement Agreement shall continue in full force and effect, unless severance of the invalid or unenforceable provision would result in such a material change so as to cause the terms of this Settlement Agreement to operate to deprive one of the Parties of the consideration for which it has bargained. Each Partyhas cooperated in the drafting and preparation of this Settlement Agreement. As a result, this Settlement Agreement shall not be construed against any Party on the basis that such Party was the drafter.
- c. <u>Choice of Law</u>. The Settlement Agreement shall be governed by and enforced in accordance with the laws of State of Delaware, without regard to its (or any other state's) conflict of law principles. <u>Any disputes arising under this Agreement shall be resolved in a court of competent jurisdiction in the State of Delaware.</u>
- d. <u>Entire Agreement</u>. This Settlement Agreement expresses the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes any and all prior or contemporaneous agreements, representations, or understandings of the Parties. No supplement, modification, or amendment of this Settlement Agreement shall be binding <u>unless executed in writing and signed by all Parties to the Settlement Agreement</u>.
- e. <u>Waiver</u>. No breach of any provision of this Settlement Agreement can be waived unless such waiver is in writing and signed by the Party waiving the provision. The waiver of a breach of any provision of this Settlement Agreement shall not be deemed to be a waiver of any other provision of the Settlement Agreement.
- f. <u>Execution in Counterparts</u>. This Settlement Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the original, facsimile or scanned signature of each of the Parties hereto. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon, but all of which together shall constitute one and the same instrument.

- g. <u>Background Paragraphs</u>. The "Background" paragraphs are expressly incorporated into this Settlement Agreement as material provisions and are not mere recitals.
- h. <u>Authority</u>. The representative of each Party executing this Settlement Agreement hereby represents and warrants that he or she is authorized to enter into this Settlement Agreement and that any appropriate corporate or other resolution or authorization allowing such person to so execute this Settlement Agreement has been duly passed and obtained, and that this Settlement Agreement shall be the legal, valid, and binding obligation of such Party. Each Party warrants that it has not assigned, pledged or otherwise conveyed its rights or obligations relating to the matters herein.
- i. <u>Other terms. Myers warrants that no other person or other legal entity has any interest in any claims, demands, causes of action, obligations, damages, or liabilities covered by this Agreement, and has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability covered by this Agreement</u>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In witness whereof, the duly authorized representatives of each of the Parties have executed this Settlement Agreement, intending to be legally bound, as of the Effective Date set forth above.

Allan Myers MD, Inc.

Sussex County, a political subdivision of the State of Delaware

Ву:	By:
Name:	Name:
Title:	Title:

Approved as to form:

Assistant Sussex County Attorney

Exhibit A

Disputed Work

Disputed Work*	Amount Submitted	Settlement Amount Breakdown
#57 Stone	\$81,692.00	\$81,692.00 (C-4 Contract Item)
Undercut	\$15,488.00	\$15,488.00 (C-1 Contract Item)
Crew Inefficiencies	\$508,686.00	\$191,800.00 (C-5 Contract Item)
Compensable Time	\$120,900.00	\$0
Advance Utility Crew	\$48,397.00	\$0
Type C Borrow	\$14,750.00	\$14,720.00 (C-2 Contract Item)
Storm Cleanup	\$14,652.00	\$0
HMA Repairs	\$19,580.00	\$0
Modified Type C	\$96,320.00	\$96,320.00 (C-2 Contract Item)



SUSSEX COUNTY GOVERNMENT GRANT APPLICATION

	SECTION 1 APPLICANT IN	IFORMATION	
ORGANIZATION NAM	E: Georgetown-Millsk	oro Rotary Club	
PROJECT NAME:	Flags for Heroes		
FEDERAL TAX ID:	22-2804785	NON-PROFIT:	YES 🗌 NO
DOES YOUR ORGANIZ	ATION OR ITS PARENT ORGANIZA	TION HAVE A RELIGIOUS AF	FILIATION?
	🗌 YES 🔳 NO 🛛 *IF YES,	FILL OUT SECTION 3B.	
ORGANIZATION'S MIS	SION:		
-	Deat Office Dav	101	
ADDRESS:	Post Office Box	164	e Characteristic contraction and a second strategy of the
	Georgetown	DE	19947
	(сітч)	(STATE)	(ZIP)
CONTACT PERSON:	Marlene Brown		
TITLE:	Member		
PHONE:	302-270-1078 EMAIL:		
$\frac{1}{2} = \frac{1}{2} \left[\frac{1}{2} + 1$	No		
	TOTAL FUNDING REQUEST		orana.
Has your organization the last year?	received other grant funds from S	ussex County Government in	YES 🗌 NO
If YES, how much was i	received in the last 12 months?		\$600
If you are asking for fur building in which the fu	nding for building or building impr Inding will be used for?	ovements, do you own the	YES NO
Are you seeking other s	ources of funding other than Susse	ex County Council?	YES 🗌 NO
If YES, approximately v	what percentage of the project's fu	nding does the Council grant	represent?4%

