

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

**MEETING:  
November 5, 2019**

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**Sussex County Council  
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## COUNTY COUNCIL

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



# Sussex County

DELAWARE  
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## SUSSEX COUNTY COUNCIL

### AGENDA

NOVEMBER 5, 2019

**1:00 P.M.**

#### Call to Order

#### Approval of Agenda

#### Approval of Minutes

#### Reading of Correspondence

#### Public Comments

#### Todd Lawson, County Administrator

1. Recognition of Retiree – Steven Bradley, Paramedic
2. Administrator's Report

#### Gina Jennings, Finance Director

1. Human Service Grants

#### Hans Medlarz, County Engineer

1. Western Sussex Transmission Facilities, Contract 4, Pump Stations, Project S19-28
  - A. Recommendation to Award
2. Robinsonville Road Core Infrastructure, Project S19-16
  - A. Recommendation to Award



**3. Davis, Bowen & Friedel, Inc.**

**A. Ellendale Water District Agreement - Design Services**

**John Ashman, Director of Utility Planning**

1. Addendum No. 1 to Memorandum of Understanding with Beebe Medical Center

**Introduction of Proposed Zoning Ordinances**

**Council Members' Comments**

**1:30 p.m. Public Hearings**

**Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc.**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT FOR SLUDGE AND WASTEWATER SPRAY IRRIGATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 351.86 ACRES, MORE OR LESS” (property lying on both sides of Mount Joy Road, approximately 52 feet west of Townsend Road, and being on both sides of Townsend Road, approximately 157 feet south of Mount Joy Road, and being on the southeast corner of Mount Joy Road and Townsend Road, the northeast corner of Maryland Camp Road and Townsend Road, and the southwest corner of Maryland Camp Road and William Street Road) (Tax I.D. No. 234-28.00-1.00, 2.00, and 3.00) (911 Address: None Available)**

**Executive Session – Collective Bargaining, Land Acquisition and Personnel pursuant to 29 Del.C.§10004(b)**

**Possible Action on Executive Session Items**

**Adjourn**

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Sussex County Council meetings can be monitored on the internet at [www.sussexcountyde.gov](http://www.sussexcountyde.gov).

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

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

Agenda items may be considered out of sequence.

###

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 29, 2019**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 29, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>Irwin G. Burton III</b>	<b>Vice President</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>John L. Rieley</b>	<b>Councilman</b>
<b>Samuel R. Wilson Jr.</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

**Call to Order**

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

Mr. Vincent called the meeting to order.

**M 532 19  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas.**

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

**Minutes**

The minutes of October 22, 2019 were approved by consent.

**Corre-  
spondence**

Mr. Moore read correspondence received from Make A Wish and Rehoboth Beach Little League.

**Public  
Comments**

A public comment period was held and the following spoke: Paul Reiger and Dan Kramer.

**DTCC/  
Delaware  
4-H  
Association**

A presentation was given by students of Delaware Technical & Community College who are members of the Delaware 4-H Association. The students thanked the Council for its donation that assisted in funding their Exchange Trip to Stillwater County, Montana. Their presentation was on the activities they participated in on their trip.

**CIB/The  
State of  
Your  
Creek**

A presentation was given by Chris Bason, Executive Director of the Center for the Inland Bays and Dr. Marianne Walch, Science & Restoration Coordinator for the Center for the Inland Bays. The presentation was on The State of Your Creek – Herring and Guinea Creeks on Rehoboth Bay,

(continued) which assesses the health of the creeks, and highlights the values of the creeks and the threats to those values.

Never Let Them Go Campaign Support Mr. Burton referenced the presentation given by members of the Beacon Middle School's Odyssey of the Mind Team on their "Never Let Them Go" Campaign, which was presented to Council at the October 22nd meeting. At that meeting, the group asked for the Council's support of its initiative to raise awareness about the harm balloon litter causes.

Mr. Lawson read a Proposed Resolution for Council's consideration.

M 533 19 Adopt R 020 19 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Resolution No. R 020 19 entitled "A RESOLUTION PLEDGING SUSSEX COUNTY COUNCIL'S SUPPORT FOR THE BEACON MIDDLE SCHOOL NEVER LET THEM GO CAMPAIGN".

Motion Adopted: 5 Yeas.

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

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

1. Wetlands and Buffer Working Group Meeting

The Wetlands and Buffer Working Group will hold its next meeting on Monday, November 4, 2019, at 2:00 p.m. at the Sussex County West Complex located at 22215 North DuPont Boulevard in Georgetown, Delaware. More information can be found at [www.sussexcountystate.gov/planning-zoning](http://www.sussexcountystate.gov/planning-zoning). A copy of the agenda is attached.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Belle Terre – Pump Station and Fox Haven II – Phase 1 received Substantial Completion effective October 14<sup>th</sup> and October 21<sup>st</sup>, respectively.

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

LSA Planning Presentation /HOME Report & Recommendation Brandy Nauman, Housing Coordinator & Fair Housing Compliance Officer, introduced Lisa Sturtevant and Jennifer Skow of LSA who presented the Housing Opportunities and Market Evaluation (HOME) Report which presents strategies designed to promote housing choice and economic vitality for Sussex County's residents and workforce. These strategies are a culmination of an eight-month initiative, supported by a housing needs assessment and economic feasibility study, to develop

**LSA  
Planning  
Presentation  
(continued)**

**foundational recommendations for creating and improving access to affordable housing opportunities in Sussex County. The recommendations benefitted from input from residents, homebuilders and developers, advocates, County staff, County Council, and Planning Commissioners. Ms. Sturtevant noted however, that the strategies and actions presented in the report represents the views of LSA, the consultant team hired by the County to undertake the study and prepare the report.**

**The goal of the Sussex County HOME Study is to formally evaluate housing needs and potential housing strategies in Sussex County after affordable housing was identified as a critical issue during the comprehensive planning process. The project process was explained, a market analysis/needs assessment and an economic feasibility analysis were presented. Also presented were strategies and an implementation framework. The three strategies presented are as follows: modify the Zoning Code to promote housing affordability in growth areas identified in the Comprehensive Plan, establish a local housing trust fund, and preserve the existing supply of affordable housing. It was noted that the report includes a detailed framework for implementing the recommended housing strategies, including the public, private, and nonprofit partners that will need to be involved in implementation, as well as cost implications of recommended actions.**

**Delaware  
Coastal  
Airport &  
Business  
Park/  
Chesapeake  
Utilities  
Corporation  
/Advance  
Agreement  
Addendum**

**Hans Medlarz, County Engineer, reported that, in order to provide all utilities desired by businesses in the Coastal Business Park, on December 18, 2018, Council approved a natural gas Customer Advance Agreement with Chesapeake Utilities Corporation. It provided for an equal capital cost share between the parties in the originally estimated amount of \$264,224.00 each. In addition, it included a 5-year reimbursement opportunity for the County based on actual customer gas consumption. In the course of construction document review, the Engineering Department requested an increased length and depth for all the gas main crossings under storm drainage pipes, increasing the estimated cost by \$20,195.00. Rather than deducting 100% of the cost increase from future reimbursements as per the approved Agreement, Chesapeake Utilities Corporation offered an addendum, equally sharing the increase. The Engineering Department recommends approval of the addendum.**

**M 534 19  
Approve  
Customer  
Advance  
Agreement  
Addendum/  
Chesapeake  
Utilities  
Corporation**

**A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Council approves the Addendum to the Customer Advance Agreement with Chesapeake Utilities Corporation to furnish gas services to the Delaware Coastal Business Park and Airport, as presented.**

**Motion Adopted: 5 Yeas.**

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

**IBRWF/  
Regional  
Biosolids  
and  
Septage  
Facilities/  
Chesapeake  
Utilities  
Corporation  
/Gas  
Service  
Agreement**

Hans Medlarz, County Engineer, reported on the regional bio-solids upgrades and gas service to the Inland Bays Regional Wastewater Facility (contract for evaluation of Class A sludge drying options). In a cooperative engineering effort, the County's biosolids drying unit design has anticipated transfer of Class B biosolids to IBRWF for final treatment. The annual natural gas usage for the unit is estimated at 31,635 Mcf. This number is reflected in the agreement as the Minimum Annual Delivery (MAD). The Tariff requires the County to pay Chesapeake Utilities each month in accordance with the pricing provisions of said Tariff, regardless of actual usage. The utility "balances" the gas as part of the Tariff but the County must procure the gas at the NYMEX. The drying unit's (a natural gas unit) full production start is scheduled on or before May 1, 2020. The closest point of service is at the Long Neck / Route 5 intersection, so they will have to bring that line to the facility. The natural gas supply has to be available at IBRWF a few weeks prior for testing and start-up. The County has explored several supply options and determined that the interruptible transportation service approach is the most cost effective. The main component of the tariff is the delivery service rate for the MAD, currently \$3.25 per Mcf, which allows the utility to recover the capital expense of extending the service to IBRWF without a capital contribution by the County. After the conclusion of the 5-year term of the agreement, the County can either switch to a different tariff model or renegotiate the delivery service rate at a much lower cost. Mr. Medlarz reported that the Finance and Engineering Departments recommend approval of the Gas Service Agreement with Chesapeake Utilities Corporation under the Interruptible Transportation Service tariff. In addition, the Finance and Engineering Departments request authorization for the Finance Director and the County Engineer to purchase natural gas in the NYMEX through an energy resource company.

**M 535 19  
Approve  
Gas  
Service  
Agreement/  
Chesapeake  
Utilities  
Corporation  
/IBRWF**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon the recommendation of the Sussex County Finance and Engineering Departments, that Council approves the Gas Service Agreement with Chesapeake Utilities Corporation, to furnish natural gas services to the Inland Bays Regional Wastewater Facility, and further approves the Finance Director and County Engineer to purchase natural gas through an Energy Resource Company.

**Motion Adopted: 5 Yeas.**

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

**Use of  
Existing  
Infra-  
structure  
Agreement/**

John Ashman, Director of Utility Planning, presented a Use of Existing Infrastructure Agreement with Dukes Lane, LLC for the Parkside project in the Millville Area. The agreement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission

**Parkside/  
Dukes  
Lane, LLC  
(continued)**

system previously constructed by the County. Under the proposed arrangement, the Parkside project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure, Dukes Lane, LLC will contribute \$62,204.00 for the financial catch-up contribution of the existing infrastructure to serve 95.00 additional Equivalent Dwelling Units.

**M 536 19  
Approve  
Use of  
Existing  
Infra-  
structure  
Agreement/  
Dukes  
Lane, LLC**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Dukes Lane, LLC for capacity allocation in the regional transmission system, as presented.

**Motion Adopted: 5 Yeas.**

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

**Grant  
Request**

Mrs. Jennings presented a grant request for the council's consideration.

**M 537 19  
Countywide  
Youth  
Grant**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$1,000 from Countywide Youth Grants to the Del-Mar-Va Council, Boy Scouts of America, for the Sussex Distinguished Citizen Award Event Fundraiser.

**Motion Adopted: 5 Yeas.**

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

**Introduction  
of Proposed  
Ordinances**

Mr. Wilson introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 17.25 ACRES, MORE OR LESS" (Change of Zone No. 1903) filed on behalf of W. Wayne Baker (Tax I.D. No. 133-6.00-43.00) (911 Address: Not Available).

Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (224 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.793 ACRES, MORE OR LESS" (Conditional Use No. 2199) filed on behalf of OA-Rehoboth, LLC (Tax I.D. No. 334-12.00-127.01 and 127.10) (911 Address: Not Available).