PRO	DGRAM CATEGORY (choose all that app	ly)
Fair Housing	Health and Human Services	Cultural
]Infrastructure ¹	Other Patriotic, Community Service	Educational
] Disability & Special Needs] Elderly Persons] Minority	BENEFICIARY CATEGORY Uictims of Domestic Violence Low to Moderate Income ² Other Veterans/Community Needs	Homeless

SECTION 3: PROGRAM SCOPE

A. Briefly describe the program for which funds are being requested. The narrative should include

the need or problem to be addressed in relation to the population to be served or the area to benefit.

This is the 4th year of the Georgetown-Millsboro Rotary Club's Flags for Heroes Project. It has been well received and anxiously anticipated by the community as residents are now asking each year when the flags will start to fly. At the request of the community, we have also placed flags on the Circle to honor and commemorate other events and people. Each \$50 donation sponsors a flag to honor a military member, first responder or other hero (past or present). Over 700 flags will be proudly displayed around the Circle in Georgetown, along Route 404 at Delaware Technical and Community College and across from the Millsboro Post Office the week before and after Memorial Day 2017. Proceeds support local youth programs, scholarships and Rotary's community projects. Last year's grant proceeds supported the following organizations:

American Red Cross \$1,000 Rotary Foundation \$1,500 First State Community Action Ageny \$2,000 Sussex County Crisis Housing Service \$1,000 Delaware Technical & Community College \$1,500 Easter Seals \$1,700 The Dictionary Project \$1,320 Ronald McDonald House \$1,000 Cancer Support Community \$1,000 Friends of the Delaware Veterans \$100 Christian Storehouse \$200 American Cancer Society \$250 High School Scholarships \$5,200 Georgetown-Millsboro Rotary Endowment\$3,900

This project is handled through the Georgetown-Millsboro Rotary Club's account at the Delaware Community Foundation and the Tax ID number listed is for the DCF. COntributions are made payable to the DCF and expenses and grants are handled by the account at the Foundation.

The Georgetown-Millsboro Rotary Club is pleased to carry out this project to honor our nation's heroes and to support worthy causes in our community. We are requesting \$1,000 from the County Council to support this community project.

SECTION 4: BUDGET	
REVENUE Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	25,000.00
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Newspaper Insert	-\$ 1,700.00
DCF Administrative Fees	-\$ 750.00
Volunteer Expenses	-\$ 200.00
Fees for Events	-\$ 100.00
TOTAL EXPENDITURES	\$ 0.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ -25,000.0 0

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the <u>Georgetown-Millsboro Rotary Club</u> agrees that: (Name of Organization)

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

SECTION 5: STATEMENT OF ASSURANCES (continued)

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

ant/Authorized Official Vitness

5-2-17 Date

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

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

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

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

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

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

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

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

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

plicant/Authorized Official

5-2-17 Date

Vincent



SUSSEX COUNTY GOVERNMENT GRANT APPLICATION

ORGANIZATION NAME: Indian River School District Odyssey of the Mind Program			
PROJECT NAME: IRSD OOTM Trip to World Finals			
FEDERAL TAX ID:	51-6000279	NON-PROFIT:	YES N
DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?			
YES Image: No *IFYES, FILL OUT SECTION 3B. Odyssey of the Mind is an International educational program that provides creative problem-solving opportunities for students of all ages. Students work as a team and apply their creativity to solve problems that range from building mechanical devices to presenting their own interpretation of literary classifies. They evaluate ideas, make decisions on their own and work within a budget to solve their chosen problem. Teams then present their problem and state competitions. If students win at the state level for their problem and solution, the teams are invited to the World Finals competition. Thousands of teams throughout the United States and 25 other countries participate in this unique program. The program is all about creativity! Students are rewarded for how they apply their knowledge, skills and telents, and not for coming up with just one right answer. In Odyssey of the Mind, there is never just one right			
	problem. Teams then present their solutions for t their problem and solution, the teams are invited t other countries participate in this unique program. knowledge, skills and telents, and not for coming	o the World Finals competition. Thousands of teams through The program is all about creativity! Students are rewards	its win at the state level for ghout the United States and ; d for how they apply their
ADDRESS:	problem. Teams then present their solutions for t their problem and solution, the teams are invited t other countries participate in this unique program. knowledge, skills and telents, and not for coming	b) the World Finals competition. Thousands of teams through The program is all about creativity! Students are rewards up with just one right answer. In Odyssey of the Mind, then	its win at the state level for ghout the United States and ; d for how they apply their
ADDRESS:	problem. Teams then present their solutions for t their problem and solution, the teams are invited other countries participate in this unique program. knowledge, skills and telents, and not for coming answerf	b) the World Finals competition. Thousands of teams through The program is all about creativity! Students are rewards up with just one right answer. In Odyssey of the Mind, then	its win at the state level for ghout the United States and ; d for how they apply their
ADDRESS:	problem. Teams then present their solutions for t their problem and solution, the teams are invited other countries participate in this unique program. knowledge, skills and telents, and not for coming answerf	b the World Finals competition, Thousands of teams throug The program is all about creativity! Students are rewards up with just one right answer. In Odyssey of the Mind, then etc.	Its win at the state level for glout the United States and ; d for how they apply their e is never just one right
ADDRESS: CONTACT PERSON:	problem. Teams then present their solutions for t their problem and solution, the teams are invited t other countries participate in this unique program knowledge, skills and telents, and not for coming answert 31 Hossier Street Selbyville	D the World Finals competition, Thousands of teams throu. The program is all about creativity! Students are rewards up with just one right answer. In Odyssey of the Mind, then DE	Its win at the state level for glout the United States and ; d for how they apply their e is never just one right 19975
ADDRESS: CONTACT PERSON: TITLE:	Toblem. Teams then present their solutions for the teams are invited to their problem and solution, the teams are invited to the roundries participate in this unique program. Anowledge, skills and telents, and not for coming answert Selbyville (CITY) Lisa Forney	D the World Finals competition, Thousands of teams throu. The program is all about creativity! Students are rewards up with just one right answer. In Odyssey of the Mind, then DE	Its win at the state level for glout the United States and ; d for how they apply their e is never just one right <u>19975</u> (ZIP)

TOTAL FUNDING REQUEST:	
Has your organization received other grant funds from Sussex County Government in the last year?	🗌 YES 🏾 NO
If YES, how much was received in the last 12 months?	مى مەرىپىيە مەرىپىيە مەرىپىيە مەرىپىيە مەر
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?	YES INO
Are you seeking other sources of funding other than Sussex County Council?	YES NO
If YES, approximately what percentage of the project's funding does the Council grant i	represent? 8%

	SECTI	ON 2: PROGRAM DESCRIPTION	
	PRO	GRAM CATEGORY (choose all that ap	ply)
	🗌 Fair Housing	🗌 Health and Human Services	Cultural
	Infrastructure ¹	Other	🔳 Educational
		BENEFICIARY CATEGORY	
	🗌 Disability & Special Needs	🗌 Victims of Domestic Violence	Homeless
	Elderly Persons	Low to Moderate Income ²	Youth
	☐ Minority	Other	
		BENEFICIARY NUMBER	
	Approximately the total num	ber of Sussex County Beneficiaries serv	red annually by this program.
	Approximately the total hun.	18 students	eu annuany by uns program:
1			

SECTION 3: PROGRAM SCOPE

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

We are asking for funding to help send three winning teams (18 students) to the World Finals competition at Michigan State University from May 23rd through May 28th, 2017. It will cost aproximately \$1,300.00 to send each child to the competition. This cost includes, airfare, room/meals, shuttles to and from airports, transporting their problem solution props/sceneery, t-shirts for opening/closing ceremonies, and state pins for trading with students from other states and countries.

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

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

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

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

SECTION 4: BUDGET	
REVENUE Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	4,500.00
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Airfare	-\$ 2,412.00
BWI Shuttle	-\$ 1,350.00
DTW Shuttle	-\$ 900.00
Room/Meals	-\$ 11,070.00
T-shirts	-\$ 432.00
Prop/Scenery Transportation	-\$ 900.00
State Pins	-\$ 5,940.00
TOTAL EXPENDITURES	\$ 23,004.00 \$ 18,504.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 18,504.00

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SECTION 5: STATEMENT OF ASSURANCES

Indian River School District Odyssey of the Mind Program agrees that: If this grant application is awarded funding, the (Name of Organization) For non-religious organizations, all expenditures must have adequate documentation and must be 1) . expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the ۰. submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs. For religious organizations, all accounting records and supporting documentation shall be 2) provided for inspection by Sussex County after the award has been made by County Council but before the funding is released. No person, on the basis of race, color, or national origin, should be excluded from participation in, 3) be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