**Introduction  
of Proposed  
Ordinances  
(continued)**

**Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS” (Conditional Use No. 2208) filed on behalf of Artesian Wastewater Management, Inc. (Tax I.D. No. 235-6.00-28.00 & 28.09) (911 Address: None Available).**

**The Proposed Ordinances will be advertised for Public Hearing.**

**M 538 19  
Go Into  
Executive  
Session**

**At 12:28 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session to discuss matters relating to collective bargaining and land acquisition.**

**Motion Adopted: 5 Yeas.**

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

**Executive  
Session**

**At 12:35 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to collective bargaining and land acquisition. The Executive Session concluded at 1:25 p.m.**

**M 539 19  
Reconvene  
Regular  
Session**

**At 1:30 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**M 540 19  
Authorize  
Land  
Acquisition**

**A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the County Administrator be authorized to negotiate, offer, and enter into a contract and proceed to closing on property identified as Land 2019-Q.**

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Mr. Wilson joined the meeting.**

**Public  
Hearing  
CU 2188**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR’S OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRE, MORE OR LESS” (Conditional Use No. 2188) filed on behalf of Donovan’s Painting and Drywall, LLC, c/o Jose Sandoval (Tax I.D. No. 334-5.00-205.01 and 208.00) (911 Address: 32454 Lewes Georgetown Highway, Lewes).**

**The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2019 at which time action was deferred. On October 10, 2019, the Commission recommended approval with conditions.**

**(See the minutes of the Planning Zoning Commission dated September 26 and October 10, 2019.)**

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

**The Council found that Shannon Carmean Burton, Attorney, was present with Ken Christenbury of Axiom Engineering, and Jose Sandoval, Applicant and owner of the property. The Council found that Ms. Burton, Mr. Christenbury, and Mr. Sandoval stated that the property was purchased in 2018; that the Applicant wishes to relocate his business to this property for the purpose of expansion; that two buildings are proposed to be constructed – an office building (stick built) and a storage building (pole barn); that 14 parking places will be provided, which includes one handicapped space; that there is no central water available so there will be a private well; that the well will be located at the front of the property and stormwater will be located at the back of the property; that employees arrive at the site in the morning, leave the site and then return in the evening to pick up their vehicles; that the hours of operation would be 7:00 a.m. to 7:00 p.m. Monday through Friday, 7:00 a.m. to 1:00 p.m. on Saturdays, with no Sunday hours; that most of the work is offsite, so there would not be a lot of activity occurring on the site during the day; that no Traffic Impact Study was required; that the property is located in the Coastal Area according to the 2019 Comprehensive Plan; that the Coastal Area is a growth area; that the site is located in an Investment Level 1 Area according to the Strategies for State Policies and Spending; that no retail sales is proposed at the site; and that there will be no impact on neighboring properties. Ms. Burton presented an overview of uses and zonings in the area, noting that the area is trending commercial. Mr. Christenbury presented an overview of the site plan and discussed the application’s compliance with the Comprehensive Plan.**

**There were no public comments.**

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

**M 541 19  
Adopt\  
Ordinance  
No. 2686/  
CU 2188**

**A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2686 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR’S OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRE, MORE OR LESS” (Conditional Use No. 2188) filed on behalf of Donovan’s Painting and Drywall, LLC, c/o Jose Sandoval, with the following conditions:**

- A. The use shall be limited to a contracting office with storage.**
- B. There shall not be any outside storage of paint or other materials associated with the use.**
- C. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- D. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways.**
- E. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- F. The hours of operation shall be Monday through Friday from 7:00 a.m. until 7:00 p.m. and from 7:00 a.m. through 1:00 p.m. on Saturdays. There shall not be any Sunday hours.**
- G. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet per side.**
- H. The parking shall comply with the County parking requirements. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles must only be parked within the designated areas.**
- I. The existing vegetation on the sides and rear of the site shall remain in place to act as a screen from neighboring properties. The Final Site Plan shall confirm the existence and location of this vegetation.**
- J. The Applicant shall comply with all requirements of the Sussex Conservation District regarding stormwater management on the site.**
- K. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.**
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
CU 2190**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY,**

**Public  
Hearing/  
CU 2190  
(continued)**

**CONTAINING 0.26 ACRE, MORE OR LESS” (Conditional Use No. 2190) filed on behalf of Steven and Helene Falcone (Tax I.D. No. 334-5.00-212.00 and 213.00) (911 Address: 17662 Beaver Dam Road, Lewes).**

**The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2019 at which time action was deferred. On October 10, 2019, the Commission recommended denial since the record does not indicate that the use will fit on this small parcel of land; since the survey that was submitted shows a building that will not fit within the proposed setbacks without at least 3 separate variances; since the survey that was submitted also indicates that there is a significant boundary line discrepancy of 14 feet along the northwest boundary of the site which further impacts the setback encroachments of the proposed building and parking; and since there are just too many unanswered questions.**

**(See the minutes of the Planning and Zoning Commission dated September 26 and October 10, 2019.)**

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

**The Council found that Jon Bulkeley, Attorney, was present with the Applicants, Steven and Helene Falcone. Mr. Bulkeley and Mr. Falcone stated that the application is for an office for an accounting firm; that there is an existing 525 square foot dwelling on the property; that they propose to add on to the existing building; that County sewer and public water are available; that the Applicant’s accounting firm has four employees; that the conceptual site plan presented to the Planning and Zoning Commission did not meet the Zoning Code; that since the Public Hearing before the Planning and Zoning Commission, they have engaged an engineering firm to revise the plan; that the expansion would be constructed and the necessary changes made to meet setbacks, etc.; and that regarding the boundary line discrepancy, it did not show up in the title search when they purchased the property in December.**

**There were no public comments and the Public Hearing was closed.**

**M 542 19  
Leave  
Record  
Open/  
CU 2190**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to leave the record open for 90 days on Conditional Use No. 2190 for the purpose of the Applicant submitting a conceptual site plan.**

**Motion Adopted: 5 Yeas.**

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

**M 543 19  
Defer  
Action/  
CU 2190**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to defer action on Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone, with the record being left open for the Applicant to provide a**

**M 543 19  
(continued)**

**conceptual site plan within 90 days.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
CU 2192**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1979 TO ALLOW FOR NIGHTCLUB TYPE ACTIVITIES AND AN ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.033 ACRES, MORE OR LESS” (Conditional Use No. 2192) filed on behalf of Thomas and Judy Munce (Napoleon Hernandez) (Tax I.D. No. 230-26.00-35.01) (911 Address: 12327 DuPont Boulevard (Route 113), Ellendale).**

**The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2019 at which time the Applicant was not present. Due to the lack of representation, and therefore, the lack of a record at the Public Hearing, the Planning and Zoning Commission recommended denial.**

**(See the minutes of the Planning and Zoning Commission dated September 26, 2019.)**

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

**Mr. Moore advised Council of Section 115-216D of the Sussex County Code regarding reconsiderations and the one year limitation for refileing an application. This section of the Code states that “...provided, however, that the County Council shall not act upon any matter in which the applicant failed to appear before the Planning and Zoning Commission.” Mr. Moore noted that the Public Hearing can be held on this date; however, the County Council cannot act on the application since the Planning and Zoning Commission did not have a public hearing. Further, if the Planning and Zoning Commission does not act to allow the Applicant, for good reason, to have a public hearing, then the application will not be acted upon.**

**The Council found that Napoleon Hernandez was present on behalf of the application. He stated that a Conditional Use already exists for the property permitting a tavern/package store; that he wants to continue operating as a tavern and to add more entertainment options / nightclub type activities, i.e. pool tables, karaoke, go-go dancing, paint nights, etc.; that they want to have an electronic message center sign; and that they have unplugged and moved their lighted sign since they do not have approval for**

**Public  
Hearing/  
CU 2192  
(continued)**

**it at this time.**

**Public comments were heard.**

**Adaria Bracy, an employee of the tavern, spoke in support of the application.**

**Theodore Walius, an adjacent property owner, spoke in opposition to the application. He stated that since the new owners have changed the type of business, problems have occurred and it is not neighborhood friendly; that there are many safety concerns: there has been a shooting as well as stabbings, and the tavern has been burglarized several times; and that the tavern has a security person that carries a rifle and a pistol.**

**There were no additional public comments.**

**The Public Hearing was closed.**

**The public record was closed with the exception of receiving the record and recommendation of the Planning and Zoning Commission. (This information will be received if the Applicant is able to reschedule the Planning and Zoning Commission public hearing).**

**M 544 19  
Defer  
Action/  
CU 2192**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to defer action on Conditional Use No. 2192 filed on behalf of Thomas and Judy Munce (Napoleon Hernandez) for the recommendation of the Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

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

**M 545 19  
Adjourn**

**At 2:36 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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

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

GINA A. JENNINGS, MBA, MPA  
FINANCE DIRECTOR

(302) 855-7741 T  
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gjennings@sussexcountype.gov



**Sussex County**

DELAWARE  
sussexcountype.gov

**MEMORANDUM:**

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

**FROM:** Gina A. Jennings  
Finance Director/Chief Operating Officer

**RE:** **FY2020 HUMAN SERVICE GRANTS**

**DATE:** November 1, 2019

Attached is a schedule of the FY2020 Human Service Grants, as well as an overview of the program. On Tuesday, I will be recommending to Council that we approve those grants listed for payment.

Please call me if you would like to discuss further.

Attachments

pc: Todd F. Lawson

The seal of Sussex County, Delaware, is a circular emblem. It features a central shield with a tree, a crescent moon, and a banner. The shield is surrounded by ornate flourishes. The outer ring of the seal contains the text "OF SUSSEX COUNTY DELAWARE" at the top and "AND PROPRIETOR" at the bottom. The year "1683" is inscribed at the very bottom. The seal is partially obscured by a yellow horizontal band.

# Sussex County Human Service Grant Program

Fiscal Year 2020



# Human Service Grant Purpose

Grants to countywide non-profit agencies for the purpose of enhancing health and human services, which contribute to a safe, healthy and self-sufficient community. Funds provide grants that assist organizations with resources in support of programs or capital purchases.



# Process

- Organizations submitted application online
- Finance reviewed
  - Organizations' statuses
  - Past due County obligations
  - Scope of request
- Finance created a formula, based on number of beneficiaries, other financial support and financial need, to best utilize the grant funds



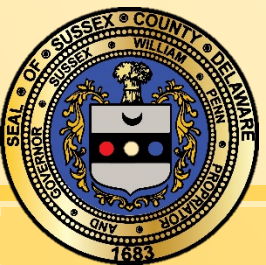
# Formula to Distribute (Budget of \$225,000)

Sussex County Beneficiary Criteria	Base Grant Amount	Additional Amount if other funding is greater than 25%	Additional Amount if need is \$5,000 or greater	Additional Amount if need is \$10,000 or greater	Maximum Grant Amount
Up to 49 Beneficiaries	\$1,000	\$100	\$350	\$350	\$1,800
50 to 249 Beneficiaries	\$1,250	\$100	\$400	\$400	\$2,150
250 to 499 Beneficiaries	\$1,500	\$100	\$450	\$450	\$2,500
500 to 999 Beneficiaries	\$2,000	\$100	\$500	\$500	\$3,100
1,000 or more Beneficiaries	\$2,750	\$100	\$550	\$550	\$3,950