	SECTION 5: STATEMENT OF	ASSURANCES (continued)
4)	All information and statements in this applic information and belief.	ation are accurate and complete to the best of my
5)	All funding will benefit only Sussex County re	esidents.
6)		e defined as public documents and available for
7)		ar purposes, i.e., non-religious purposes and shall not
8)		sed in violation of the requirements of this grant,
	the awarded funding shall be reimbursed	to Sussex County within a timeframe designated
	by Sussex County by written notice.	
	Liva Formay	4-28-17
	Applicant/Authorized Official	Date
	Auchers Carper	4-28-17
	Witness	Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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



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

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

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

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

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

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

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

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

Applicant/Authorized Official

Indian River school District Odyssey of the Mind Coordinator <u>4-28-17</u> Date



SUSSEX COUNTY GOVERNMENT GRANT APPLICATION

	SECTION 1 APPLICANT	INFORMATION	
	Community Intograt		
ORGANIZATION NAME:		Conception of the second of th	······································
PROJECT NAME:	Sussex County, DE	Expansion & Enhance	ment
FEDERAL TAX ID:	23-2648381	NON-PROFIT: [🔳 YES 🗌 NO
DOES YOUR ORGANIZA	ΓΙΟΝ OR ITS PARENT ORGANI	ZATION HAVE A RELIGIOUS AFF	ILIATION?
	YES NO *IF YE	S, FILL OUT SECTION 3B.	
ORGANIZATION'S MISS	individualized employme equality and community.		-sustainability,
ADDRESS:	a second s	rated Services, Inc. (C	15)
	18 W. Main Stree	÷.	×
	Middletown	DE	19709
	(CITY)	(STATE)	(ZIP)
CONTACT PERSON:	Sandi Hanley		
TITLE:	Director of CIS in	Delaware	
PHONE:	302-545-6761 _{EMA}	_{IL:} Sandi.hanley@cisv	vorks.org
	TOTAL FUNDING REQUE	st: \$1,645.00	-
Has your organization ro the last year?	eceived other grant funds fron	n Sussex County Government in	YES NO
If YES, how much was re	ceived in the last 12 months?		n/a
If you are asking for fund building in which the fun	ing for building or building im ding will be used for?	provements, do you own the	YES NO
Are you seeking other so	urces of funding other than Su	ssex County Council?	YES NO
If YES, approximately w	hat percentage of the project's	funding does the Council grant	represent? 29.9%

51011	ON 2: PROGRAM DESCRIPTION	and the second second
PRO	GRAM CATEGORY (choose all that ap	ply)
Fair Housing	Health and Human Services	Cultural
Infrastructure ¹	Other	Educational
🔳 Disability & Special Needs	BENEFICIARY CATEGORY	Homeless
Elderly Persons	Low to Moderate Income ²	Youth
Minority	□ Other	
	BENEFICIARY NUMBER	
Approximately the total num	ber of Sussex County Beneficiaries serve 120	ed annually by this program

SECTION 3: PROGRAM SCOPE

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

Thank you for the opportunity to request partial grant funding for our work in Sussex County, DE.

In FY 2015-2016, we served 403 individuals statewide. In Sussex County, DE, we served 64 individuals with the Division of Vocational Rehabilitation (DVR) and 47 with the Division of Developmental Disabilities Services (DDDS).

We started in January 2017 with a Sussex County caseload of 43 DVR consumers (with 6 pending referrals) and 37 active DDDS consumers. We have hired new job developers and job coaches within Sussex County, and it is incumbent upon us to strengthen and enhance our local presence and support our Southern Delaware staff.

Having satellite offices enables staff to work more efficiently including lap tops that enable our staff to meet at locations that are easier for the Sussex County consumers to access, especially if they don't have reliable transportation or Internet access. The bulk of our funding comes through state contracts and much of the required documenting is non-billable. Therefore, CIS seeks donations and grants to help support the good work our staff does on behalf of individuals seeking employment who have special needs and/or disabilities.