All Boys & Girls Clubs	\$2,000
All CHEER & Senior Centers	\$5,500

All organizations were capped at their demonstrated need and request

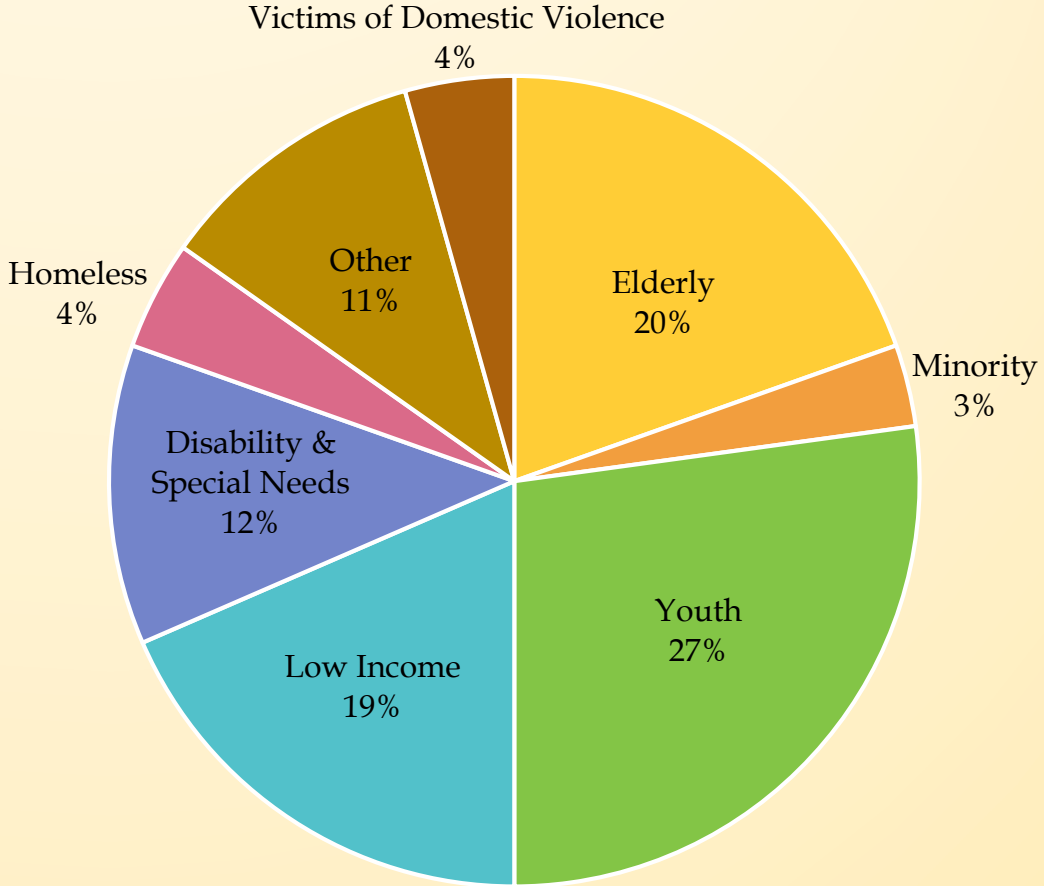
If another County grant was awarded within the last 12 months, 50% of the original grant, up to \$750, was deducted.



# Application Statistics

- Received \$633,397 in requests from 92 qualified organizations
- 18 new organizations
- 204,000 Sussex County beneficiaries
- Organizations raise approximately \$8.7 million of other types of support for these projects

Type of Beneficiaries



# Fiscal Year 2020 Recipients

Abbott's Mill Nature Center of the Delaware Nature Society  
 Agape Love Transitional Home  
 American Legion Auxiliary, Department of Delaware  
 Arc of Delaware  
 ARK Educational Consulting, Inc.  
 Barbara K. Brooks Transition House, Inc.  
 Best Buddies International, Inc.  
 Big Brothers Big Sisters of Delaware, Inc.  
 Boys & Girls Clubs of Delaware at Dagsboro  
 Boys & Girls Clubs of Delaware at Laurel  
 Boys & Girls Clubs of Delaware at Oak Orchard/Riverdale  
 Boys and Girls Clubs of Delaware at Georgetown  
 Boys and Girls Clubs of Delaware at Rehoboth  
 Boys and Girls Clubs of Delaware at Western Sussex  
 Bridgeville Senior Citizens Center Inc.  
 Cancer Support Community Delaware  
 Cape Henlopen Senior Center, Inc.  
 Greenwood CHEER Activity Center  
 Roxana CHEER Activity Center  
 Georgetown CHEER Activity Center  
 Harbor Lights (Lewes) CHEER Activity Center  
 Long Neck CHEER Activity Center  
 Milton CHEER Activity Center  
 Ocean View CHEER Activity Center  
 Children & Families First  
 City of Refuge Church  
 Clothing Our Kids  
 Community Integrated Services  
 Community Resource Center  
 Delaware Adolescent Program, Inc. - Sussex County

Delaware Breast Cancer Coalition, Inc.  
 Delaware Community Reinvestment Action Council, Inc.  
 Delaware Crime Stoppers  
 Delaware Ecumenical Council on Children and Families  
 Delaware Hospice, Inc.  
 Delaware Lions Foundation, Inc.  
 Delaware Senior Olympics  
 Delmarva Clergy United In Social Action Foundation  
 DFRC Inc.  
 Down Syndrome Association of Delaware  
 Dr. Martin Luther King Celebration  
 Easter Seals Delaware & Maryland's Eastern Shore  
 Everlasting Hope Ministry  
 First State Community Action Agency  
 Food Bank of Delaware  
 Girl Scouts of the Chesapeake Bay  
 Harry K Foundation  
 Housing Alliance Delaware  
 Independent Resources  
 Indian River Senior Center, Inc.  
 ITN Southern Delaware  
 Junior Achievement of Delaware, Inc.  
 Just a Hands Up Community Navigation Association  
 Kent-Sussex Industries, Inc.  
 La Esperanza  
 La Red Health Center, INC.  
 Laurel Senior Center, Inc.  
 Lewes Historical Society  
 Lewes Senior Citizens Center, Inc.  
 Lighthouse for Broken Wings  
 Literacy Delaware

Love Drives Foundation  
 Love INC of Mid-Delmarva  
 Lutheran Church of Our Savior  
 Mid-Atlantic Symphony Orchestra  
 Milford Housing Development Corporation  
 Milford Senior Center, Inc.  
 Milton Community Food Pantry  
 Multiplying Good  
 Nanticoke River Watershed Conservancy  
 NCALL Research, Inc.  
 New Hope Recreation and Development Center  
 Pathways to Success, Inc.  
 People's Place II, Inc.  
 Primeros Pasos Inc.  
 Read Aloud Delaware  
 Richard Allen Coalition, Inc.  
 Ronald McDonald House of Delaware  
 S. DE Therapeutic & Recreational Horseback Riding  
 Steps for Hope, Inc.  
 Survivors of Abuse in Recovery, Inc.  
 Sussex Community Crisis Housing Services, Inc.  
 Sussex County Habitat for Humanity, Inc.  
 Sussex County RSVP 50 Plus Advisory Council  
 Sussex Family YMCA  
 Thresholds of Delaware, Inc.  
 Veterans Reentry Resources Alliance, Inc.  
 Wave of Healthy Meals Foundation  
 Way Home  
 West Side New Beginnings  
 What is Your Voice, Inc.  
 YWCA Delaware

# Motion

Be it moved that the Sussex County Council, approve the Fiscal Year 2020 Human Service Grant allocation as presented.



FY2020 Human Service Grants

Name of Organization	Project	Last Year's Grant	Grant Request	Recommended Grant
Abbott's Mill Nature Center of the Delaware Nature Society	Student scholarship program	2,300	2,500	2,000
Agape Love Transitional Home	Repair costs for women and children homeless shelter	2,400	5,000	1,650
American Legion Auxiliary, Department of Delaware	American Legion Auxiliary Delaware Girls State	1,000	1,000	1,000
Arc of Delaware	Recreation program for individuals with intellectual disabilities	1,800	1,500	1,500
ARK Educational Consulting, Inc.	The ARK Educational Resource Center	2,800	5,000	1,600
Barbara K. Brooks Transition House, Inc.	Transitional housing for women	2,300	10,000	1,800
Best Buddies International, Inc.	Program for people with intellectual and developmental disabilities	1,900	5,000	1,350
Big Brothers Big Sisters of Delaware, Inc.	Mentoring program for at-risk youth	2,000	3,000	1,250
Boys & Girls Clubs of Delaware at Dagsboro	Power Hour	2,000	5,000	2,000
Boys & Girls Clubs of Delaware at Laurel	Power Hour	2,000	5,000	2,000
Boys & Girls Clubs of Delaware at Oak Orchard/Riverdale	Power Hour	2,000	5,000	2,000
Boys and Girls Clubs of Delaware at Georgetown	Power Hour	2,000	5,000	2,000
Boys and Girls Clubs of Delaware at Rehoboth	Power Hour	2,000	5,000	2,000
Boys and Girls Clubs of Delaware at Western Sussex	Power Hour	2,000	5,000	2,000
Bridgeville Senior Citizens Center Inc.	Nutrition homebound meal program	5,500	11,250	5,500
Cancer Support Community Delaware	Cancer support services for individuals over 65	2,500	4,000	2,500
Cape Henlopen Senior Center, Inc.	Senior center programs	5,500	7,110	5,500
Cheer, Inc.	Greenwood CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Roxana CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Georgetown CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Harbor Lights (Lewes) CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Long Neck CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Milton CHEER Activity Center	5,500	6,000	5,500
Cheer, Inc.	Ocean View CHEER Activity Center	5,500	6,000	5,500
Children & Families First	Therapeutic residence driveway repair and maintenance	-	6,591	1,350
City of Refuge Church	Live Beyond Labels program for suicide prevention	1,900	3,000	2,150
Clothing Our Kids	Clothing purchases for at-risk youth	3,000	3,000	2,650
Community Integrated Services	Provide services for individuals with disabilities	2,000	3,000	1,250
Community Resource Center	Cold weather shelter	1,600	2,000	1,350
Delaware Adolescent Program, Inc. - Sussex County	Technology for Teen Moms program	-	2,500	1,350
Delaware Breast Cancer Coalition, Inc.	Yes2Health program	-	5,000	1,650
Delaware Community Reinvestment Action Council, Inc.	Low income tax clinic	1,000	2,000	1,350
Delaware Crime Stoppers	Crime Reduction Program	2,500	1,500	1,500
Delaware Ecumenical Council on Children and Families	Volunteer caregivers for Sussex County elderly	1,500	2,500	1,100
Delaware Hospice, Inc.	Delaware Transitions Program	2,400	3,500	2,150
Delaware Lions Foundation, Inc.	Humanitarian projects	-	3,500	1,750
Delaware Senior Olympics	Annual National Senior Games	-	1,000	1,000
Delmarva Clergy United In Social Action Foundation	After-school program	1,900	3,000	1,800
DFRC Inc.	DFRC Blue-Gold Hand-in-Hand Program	2,300	5,000	2,150
Down Syndrome Association of Delaware	Summer camp	1,600	4,000	1,650
Dr. Martin Luther King Celebration	MLK Scholarship Fund	-	2,000	1,500
Easter Seals Delaware & Maryland's Eastern Shore	Purchase developmental assessment tools for outpatient rehabilitation	1,000	1,000	1,000
Everlasting Hope Ministry	Prison re-entry program	-	5,000	2,400
First State Community Action Agency	Community Needs Assessment and Strategic Planning	-	2,500	2,100
Food Bank of Delaware	Backpack Program for children	2,300	10,000	2,150
Girl Scouts of the Chesapeake Bay	Girl scouting for Latina girls in Sussex County	-	2,500	1,350

FY2020 Human Service Grants

Name of Organization	Project	Last Year's Grant	Grant Request	Recommended Grant
Harry K Foundation	Halt Hunger Program	2,500	2,500	2,500
Housing Alliance Delaware	Community Development Program	1,600	5,000	2,850
Independent Resources	Youth Transition Life Skills Program	2,000	20,000	2,050
Indian River Senior Center, Inc.	Maintenance and care of facility	5,500	6,958	5,500
ITN Southern Delaware	Senior transportation	3,075	15,000	2,350
Junior Achievement of Delaware, Inc.	Junior Achievement for K-12 students in Sussex County	4,200	10,000	3,950
Just a Hands Up Community Navigation Association	Shed to store donations	1,575	2,500	2,000
Kent-Sussex Industries, Inc.	Transportation for employment	2,400	5,000	2,150
La Esperanza	Immigration program	3,000	2,500	2,500
La Red Health Center, INC.	Expansion of services project	2,400	25,000	3,950
Laurel Senior Center, Inc.	Meal Program	5,500	8,000	5,500
Lewes Historical Society	Education of Lewes	2,500	1,500	1,500
Lewes Senior Citizens Center, Inc.	Tables and chairs	5,500	5,000	5,000
Lighthouse for Broken Wings	Transitional housing program	2,400	55,000	2,050
Literacy Delaware	Helping adults with limited literacy	-	4,000	1,100
Love Drives Foundation	Shelter and childcare services	2,400	18,000	2,500
Love INC of Mid-Delmarva	Community engagement	3,975	30,000	3,100
Lutheran Church of Our Savior	English as a Second Language Program	-	2,000	1,750
Mid-Atlantic Symphony Orchestra	Concert series	2,000	2,500	2,100
Milford Housing Development Corporation	Home repair program	2,400	25,000	2,150
Milford Senior Center, Inc.	Meal Program	5,000	20,000	5,500
Milton Community Food Pantry	Food pantry	-	9,600	3,300
Multiplying Good	Sussex County student leadership conference	1,800	1,800	1,800
Nanticoke River Watershed Conservancy	Roof repair	-	3,200	2,750
NCALL Research, Inc.	Affordable housing services	2,400	5,000	1,800
New Hope Recreation and Development Center	After-school program	1,000	1,200	1,200
Pathways to Success, Inc.	Young Men's Summit	-	1,500	1,500
People's Place II, Inc.	Veteran's Outreach	2,000	2,000	1,750
Primeros Pasos Inc.	Learning Center	1,375	1,500	1,250
Read Aloud Delaware	Early childhood reading program	3,000	3,000	3,000
Richard Allen Coalition, Inc.	Step replacement	1,800	6,000	1,650
Ronald McDonald House of Delaware	Housing Program for Sussex County families	3,500	5,000	3,950
Southern DE Therapeutic & Recreational Horseback Riding	Scholarships for Sussex County residents with special needs	2,100	2,500	2,150
Steps for Hope, Inc.	Furniture and shelves	-	12,000	2,250
Survivors of Abuse in Recovery, Inc.	Trauma counseling for victims	2,800	15,000	2,150
Sussex Community Crisis Housing Services, Inc.	Crisis House homeless shelter	2,300	4,000	850
Sussex County Habitat for Humanity, Inc.	Family Empowerment Program	2,800	10,000	2,500
Sussex County RSVP 50 Plus Advisory Council	Nimble Fingers	1,110	1,788	1,788
Sussex Family YMCA	Cancer survivor program	2,400	20,000	2,050
Thresholds of Delaware, Inc.	Thresholds program at Sussex Correctional Institution	600	600	600
Veterans Reentry Resources Alliance, Inc.	Veterans Reentry	-	15,000	2,150
Wave of Healthy Meals Foundation	Healthy Meals for Healthy Communities Program for cancer patients	-	6,000	1,650
Way Home	Sustaining Hope Program	-	20,000	2,050
West Side New Beginnings	Youth Program	1,250	5,000	900
What is Your Voice, Inc.	Domestic violence care	2,300	9,800	1,950



FY2020 Human Service Grants

Name of Organization	Project	Last Year's Grant	Grant Request	Recommended Grant
YWCA Delaware	Sexual assault response center	3,300	5,000	2,600
			<b>633,397</b>	<b>224,488</b>

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

## Memorandum

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

**FROM:** Hans Medlarz, County Engineer

**RE:** *Robinsonville Road Core Infrastructure, Project S19-16*  
*A. Recommendation to Award*

**DATE:** November 5, 2019

On June 26, 2018, County Council granted permission to post notices for the Robinsonville Road expansion of the Unified Sanitary Sewer District. The subsequent Public Hearing was held on July 31, 2018 and following the hearing, County Council passed a resolution revising the district boundary to include several large parcels.

At each presentation, the Department conveyed the intent for a combined core sewer infrastructure approach covering all three (3) proposed projects in this expansion as per County Code § 110-97. The Department has been working with the Engineers and Developers of the projects to construct a common gravity interceptor, a central pump station and forcemain utilizing a single connection point to the existing transmission main. This approach avoids construction of two additional pump stations as well as tapping the main in various locations therefore reducing the County's long-term maintenance significantly.

The Department in connection with Counsel had developed "Use of Existing & Proposed Infrastructure Agreements" containing sections pertaining to the use of the existing infrastructure as well as proposed improvements. The three respective development entities executed this type of document and posted the required security. On September 25, 2018, County Council approved the three agreements and affirmed Solutions IPEM, Inc. as the Engineer of Record for the project.

This project approach required the acquisition of three off-site easements which were obtained at appraised value. The County's sewer easements are either shared or paralleled by a water



easement for Tidewater Utilities. The largest easement is located on an agricultural property and the owner only granted it under the condition of a one-time interruption of the farming activities with stringent topsoil removal & restoration requirements. This condition, written in both easements, forced a combined water/sewer construction project. With the sewer being the deeper installation, the County had to take the lead requiring a Financing Agreement with Tidewater Utilities, Inc. Based on recommendations by the Finance Director and Department, the Agreement was authorized by Council during the October 22, 2019 meeting.

Contract Documents for the water/sewer construction project, titled Robinsonville Road Core Infrastructure, Project S19-16, were assembled and advertised on October 4, 2019. Bids were received, publicly opened and read aloud at 10:00 AM on Thursday, October 31, 2019. Three (3) bids were received as summarized below:

Teal Construction Inc.	Dover, DE	\$ 1,635,126.00
A-Del Construction Co. Inc.	Newark, DE	\$ 1,795,547.00
J.J.I.D. Inc.	Bear, DE	\$ 2,006,000.00

The Engineering Department reviewed each bid package and in accordance with the Financing Agreement with Tidewater Utilities, Inc. developed project financing details. The attached summary reflects a 60.23% / 39.77% average percent split of sewer and water bids, respectively. Per the Agreement, these percentages are applied to the lowest responsive bid to determine estimated reimbursement amounts for sewer and water. Common costs bid as General Construction are then equally shared.

Based on the bid and Financing Agreement details, reimbursement totals are estimated as:

Water Reimbursement Total:	\$ 673,271.16
Sewer Reimbursement Total:	\$ 961,854.84

Tidewater Utilities, Inc. has reviewed the bids received and the project financing estimates developed and concurs with the Engineering Department recommendation that Council award Project S19-16 to the lowest responsible bidder, Teal Construction Inc, of Dover, DE, in the amount of \$ 1,635,126.00.

Robinsonville Road Core Infrastructure Project S19-16		Teal Construction	A-Del Construction Co., Inc.	JJID, Inc.	
<u>Bid Part</u>		<u>Total Price</u>	<u>Total Price</u>	<u>Total Price</u>	<u>AVERAGE</u>
<b>A - SEWER INFRASTRUCTURE</b>					
Bid A Subtotal		\$866,687.00	\$867,217.00	\$966,700.00	\$900,201.33
<b>B - WATER INFRASTRUCTURE</b>					
Bid B Subtotal		\$543,778.00	\$565,630.00	\$673,800.00	\$594,402.67
<b>C - GENERAL CONSTRUCTION</b>					
Bid C Subtotal		\$224,661.00	\$362,700.00	\$365,500.00	n/a
Total Bid (A+B+C)		\$1,635,126.00	\$1,795,547.00	\$2,006,000.00	
<b><u>PROJECT FINANCE AGREEMENT DETAILS</u></b>					\$1,494,604.00
Average Sewer & Water Total (Avg Part A + Avg Part B)					60.23%
Average % Sewer					39.77%
Average % Water					
Low Bid Sewer & Water Total					\$1,410,465.00
<b>ESTIMATED WATER REIMBURSEMENT</b>					
Low Bid Sewer & Water Total x Average % Water					\$560,940.66
Common Costs = 50% of Low Bid Part C					\$112,330.50
<b>Water Reimbursement Total</b>					<b>\$673,271.16</b>
<b>ESTIMATED SEWER REIMBURSEMENT</b>					
Low Bid Sewer & Water Total x Average % Sewer					\$849,524.34
Common Costs = 50% of Low Bid Part C					\$112,330.50
<b>Sewer Reimbursement Total</b>					<b>\$961,854.84</b>

## ENGINEERING DEPARTMENT

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# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

## MEMORANDUM

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

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

**RE:** *Ellendale Water District*  
*A. Approval of Davis, Bowen & Friedel, Inc. - Design Services Agreement*

**DATE:** November 5, 2019

Enough petitions, as per Del Code requesting the creation of a water district in the greater Ellendale area, were submitted in 2017. In conjunction with the Town of Ellendale, a potential district boundary was established. County Council accepted Resolution No. R 024 17, approving the boundary on September 19, 2017, and a referendum was held on November 4, 2017. However, it did not receive sufficient votes to proceed.

Residents in favor of the formation of a district regrouped and in conjunction with the Engineering Department optimized the boundary, including only areas of greatest need and resubmitted the required number of petitions. On June 26, 2018, Council approved Resolution No. R 009 18, establishing the revised boundary of the Ellendale Water District. A referendum was held on September 15, 2018, with the final count revealing the eligible voters to be in favor of the project, with 81 Yes versus 21 No votes cast.

Based on the affirmative results of the election, and in accordance with Title 9 Delaware Code Section 6507, County Council approved the Ellendale Water District on October 2, 2018, through Resolution No. R 015 18. Subsequently, the Engineering Department submitted a State Drinking Water SRF capital funding package which made it on the State's Project Priority List with the highest ranking. The application reflected Artesian Water Company as the water supplier at rates and terms necessary to meet the referendum approved maximum annual user rate of \$430.00 for the average residential account within the District.

On January 29, 2019 Council approved the Ellendale Water District Agreement with the Artesian Water Company. In addition to creating the water district in accordance with Del Code Title 9, the County had to also obtain a Certificate of Public Convenience and Necessity as per Del Code Title 26 to serve the area. This certificate was issued by the State's Public Service Commission on August 6, 2019.



Due to the project's extraordinarily important priority under the Governor's initiative, the Department of Health and Social Services (DHSS) requested funding under the 2020 Bond Bill. The Legislature approved \$4.00 million for the Ellendale Water District project out of an estimated total cost of \$5.76 million. Per DHSS priorities, any supplemental funding will come from the 2021 Drinking Water SRF allocation in all loan forgiveness. Sussex County's efforts will focus on improving plumbing of the project area, thereby reducing unintentional water consumption and its associated cost.

On May 14, 2019, Council had approved the selection of three (3) consulting engineering firms to provide professional services: Davis, Bowen & Friedel (DBF); George Miles and Buhr (GMB); and KCI Technologies, Inc. (KCI). DBF previously worked on behalf of Artesian on the Ingram Village portion of the Ellendale water system and therefore has substantial data already assembled, reducing the system design cost. Therefore, the Engineering Department solicited a stand-alone agreement from DBF for design, permitting and bidding, including survey, geotechnical work & wetlands delineation as needed.

The Engineering Department now requests Council's approval of DBF's proposal in the amount of \$ 185,000.00.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

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

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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

THIS IS AN AGREEMENT effective as of November 5, 2019 ("Effective Date") between  
Sussex County ("Owner") and  
Davis, Bowen & Friedel ("Engineer").

Whereas Owner has selected Engineer for Miscellaneous Engineering Services pursuant to RFP 19-22, and

Whereas Owner has selected Engineer to provide Professional Engineering Services under this Agreement for

Ellendale Water District, Project No. W20-17 ("Project").

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

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Engineer's services under this Agreement are generally identified as follows: **Design, permitting and bidding assistance for new waterline construction along N/S Old State Road to serve all properties illustrated by the Owner's Ellendale Water District map, and more described by Exhibit "A" herein.**

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Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

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

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C, as applicable.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement unless otherwise noted therein. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;
2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### **ARTICLE 3 – TERM; SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement and Term**

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

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services shall be adjusted equitably.
- D. If Engineer fails to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

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

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

- A. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for undisputed services, expenses, and other related charges.