Thank you for your consideration

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

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

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

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

N/A

SECTION 4: BUDGET	
REVENUE Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	5,500.00
EXPENDITURES Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Personnel time on transition	-\$ 1,100.00
Office Equip/furnishings, desks, chairs, etc	-\$ 400.00
Phones - Internet service - fax, copy	-\$ 980.00
Staff tools/ laptops for direct field work w/consumers	-\$ 645.00
Quarterly Sussex staff strategic sessions	-\$ 400.00
Chamber memberships / initial moving expenses and misc	-\$ 1,775.00
Transportation costs for working projects (fuel/bus)	-\$ 200.00
TOTAL EXPENDITURES	-\$ 5,500.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 0.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the <u>Community Integrated Services, Inc. (CIS)</u> agrees that: (Name of Organization)

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

SECTION 5: STATEMENT OF ASSURANCES (continued) All information and statements in this application are accurate and complete to the best of my 4) information and belief. All funding will benefit only Sussex County residents. 5) All documents submitted by the applicant are defined as public documents and available for 6) review under the Freedom of Information Act of the State of Delaware. All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not 7) be used to advance or inhibit religious purposes. In the event that the awarded funding is used in violation of the requirements of this grant, 8) the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.) pm 27, 17 Date Sandr. Applicant/Authorized Øfficial nne Witness

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

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

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

Sandry C. Haple Applicant/Authorized Official Title

Council District No. 4 – Cole Tax I.D. No. 234-25.00-31.02, 234-25.00-31.05, 234-25.00-31.04, and 234-25.00-31.00 911 Address: 36625 Long Neck Road and 20628 Long Beach Drive, Millsboro

ORDINANCE NO.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT TO ORDINANCE NO. 2378 FOR CONDITIONAL USE NO. 1963 FOR A CAMPGROUND TO AMEND CONDITION OF APPROVAL NO. 9 RELATING TO PARKING OF "PARK MODEL RV'S" AND CAMPGROUND FOOD TRAILER(S) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS

WHEREAS, on the 27th day of March 2017, a conditional use application, denominated

Conditional Use No. 2089, was filed on behalf of Massey's Landing Properties, LLC; and

WHEREAS, on the _____ day of ______ 2017, 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. 2089 be ; and

WHEREAS, on the _____ day of ______ 2017, 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. 2089 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 both sides of the eastern end of Long Neck Road, and being more particularly described per the attached deed prepared by Morris James, LLP, said parcel containing 54.33 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.

Council District No. 5 – Arlett Tax I.D. No. 134-18.00-31.01 and 134-18.00-31.02 911 Address: 34742 Rickards Road, Frankford

ORDINANCE NO.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT TO ORDINANCE NO. 1533 FOR CONDITIONAL USE NO. 1446 FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE TO REQUEST AN AMENDMENT TO CONDITION NO. 3 REGARDING HOURS OF OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS

WHEREAS, on the 5th day of April 2017, a conditional use application, denominated Conditional Use No. 2095, was filed on behalf of Sposato Investments, LLC; and

WHEREAS, on the ____ day of _____ 2017, 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. 2095 be _____; and

WHEREAS, on the _____ day of ______ 2017, 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. 2095 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 south side of Rickards Road, approximately 0.62 mile northeast of Daisey Road, and being more particularly described per the attached deed prepared by Tunnell & Raysor, P.A., said parcel containing 5.0 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.

Council District No. 2 – Wilson Tax I.D. No. 133-2.00-21.00 911 Address: 24487 DuPont Boulevard, Georgetown

ORDINANCE NO.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOBILE AND TRUCK SALES, SERVICE, AND REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.01 ACRES, MORE OR LESS

WHEREAS, on the 17th day of April 2017, a conditional use application, denominated Conditional Use No. 2097, was filed on behalf of Christopher Lopez; and

WHEREAS, on the ____ day of _____ 2017, 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. 2097 be _____; and

WHEREAS, on the _____ day of ______ 2017, 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. 2097 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the east side of DuPont Boulevard (Route 113), approximately 1,297 feet south of Wood Branch Road, and being more particularly described per the attached legal description, said parcel containing 1.01 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.

Council District No. 2 - Wilson Tax I.D. No. 530-14.00-24.00 (portion of) 911 Address: 14485 Sussex Highway, Bridgeville

ORDINANCE NO.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 13.063 ACRES, MORE OR LESS

WHEREAS, on the 8th day of December 2016, a zoning application, denominated Change of Zone No. 1819, was filed on behalf of MTC Properties, LLC; and

WHEREAS, on the _____ day of _____ 2017, 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. 1819 be

____; and

WHEREAS, on the _____ day of ______ 2017, 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 of CR-1 Commercial Residential 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 east side of Sussex Highway (Rt. 13), approximately 1,226 feet south of Adams Road, and being more particularly described in the legal description prepared by MTC Properties, LLC, said parcel containing 13.063 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.