Engineer otherwise does not have the right to suspend services under this Agreement, except as set forth in Section 6.06.

## **ARTICLE 5 – OPINIONS OF COST**

### **5.01** *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### **5.02** *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of any Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### **6.01** *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. *Technical Accuracy:* Notwithstanding any other provision, Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* All subcontracts proposed to be entered into by the Engineer pursuant to this Agreement shall be subject to the prior written approval of the Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with engineering professional rules.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
  - a. changes after the Effective Date to Laws and Regulations;
  - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
  - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.

- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- O. If at any point, Engineer becomes aware of any violation of law or regulations by Constructor or sub constructor, they have an affirmation duty to notify Owner, as their obligation to see that work is done in a safe manner and to protect the public.

#### 6.02 *Design Without Construction Phase Services*

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

#### 6.03 *Use of Documents*

- A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- B. Upon payment to Engineer for any service or deliverable, all tracings, plans, maps, descriptions, specifications, records and documentation prepared, obtained, or kept under this Agreement by Engineer (including the copyright and the right of reuse), shall be delivered to and become property of the Owner, whether or not the Project is completed. Any such service or deliverable, including any logos or other documents, may be subject to trademark, copyright, or other licensing by Owner.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to email encryption systems or a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. Engineer shall not commence services or work until Engineer has obtained, at Engineer's own expense, all of the insurance as required hereunder and such insurance has been approved by the Owner; nor shall Engineer allow any Consultant to commence services on any subcontract until all insurance required of the subcontractor has been so obtained and approved by Engineer. Approval of insurance required of Engineer will be granted only after submission to Owner of original certificates of insurance, in the most current ACORD format, evidencing the required liability insurance, signed by authorized representatives of the insurers or, at Owner's request certified copies of the required liability insurance policies.
- B. Liability insurance as required hereunder shall be in force throughout the term of the Agreement and for three (3) years after the date of final payment by the Owner for Engineer's services under this Agreement. Original certificates of insurance signed by authorized representatives of the insurers or, at Owner's request, certified copies of insurance policies, evidencing that the required liability insurance is in effect, shall be maintained with Owner throughout the term of this Agreement and for three (3) years after final payment by the Owner for Engineer's services under this Agreement.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, and employers' liability insurance, commercial general liability, business auto liability, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Engineer shall require all Consultants to maintain during the term of this Agreement, commercial general liability insurance, business auto liability insurance, workers' compensation and employers' liability insurance, umbrella excess liability insurance and professional liability insurance to the same extent required of Engineer in Exhibit G. ENGINEER shall furnish Consultants certificates of insurance to Owner.
- D. All insurers underwriting Engineer's or Consultant's insurance must be allowed to do business in the state of Delaware and acceptable to Owner. The insurers must have a Financial Strength Rating of A- or better, and a Financial Size Category of VII or higher in the latest evaluation by A.M. Best Company, unless Owner grants specific approval for an exception.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to

the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. To the extent commercially available, Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. To the extent commercially available, Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All insurance required hereunder shall be endorsed to provide that the policy is not subject to cancellation, non-renewal, or any material change or reduction in coverage until thirty (30) days prior written notice has been given to Owner (not less than ten (10) days' notice is required for non-payment of premium). Therefore, a copy of the endorsements to the required policies that confirm the insurer is obligated to send notice to Owner as required herein, must accompany all certificates of insurance.
- G. No acceptance and/or approval of any insurance by Owner shall be construed as relieving or excusing Engineer from any liability or obligation imposed upon them by the provisions of this Agreement.
- H. If Engineer or any Consultant does not meet the insurance requirements of this Agreement, Engineer shall forward a written request to Owner for a waiver in writing of the insurance requirements(s) not met or approval in writing of alternate insurance coverage or self-insurance arrangements. If Owner denies the request, Engineer or Consultant must comply with the insurance requirements as specified in Exhibit G. Nothing in this provision shall be construed to allow Engineer or Consultant to permit the required insurance coverage to lapse during this Agreement.
- I. Any deductibles or retentions of \$25,000 or greater shall be disclosed by Engineer, and are subject to Owner's written approval. Any deductible or retention amounts elected by Engineer or its Consultant's or imposed by Engineer's or Consultant's insurer(s) shall be the sole responsibility of the Engineer, and are not chargeable as expenses.
- J. If the Owner is damaged by the failure or neglect of the Engineer to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Engineer shall bear all reasonable costs, damages, and other losses properly attributable thereto.
- K. Insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants under Engineer's or Consultant's liability insurance as specified in Exhibit G, including, but not limited to, umbrella and/or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance. Any cross suits or cross liability exclusion shall be deleted from Engineer's liability insurance policies required herein.
- L. Insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants as specified herein shall be primary, and any other insurance, coverage or indemnity available to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants shall be excess of and non-



contributory with insurance provided to Owner and its appointed and elected officials, directors, officers, employees, agents and consultants as specified herein.

- M. If any liability insurance purchased by Engineer or by any Consultant has been issued on a “claims- made” basis, Engineer must comply with the following additional conditions. The limits of liability and the extensions to be included remain the same.
1. The retroactive date (if any) of such “claims-made” coverage can be no later than the earlier of the date of this Agreement or the commencement of the Engineer’s services under this Agreement.
  2. The Engineer or Consultant shall agree to provide certificates of insurance evidencing the above coverages for a period of three (3) years, or the applicable statute of limitations or repose under Delaware law, after final payment by the Owner for the Engineer’s or Consultant’s services or work under this Agreement. Such certificates shall evidence a retroactive date no later than the earlier of the date of this Agreement or the commencement of the Engineer’s services under this Agreement; or
  3. The Engineer or Consultant shall purchase an extended (minimum three (3) years), or the applicable statute of limitations or repose under Delaware law, reporting period endorsement for each such “claims-made” policy in force as of the date of final payment by the Owner for the Engineer’s services under this Agreement and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance and a copy of the endorsement itself. Such certificate and copy of the endorsement shall evidence a retroactive date no later than the earlier of the date of this Agreement or the commencement of the Engineer’s or Consultant’s services under this Agreement.
- N. If Engineer fails to provide evidence of required liability insurance as required in Exhibit G, the Owner shall be permitted, without prejudice to any other right or remedy, to obtain equivalent insurance to protect Owner’s interests, at the expense of Engineer. Such expense shall be deducted from the Engineer’s compensation.
- O. If and when required based on the decision of the Owner, Engineer will purchase the necessary pollution liability insurance with limits as required by Owner.

#### 6.06 *Suspension and Termination*

A. *Suspension:*

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

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

1. For cause,
  - a. by either party upon 10 days written notice in the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Termination for nonpayment by Owner shall not be permitted, except in accordance with Section 4.02.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to the rules or regulations of an engineer as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 10 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 10 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to the date that Owner determines in its sole discretion.
2. By Owner: If, for any reason or cause, conditions are encountered by the Owner which require termination of the Agreement and any modifications hereof, such determination to rest solely in the judgment of the Owner, this Agreement and any modifications hereof may be terminated in whole or in part upon thirty (30) days written notice to the Engineer. Upon such termination, the Engineer shall render a final terminal report and shall be due only that payment of fees specified in Exhibit C of this Agreement. The Engineer shall immediately transfer to the Owner in a neat and orderly manner the ownership of all documents relating to the Project as specified in Article 6.03.C of this Agreement. In the case of receipt of a notice of termination of this Agreement and any modifications hereof, the Engineer shall take all reasonable steps to minimize the further incurring of fees under this Agreement.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
  1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in

accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located without respect to its choice of law provisions.

#### 6.08 *Successors, Assigns, and Beneficiaries*

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

#### 6.09 *Dispute Resolution*

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

#### 6.10 *Environmental Condition of Site*

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

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, the Engineer shall be responsible for its own acts and those of its subordinates, employees, Consultants and subcontractors performing all work required under this Agreement, it being expressly understood that to the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the Owner, and its appointed and elected officials, employees, agents, directors, and officers, from and against any and/or all claims, suits, judgments, expense, actions, damages, and cost of every name and description, arising out of and/or resulting from the negligent performance of the Engineer's Scope of Services under this Agreement.

- B. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. *Percentage Share of Negligence:* To the fullest extent permitted by 10 Del. C. Section 8132, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

#### 6.12 *Records Retention*

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

#### 6.13 *Miscellaneous Provisions*

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

## **ARTICLE 7 – DEFINITIONS**

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Amendment*- The Document, Exhibit K whenever possible, that supplements the total Agreement in accordance with Paragraph 8.02.
5. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
6. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
7. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

11. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
12. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
17. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
18. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
20. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
25. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under an Amendment are a part.
26. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
27. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
28. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
30. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
31. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
32. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
33. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.



34. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
35. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
38. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **Not Used**

- E. Exhibit E, Notice of Acceptability of Work. **Not Used**
- F. Exhibit F, Construction Cost Limit. **Not Used**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. **Not Used**
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

#### 8.02 *Total Agreement*

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

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents. An Amendment may also designate a specific representative for that Project, which shall supersede the representative designated on the signature page of this Agreement.

#### 8.04 *Engineer's Certifications*

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

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

Owner: Sussex County

Engineer: Davis, Bowen & Friedel, Inc.

By: \_\_\_\_\_  
Print name: Michael Vincent  
Title: President, Sussex County Council  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Print name: Jason P. Loar, P.E  
Title: Principal  
Date Signed: \_\_\_\_\_

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

State of: Delaware 14959/1992101958

Address for Owner's receipt of notices:

P.O. Box 589  
Georgetown, DE 19947

Address for Engineer's receipt of notices:

1 Park Avenue  
Milford, Delaware 19963

Designated Representative (Paragraph 8.03.A):

Hans Medlarz, P.E.  
Title: County Engineer  
Phone Number: 302-855-7718  
E-Mail Address: hans.medlarz@sussexcountyde.gov

Designated Representative (Paragraph 8.03.A):

Jason P. Loar, P.E.  
Title: Principal  
Phone Number: 302.424-1441  
E-Mail Address: jpl@dbfinc.com

**PREVIOUSLY APPROVED AS TO FORM**

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

## **Engineer's Services**

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

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

### **PART 1 – BASIC SERVICES**

**Project Narrative:** The project includes new waterline along N/S Old State Road approximately 1,600 feet north of Gladys Street to approximately 500 feet south of Piper Lane and will include several side streets along N/S Old State Road with the intent to serve all properties as illustrated in the County's Ellendale Water District map, attached as **Figure A-1**. Portions of this alignment currently have a waterline as previously installed by Artesian in which connections/extensions will be provided as necessary. The waterline will be per Artesian standards and include valves, fire hydrants, service connections, water meters, etc. including pavement restoration as required.

Davis, Bowen & Friedel, Inc., (DBF) has reviewed the scope of services associated with design, permitting, and bidding assistance for the Ellendale Water District Project and proposes Exhibit A – Engineer's Services as follows:

#### **A1.1 - Survey:**

Engineer will perform the necessary office and field work to provide a complete topographic survey of the project area. Our in-house survey crew will locate all surface structures within the project area including but not limited to streets, curbs, gutters, sidewalks, swales, drainage structures, utilities, manholes, cleanouts, valves, meter pits, buildings, fences, landscaping, mailboxes, signs, and other natural man-made features. In addition, invert elevations of existing sanitary/stormwater manholes and inlets will be collected.

Previously completed survey/designs in association with existing waterlines in the area will be requested from Artesian to minimize field work; should these not be provided field survey will be completed in these areas. County GIS will be provided identifying the existing sanitary sewer collection system including service connections as this will assist in accurately identifying properties to be served by the new water system. Survey will include locating easily visible and accessible private well heads.

We will work with the County on scheduling, but will require the County to contact property owners for approval as some survey work will be completed on private property.

Plats will be provided for easements as required for completion of the project.

#### **A1.2 - Geotechnical Investigation:**

Through our sub-consultant, John D. Hynes and Associates, Inc., we will have eight (8) soil borings completed along the alignment of N/S Old State Road to evaluate groundwater levels and soils. The soil

borings will be evaluated with foundation/bedding recommendations. The borings will be completed approximately every 1,000 feet along the alignment where existing waterlines currently do not exist.

### **A1.3 - Wetlands Investigation:**

Through our sub-consultant, Environmental Resources, Inc., we will have wetlands which may impact the design field delineated. However, use of available wetlands mapping along with an effort to avoid wetland impacts will be the course of action to avoid any wetland disturbances and permitting.

### **A1.4 - Construction Document Preparation:**

Utilizing the above survey and geotechnical investigation information along with any existing as-built plans as provided by the County and Artesian, we will prepare project construction documents for project permitting and bidding. Construction documents will be submitted to the County for review at 60%, 90%, and final completion stages. The documents will include:

- Title Sheet
- Existing Topographic and Utility Plan Sheets
- Proposed Waterline Plan and Profile Sheets
- Proposed Detail Sheets
- Sediment & Erosion Control Plans and Details
- DelDOT Maintenance of Traffic Plans
- Technical Specifications and Bid Documents in accordance with DHSS requirements
- Final Construction Cost Estimates

### **A1.5 - Project Permitting:**

Upon completion of the project construction documents we will submit or assist the County in submitting to the following agencies for review and approval.

- DNREC
- Sussex Conservation District
- DelDOT
- Artesian
- DHSS

As part of this work we will address any review comments and resubmit the revised documents to obtain final project approval. *Please note that any project permitting fees are excluded from our fees.*

### **A1.6 - Bid Phase Services:**

Our office will perform the following services to assist Sussex County with obtaining competitive construction Bids.

- Distribute construction documents to various general contractors; cost of reproduction of such documents are included in the design fee.
- Maintain a contractor's bidders lists. Conduct a Pre-Bid meeting in coordination with DHSS to review the project and answer questions from potential bidders

- Address contractor questions during the bidding process
- Prepare any necessary construction document addenda
- Attend the bid opening
- Review construction bids and make award recommendation to the County

**A1.7 - Project Coordination Meetings:**

Davis Bowen and Friedel Inc. will participate in design meetings with the County and/or Artesian. These meetings will include a kick-off meeting and monthly update meetings during the project design process in order to review the design and go over any comments that the County and/or Artesian might have. We assume each coordination meeting will be held in Georgetown at the County offices and last approximately two (2) hours per meeting.

**A1.8 - Excluded Services:**

The following services are not included in our scope of work. If determined to be required during the course of the project we will submit a separate proposal to you for consideration.

- Archeological Investigations
- Permit and/or bid advertisement costs
- Construction Administration Services
- Construction Inspection Services
- Construction Stakeout Services
- As-Built Surveys and/or As-Built Plan Preparation

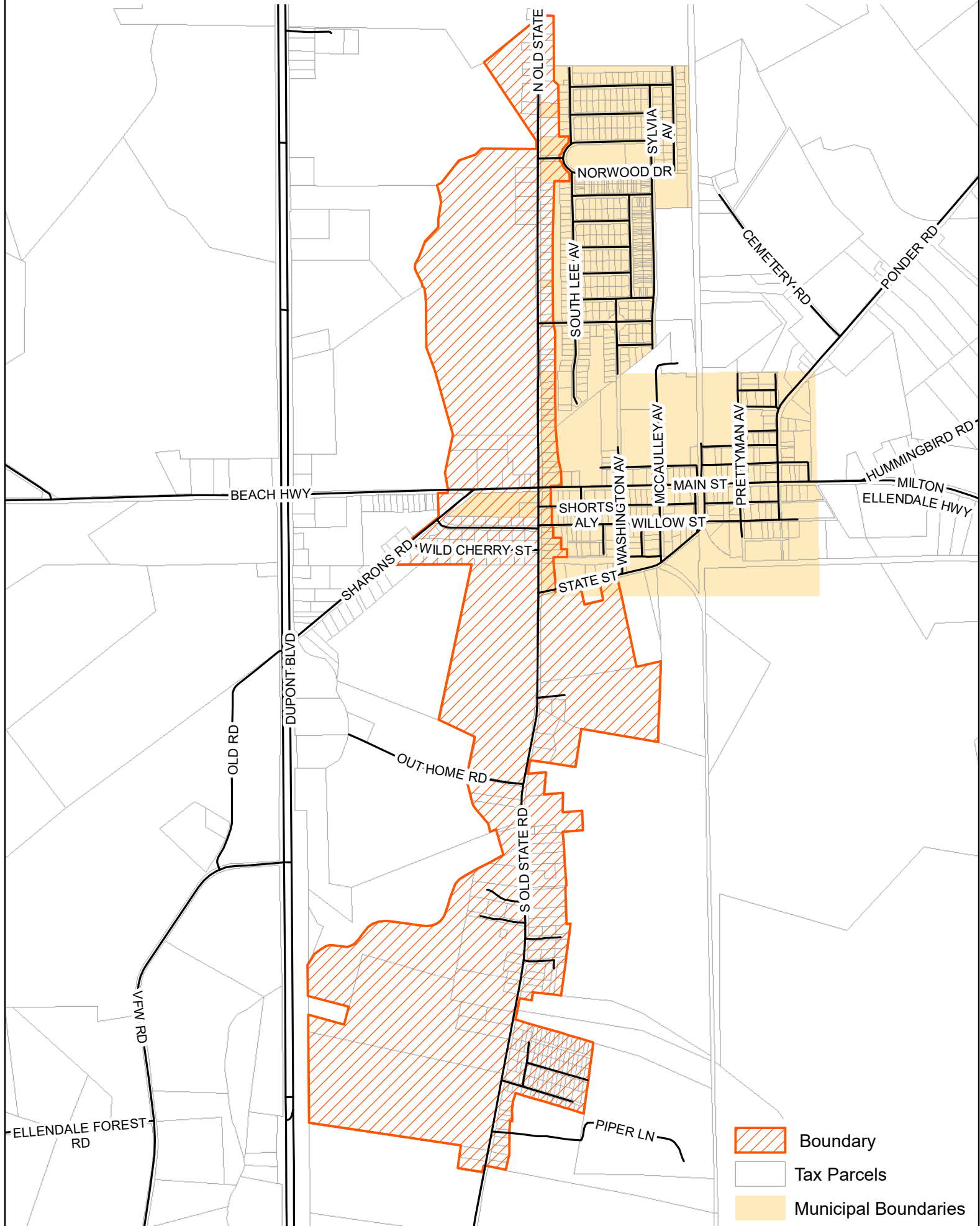
**A1.9 – Term & Schedule:**

Davis Bowen and Friedel Inc. recognize time is of the essence and acknowledge the funding schedule as defined by Grant Agreement No. 20-257 dated October 15, 2019 for use of 2020 Bond Bill Funds to complete the project.

The schedule for services defined shall anticipate the Bid Phase beginning on or before March 1, 2020.

This Agreement term shall end upon construction award recommendation to Council, unless otherwise amended.

Figure A-1 : Boundary to the Ellendale Water District 2018



This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

## **Owner's Responsibilities**

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

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

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



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

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

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 5, 2019**.

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

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

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

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
  2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
  3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
  4. The total compensation for services under Paragraph C2.01 is estimated to be **\$185,000** based on the following estimated distribution of compensation:

a. Study and Report Phase	\$ N/A
b. Preliminary Design Phase	\$57,500.00
c. Final Design Phase	\$115,500.00
d. Bidding or Negotiating Phase	\$12,000.00
  5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually **as of June 1, 2020** to reflect equitable changes in the compensation payable to Engineer.

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

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of [1.0].

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

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.0].
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
  1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to

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**Exhibit C – Compensation Packet AS-2: Additional Services –  
Direct Labor Costs Times a Factor Method of Payment.**

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

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consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

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

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

**Reimbursable Expenses Schedule**

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


**As per Schedule of Rates: Sussex County On-Call Services, Effective June 11, 2019**

**DAVIS, BOWEN & FRIEDEL, INC. (“DBF”)  
SCHEDULE OF RATES AND GENERAL CONDITIONS  
SUSSEX COUNTY ON-CALL SERVICES  
Effective June 11, 2019**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$190.00
Senior Architect	\$170.00
Architect	\$130.00
Senior Landscape Architect	\$170.00
Landscape Architect	\$130.00
Senior Engineer	\$170.00
Engineer	\$130.00
Construction Administrator	\$130.00
Senior Traffic Engineer	\$170.00
Traffic Engineer	\$130.00
GIS Specialist	\$105.00
Senior Surveyor	\$170.00
Surveyor	\$130.00
Senior Designer	\$115.00
Designer	\$100.00
CADD I	\$90.00
CADD II	\$80.00
2 Man Field Crew	\$140.00
3 Man Field Crew	\$175.00
GPS Unit (1 Man)	\$110.00
GPS Unit (2 Man Crew)	\$150.00
GPS Unit (3 Man Crew)	\$200.00
Resident Project Representative	\$90.00
Computer Graphics Designer	\$85.00
Computer Administrator	\$100.00
Clerical	\$60.00
Travel	\$0.58
Direct Expense	Cost
Prints	\$2.50/sheet
Overtime	(1.5 x Above Hourly Rate)

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

## Standard Hourly Rates Schedule

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A. *Standard Hourly Rates:*

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

B. *Schedule:*

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

**As per Schedule of Rates: Sussex County On-Call Services, Effective June 11, 2019**

**DAVIS, BOWEN & FRIEDEL, INC. (“DBF”)  
SCHEDULE OF RATES AND GENERAL CONDITIONS  
SUSSEX COUNTY ON-CALL SERVICES  
Effective June 11, 2019**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$190.00
Senior Architect	\$170.00
Architect	\$130.00
Senior Landscape Architect	\$170.00
Landscape Architect	\$130.00
Senior Engineer	\$170.00
Engineer	\$130.00
Construction Administrator	\$130.00
Senior Traffic Engineer	\$170.00
Traffic Engineer	\$130.00
GIS Specialist	\$105.00
Senior Surveyor	\$170.00
Surveyor	\$130.00
Senior Designer	\$115.00
Designer	\$100.00
CADD I	\$90.00
CADD II	\$80.00
2 Man Field Crew	\$140.00
3 Man Field Crew	\$175.00
GPS Unit (1 Man)	\$110.00
GPS Unit (2 Man Crew)	\$150.00
GPS Unit (3 Man Crew)	\$200.00
Resident Project Representative	\$90.00
Computer Graphics Designer	\$85.00
Computer Administrator	\$100.00
Clerical	\$60.00
Travel	\$0.58
Direct Expense	Cost
Prints	\$2.50/sheet
Overtime	(1.5 x Above Hourly Rate)

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

## Insurance

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

### G6.05 *Insurance*

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

1. By Engineer:

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

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

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

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

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

This insurance shall include coverage for all of the following:

1. Any general aggregate limit shall apply per project basis;
2. Liability arising from premises and operations;
3. Liability arising from the actions of independent Consultants;
4. Liability arising from completed operations with such coverage to be maintained for three (3) years after final payment ;
5. CONTRACTUAL liability including protection for Engineer from bodily injury and property damage claims arising out of liability assumed under this Agreement;
6. Liability arising from the explosion, collapse and underground (XCU) hazards; and
7. Waiver of subrogation in favor of the Owner.

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Exhibit G – Insurance.



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

\$5,000,000 each occurrence;  
\$5,000,000 aggregate other than completed operations and auto liability; and  
\$5,000,000 completed operations aggregate.

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

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

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

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

d. Business Auto Liability Insurance:

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

This insurance shall include coverage for all of the following:

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

e. Professional Liability – required limits of liability:

- |                     |               |
|---------------------|---------------|
| 1) Each Claim Made  | \$[2,000,000] |
| 2) Annual Aggregate | \$[2,000,000] |

Engineers' and architects' professional liability insurance which insures against errors and omissions in rendering or failure to render engineers' and architects' professional services, including construction management if applicable, required under this Agreement. Certificates of insurance shall evidence a retroactive date no later the earlier of the date of this Agreement or the commencement of Engineer's services under this Agreement.

f. Other (specify): \$[ ]

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Exhibit G – Insurance.

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

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 5, 2019.

## Dispute Resolution

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

### H6.08 *Dispute Resolution*

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

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

## **Special Provisions**

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Paragraph(s) [ ] of the Agreement is/are amended to include the following agreement(s) of the parties:

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

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

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

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

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

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

Description of Modifications:

Agreement Summary:

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

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

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

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

OWNER:

ENGINEER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

PREVIOUSLY APPROVED FORM

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE


sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

## Memorandum

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

FROM: John J. Ashman   
Director of Utility Planning

RE: ***Memorandum of Understanding – Addendum No. 1  
Beebe Medical Center – Rehoboth Health Campus  
File: OM 9.01***

DATE: November 5, 2019

On March 23, 2004, the County entered into a Memorandum of Understanding with Beebe Medical Center (BMC) for sanitary sewer service for their new Radiation Oncology Center. The memorandum outlines that BMC wanted to obtain sanitary sewer service from Sussex County's wastewater system. BMC agreed to complete the plan, design and construct the sanitary sewer facilities required to connect. BMC would also be responsible for all sanitary sewer charges in accordance with Chapter 110 of the Sussex County Code including annual service charges, System Connection Charges, one-time sewer permit fee and front-foot assessment. BMC will also provide a perpetual easement to the County for the operations and maintenance of the wastewater pipeline located within the BMC property. Sussex County will become responsible for the operations and maintenance of the new on-site infrastructure required to provide a connection for the new facility upon final acceptance by the engineering department.

Addendum No. 1 addresses additional lands BMC has added to the Sussex County Unified Sanitary Sewer District and wishes to connect to the County's existing sanitary sewer service. The addendum adds parcel 334-12.00-125.00 to the original MOU with all other terms and conditions remaining unchanged.



ADDENDUM NO. 1 TO THE  
MEMORANDUM OF UNDERSTANDING  
BETWEEN SUSSEX COUNTY  
AND THE BEEBE MEDICAL CENTER

WHEREAS, on March 23, 2004 the parties entered into a Memorandum of Understanding regarding sewer service for a Radiation Oncology Center at their Route 24 facility near Route 1; and

WHEREAS, Beebe Medical Center, Inc. (BMC) has recently added additional land to the SCUSSD (Parcel 334-12.00-125.00); and

WHEREAS, both parties desire to amend the existing memorandum.


NOW, THEREFORE, the Sussex County Council (County) and BMC agree to amend the memorandum as follows:

1. By amending section 1 to add, Parcel 334-12.00-125.00.
2. All other terms and conditions of the memorandum remain unchanged.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed on the 21<sup>st</sup> day of OCTOBER, 20 19 by their duly authorized officers.

BEEBE MEDICAL CENTER, INC.

SUSSEX COUNTY

By: 

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

Mark Loukides, Vice President  
Facilities, Infrastructure & Plant Operations

Michael H. Vincent, President  
Sussex County Council

**MEMORANDUM OF UNDERSTANDING  
BETWEEN SUSSEX COUNTY  
AND THE BEEBE MEDICAL CENTER**

WHEREAS, the County operates a wastewater collection, transmission and treatment system which serves the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District (WRE); and

WHEREAS, Beebe Medical Center (BMC) has requested to add an additional land area to the WRE of approximately 25 acres; and

WHEREAS, the BMC is proposing to build a Radiation Oncology Center at their Route 24 facility near Route 1 near; and

WHEREAS, BMC wishes to obtain sanitary sewer service from Sussex County's wastewater system; and

WHEREAS, the connection of BMC's future facilities to the County wastewater system would eliminate the need for on-site or private wastewater systems to serve BMC's project.

NOW, THEREFORE, the County and BMC stipulate and agree as follows:

1. The County shall provide wastewater transmission and treatment services for the property shown as Attachment "A";
2. BMC shall plan, design, and construct the necessary facilities to collect and transmit wastewater from BMC's project site to the County wastewater system in accordance with Sussex County's Standard Specifications and Procedures and its existing Planning Studies, and to pay all costs associated with this process including: inspection, bonding, permitting, and plan review fees;
3. BMC shall pay all sanitary sewer charges in accordance with Chapter 110 of the *Sussex County Code*, as amended each year by the Sussex County Council for the WRE, including the following:
  - (a) System connection charges to be paid before connection permits are issued by the Sussex County Engineering Department (SCED) for the new wastewater facilities;
  - (b) One-time sewer connection permit fee;
  - (c) Front foot assessments based on the transmission and/or treatment portion to be paid annually; and
  - (d) Service charges to be paid quarterly.
4. BMC shall not be responsible for said service and assessment charges until final connection is made to the County system.




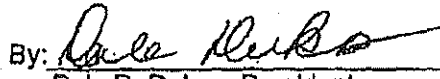
5. Sussex County shall become responsible for the operations and maintenance of the portion of new wastewater system meeting Sussex County's specifications as required in Article XI, Chapter 110 of the Sussex County Code, upon acceptance by the SCED.
6. BMC shall provide a perpetual easement for the operations and maintenance of wastewater pipelines located within the BMC's property, as specified by the SCED.
7. This Agreement may be modified or terminated only upon the written agreement of both parties, signed by the President of the County Council and BMC. This Agreement shall be binding upon the parties and their respective successors, administrators, and assignees.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed on the 23<sup>rd</sup> day of March, 2004 by their duly authorized officers.

BEEBE MEDICAL CENTER

SUSSEX COUNTY

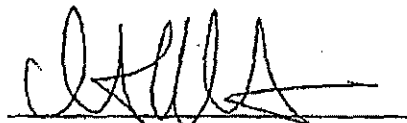
By:   
E. James Monihan  
Vice President/CCO  
Beebe Medical Center

By:   
Dale R. Dukes, President  
Sussex County Council

ATTEST:

  
Robin Griffith  
Clerk of the County Council

APPROVED AS TO FORM:

  
Vincent G. Robertson, Esquire  
Assistant County Attorney

Attachment "A"

LEGAL DESCRIPTION  
FOR TAX MAP 3-34-12.00 part of Parcel 57

ALL that certain tract and part of a single parcel of land east of State Route 24 (John J. Williams Highway), being in the Lewes and Rehoboth Hundred, Sussex County, Delaware, containing 24.72 acres and being bounded and described as follows:

BEGINNING at a point, said point being on the southern right-of-way of State Route 24, 2155 +/- feet west of the intersection of the southern right-of-way of State Route 24 with the western right-of-way of State of Delaware Route 1, said point being a common point of land now or formerly (N/F) of The Herola Co. and land N/F of Beebe Medical Center, Inc., said point also being in the boundary of the WRE; thence proceeding with the boundary of the WRE the following two courses and distances: (1) South 29 degrees 11 minutes 50 seconds East 538.25 +/- feet; and (2) South 48 degrees 37 minutes 31 seconds West 555.67 +/- feet, respectively, to a point where it meets the boundary line of land N/F of J. G. Townsend, Jr. & Co., said point also being in the boundary of the WRE; thence leaving the boundary of the WRE and proceeding South 30 degrees 9 minutes 20 seconds East 516.07 +/- feet to a point, said point being a common corner of land N/F of J. G. Townsend, Jr. & Co. and land of The Herola Co., said point also being in the boundary line of land N/F of Beebe Medical Center, Inc.; thence proceeding the following two courses and distances: (1) South 44 degrees 42 minutes 57 seconds East 425.04 +/- feet; and (2) North 49 degrees 25 minutes 30 seconds East 439.24 +/- feet, respectively, to a point, said point being a common corner of land N/F of The Herola Co. and land N/F of Earl D. Warrington, said point also being in the boundary line of land of Beebe Medical Center, Inc.; thence proceeding North 49 degrees 25 minutes 30 seconds East 972.29 +/- feet to a point, said point being a common corner of land N/F of Beebe Medical Center, Inc. and other land of The Herola Co., said point also being in the boundary line of land N/F of Earl D. Warrington; thence leaving the boundary line of land N/F of Earl D. Warrington and proceeding the following four courses: (1) a chord to the left, bearing North 68 degrees 30 minutes 46 seconds West 164.73 +/- feet; (2) North 57 degrees 49 minutes 03 seconds West 850.0 +/- feet; (3) a chord to the right, bearing North 57 degrees 49 minutes 03 seconds West 438.56 +/- feet; and (4) North 20 degrees 49 minutes 03 seconds West 200.0 +/- feet, respectively, to the point and place of beginning, containing 24.72 acres as surveyed by L. Franklin Beers, Jr., Professional Land Surveyor on a Perimeter Survey Plan dated January 6, 2004.

**To Be Introduced 11/05/19**

**Council District No. 4 - Hudson  
Tax I.D. No. 234-31.00-4.00 (portion of)  
911 Address: None Available**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXPANSION TO A RESTAURANT (SEASIDE BAR AND GRILL) WITHIN A MANUFACTURED HOME PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.3 ACRES, MORE OR LESS**

**WHEREAS, on the 5th day of June 2019, a conditional use application, denominated Conditional Use No. 2191, was filed on behalf of Jason Hill; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2191 be \_\_\_\_\_; and**

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

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article IV and XXIV, Subsections 115-22 and 172, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2191 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 at the end of Sandpiper Road in the Pot Nets Seaside development and being more particularly described in the attached legal description prepared by Ellis & Szabo, LLP, said parcel containing 1.3 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.**

JANELLE M. CORNWELL, AICP  
PLANNING & ZONING DIRECTOR  
(302) 855-7878 T  
(302) 854-5079 F  
janelle.cornwell@sussexcountyde.gov



**Sussex County**  
DELAWARE  
sussexcountyde.gov

## Memorandum

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

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: October 31, 2019

RE: County Council Report for CU 2186 Mountaire Farms of Delaware, Inc.

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The Planning and Zoning Department received an application (CU 2186 Mountaire Farms of Delaware, Inc.) for a Conditional Use for parcels 234-28.00-1.00, 2.00, and 3.00 to allow for sludge and wastewater spray irrigation to be located on Mount Joy Rd. and Townsend Rd. The Planning and Zoning Commission held a public hearing on October 10, 2019. The following are the draft minutes for the Conditional Use from the Planning and Zoning Commission meetings.

Ms. Cornwell advised the Commission that submitted into the record were results from the DelDOT Service Level Evaluation, comments from the Sussex Conservation District, an Exhibit Booklet which includes photographs, comments from the Sussex County Engineering Department Utility Planning Division; that Ms. Cornwell noted that there are seven letters in opposition to the application.

Mr. Robertson stated that he would not participate, and that Mr. Sharp would take his place for this case.

That the Commission found that Ms. Lisa McLaughlin, an Attorney with Phillips Goldman McLaughlin and Hall, Mr. Austin Pajda and Mr. Mike Tirrell, with Mountaire Farms appeared on behalf of the Applicant, that Ms. McLaughlin stated Mountaire Farms of Delaware, Inc. is requesting a Conditional Use; that Mountaire currently spray irrigates it's treated poultry processed water on thirteen (13) fields; that there are five (5) fields for land application of sludge which are underutilized; that Mountaire wants to repurpose two (2) of the fields to allow spray irrigation on these fields; that when there is more acreage to spray, it is better for the environment; that Mountaire has no plans to increase production or to increase the amount of treated processed water applied to the fields; that this will be good for the County; and that it will help Mountaire achieve its objectives with the Department of Natural Resources and Environmental Control (DNREC); that Mr. Pajda referred to the map and stated that a Conditional Use is required for all bio solid application sites after May 1990; that the Rust and Thorogood Farms were permitted by DNREC through an agriculture utilization



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE

permit that began in June 1990; that Mountaire purchased this property in early 2000s and all active permits transferred with ownership; that the sludge application permits were renewed every five (5) years as required; that to be exempt from going through the Conditional Use process for application of sludge, Mountaire would have to provide that the use was in place and not interrupted for more than a two-year period; that after discussion with the County and DNREC bio solids program, Mountaire made the decision to apply for a Conditional Use to proceed with the renewal of the agricultural utilization permit; that in addition Mountaire is requesting a Conditional Use to use spray irrigation on these lands; that all locations will need to be approved by DNREC; that the spray irrigation is subject to strict regulations which considers nearby homeowners; that Mountaire currently has approximately 920 acres across thirteen (13) fields which are used for spray irrigation; that having the potential to increase the amount of land by thirty 30% would be strides forward to allow for better accommodations for Mountaire's spray irrigation operation; that this is not for the purpose of increasing production; that having more acres to spray with the same amount of water on the additional lands would allow operators to have more flexibility to rotate fields during harvest season; that it would allow fields to receive less water on a year round average, that it would allow crops to uptake nutrients at a more efficient rate; that it would cause overall loading at the site to decrease and that it would decrease the overall percolate for groundwater parameters; that Mr. Tirrell stated that Mountaire Farms employs over 3,000 people in the Millsboro facility and over 5,000 people in the Delmarva area; that 35,000 indirect jobs are provided in the area; that Mountaire purchases services and goods from hundreds of goods from chicken farmers and grain growers; that the payments of wages in 2017 were over \$100 million, payments to farmers and growers were over \$77 million, utility payments over \$60 million and capital improvements over \$50 million; that in 2017, Mountaire invested over \$300 million into the local economy and donated several million dollars to charities; that approving this conditional use will allow Mountaire to continue with the programs and contributions to the community; and that Mountaire Farms is committed to getting their facility in complete compliance.

Mr. Hopkins asked about the cost of the new wastewater treatment plant; that Mr. Tirrell stated that the state-of-the-art plant will cost approximately \$50 million.

Ms. Wingate asked what sludge is; that Mr. Pajda stated that it is partially solid that has been treated through requirements set by DNREC; that it must go through pathogen reduction and a similar treatment process as the water; that Ms. Wingate asked what is being done with the sludge currently; that Mr. Pajda stated that a contractor is being paid to haul it away.

Mr. Mears asked if there were statistics about how pure the water being sprayed is; that Mr. Pajda stated that he did not have the statistics at this time but that the new plant would be state-of-the-art and will be pristine water; that Ms. Stevenson asked if the water which will be sprayed will all go through the treatment plant; that Mr. Pajda stated yes; and that Mr. Wheatley stated that the State regulates the water treatment process.

Mr. Sharp asked if all the sludge and water will be from Mountaire facilities; that Mr. Pajda stated that is correct; that Mr. Sharp asked if any sludge would be stockpiled on the site; that Mr. Pajda stated that there wouldn't be any stored and would be applied immediately; that Mr. Sharp asked about the hours of operation; that Mr. Pajda stated that DNREC has very strict guidelines about when spray irrigation can be done; that Mr. Sharp asked if there are buffers to neighboring non-Mountaire lands; that Mr. Pajda stated that there will be a 200 ft. buffer to the residential property to the east; that Mr.

Sharp asked if this was to help offload spray irrigation that is being done elsewhere; that Mr. Pajda stated that this is correct and that sludge is currently being hauled away.

The Commission found that no one spoke in favor of and six parties spoke in opposition to the application.

Ms. Shelly Cohen, Mr. Ken Haynes, Ms. Cheryl Mathes, Ms. Jymayce Wescott, Keith Steck and Joanne Haynes spoke in opposition to the application. Ms. Cohen read a statement and submitted it into the record. Ms. Cohen stated that the proposal is not an agricultural activity; that if it were agricultural a Conditional Use permit would not be necessary; that it is not business development and that the proposed use does not fall under the listings of Conditional Uses listed in Sussex County Code. Mr. Haynes stated that he is opposed to this application. Ms. Mathes stated that she is opposed to the application; that she has an air filter in her car which registers red when passing fields where spray irrigation is being operated. Ms. Wescott stated that homeowners want to know that spray irrigation and sludge do not affect the community; that information was not provided about how far that water and sludge will travel in the ground; that the community needs to understand exactly what this means for this the area.

Mr. Wheatley asked the representatives from Mountaire could respond to the questions raised by Ms. Wescott. Mr. Pajda stated that the infiltration rate is regulated by DNREC. Ms. Tanya Rogers-Vickers, Director of Environmental Compliance for Mountaire stated that the new wastewater plant and will meet all requirements set forth by DNREC; that there will be a certain amount of nitrogen and phosphorous in the water to help grow plants.

Mr. Hopkins asked if this plant would be able to more precisely deliver the nitrogen and phosphorous; that Ms. Rogers-Vickers stated that the amount applied to the land will be less than what is needed for crops and therefore all nitrogen and phosphorous will be absorbed by the crops; that Mr. Hopkins asked if Mountaire is willing to have a lesser yield of crop in order for the crop to soak up all the nitrogen and phosphorous; that Ms. Rogers-Vickers stated that this is correct; that Ms. Stevenson asked if the crops are sold; that Ms. Rogers-Vickers stated that corn, wheat and soy beans are grown for Mountaire's use; that Ms. Stevenson asked how the groundwater levels are reported to DNREC; that Ms. Rogers-Vickers stated that the levels are reported monthly to DNREC in the Spray Monitoring Report (SMR); that Ms. Stevenson asked if DNREC ever perform checks on their own; that Ms. Rogers-Vickers stated yes.

Mr. Steck stated that he opposes the application and that he will submit his written comments into the record; that he had concerns about the online packet provided by the Planning and Zoning Department; that Ms. Cornwell stated that the application was omitted from the package but that all the documents provided were part of the online packet; that Mr. Steck stated that he believes there are inaccuracies in the packet; that he has a number of questions such as are there heavy metals in the sludge, if sanitary waste is co-mingled with processed waste, how does the wastewater and sludge get transported to the site; and that any decision should be put on hold until all documents have been reviewed.

Mr. Wheatley asked the Mountaire team to come forward to respond to the questions; that Ms. Rogers-Vickers stated that the sludge is hauled by truck with 2 – 3 trips transported off site; that the wastewater is transported by a pipeline from the plant to the fields; that sludge is made when you treat wastewater and you separate the solids from the liquids; that the process does not have any heavy

metals associated with it; that DNREC requires Mountaire to test for heavy metals. Ms. Haynes stated that DNREC did not allow Mountaire to spray when it rains; that now Mountaire sprays all the time; and that she is concerned about spraying when it is raining.

Ms. Rogers-Vickers stated that Mountaire does have wet weather fields with the stipulation that if they spray there is no ponding or run off; and that there are operators on Mountaire staff that monitor this process 365 days a year.

Mr. Sharp asked what amount is being sprayed elsewhere and the amount that is being sprayed; that Ms. Cornwell stated that information is not available as it is not part of this application.

Ms. Stevenson asked if the Commission could ask DNREC about the monitoring process; that Mr. Sharp stated that the Commission could ask the Applicant what permits are required by DNREC; Mr. Wheatley asked the Applicant to address this issue; Ms. Rogers-Vickers stated that Mountaire monitors on a daily basis and submits to DNREC monthly on the SMR; that DNREC conducts visits both announced and unannounced; that Ms. Cornwell stated that DNREC requires monthly, quarterly and annual reports from anyone who holds a spray irrigation permit.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

At their meeting on October 24, 2019, the Planning Commission discussed the application which has been deferred since October 10, 2019.

Ms. Stevenson moved that the Planning Commission recommend approval of Conditional Use # 2186 for Mountaire Farms, Inc., for sludge and wastewater spray irrigation based upon the record made during the public hearing and for the following reasons:

1. The property is a large parcel consisting of approximately 351.86 acres more or less and is located in a Low Density Area and Coastal Area. The Low Density Area designation recognizes that business development should be largely confined to businesses that address the needs of single-family residences and agriculture. The Coastal Area designation recognizes that development can be accommodated provided that any special environmental concerns are addressed.
2. The Applicant seeks to use its property for sludge and wastewater spray irrigation. The Applicant currently spray irrigates wastewater on other lands and seeks to spray irrigate wastewater on this property as well. The Applicant has no intention to increase the amount of wastewater it spray irrigates and intends to use this property to allow for better load and nutrient management.
3. The Applicant will also use the property for sludge application. The application of sludge and wastewater spray irrigation will be used to assist in the growing of crops. This use is consistent with the underlying zoning of the property.
4. There were concerns raised by opposition about the effect of the sludge and wastewater spray irrigation application on water. The Applicant will be subject to regular monitoring by DNREC and will have to comply with DNREC's requirements. These monitoring requirements include monthly reports to DNREC and unannounced visits from DNREC to inspect the site. No ponding or runoff is allowed.

5. The Applicant will use an existing pipeline for wastewater transport and wastewater will not be trucked to the site thereby limiting the traffic impact. Sludge will be trucked to the site with an estimated 2-3 loads per day. As such, the traffic related to the sludge should be minimal. The sludge transport is regulated by DNREC permits as well.
6. There is no indication that the use, if in compliance with DNREC regulations, will have any adverse impact upon the area or neighboring or adjacent properties. To the contrary, it will be consistent with the agricultural uses on nearby properties which utilize wastewater spray irrigation and sludge application.
7. The use will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways.
8. The use is of a public or semi-public character that will be a benefit to Sussex County.
9. This use is subject to the following conditions:
  - a. The application of sludge and wastewater spray irrigation shall be subject to DNREC and other state and federal regulatory approvals.
  - b. The application of sludge and wastewater shall be limited to sludge and wastewater from Mountaire Farms.
  - c. There shall not be any stockpiling of sludge materials or wastewater on site.
  - d. The maximum number of sludge and wastewater applications on the property shall be subject to the approval of DNREC and other regulatory agencies with jurisdiction over this use.
  - e. This conditional use shall be valid concurrent with DNREC's permits for this use. If the DNREC permits shall be terminated or expire, this conditional use shall also terminate and expire.
  - f. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
  - g. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to apply the sludge and wastewater spray irrigation on this property.
  - h. The failure to abide by these conditions shall result in the termination of the conditional use approval.
  - i. The Applicant shall submit a Final Site Plan, which shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons stated in the motion. Motion carried 4-1.



## PLANNING & ZONING

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# Sussex County

DELAWARE  
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## Memorandum

To: Sussex County Planning & Zoning Commission Members  
From: Jamie Whitehouse, AICP, Planning & Zoning Manager  
CC: Vince Robertson, Assistant County Attorney and Applicant  
Date: October 3, 2019  
RE: Staff Analysis for CU 2186 Mountaire Farms of Delaware, Inc.

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2186 Mountaire Farms of Delaware, Inc. to be reviewed during the October 10, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for parcels 234-28.00-1.00, 2.00 and 3.00 to allow for the land application of sludge and wastewater spray irrigation to be located on both sides of Mount Joy Rd., approximately 52 ft. west of Townsend Rd, and being on both sides of Townsend Rd., approximately 157 ft. south of Mount Joy Rd., and being on the southeast corner of Mount Joy Rd. and Townsend Rd, the northeast corner of Maryland Camp Rd and Townsend Rd, and the southwest corner of Maryland Camp Rd. and William Street Rd. The size of the property is 351.86 ac. +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map shows that Parcel 234-28.00-1.00 is largely within the low-density designated area with the easternmost corner of the parcel being within the Coastal Area designation. Parcels 234-28.00-2.00 and 3.00 are designated as being within the Coastal Area.

The Low-Density Area designation recognizes that the primary uses envisioned in Low Density Areas are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. The Coastal Area designation recognizes that development can be accommodated provided that any special environmental concerns are addressed. Applicants are encouraged to analyze the development's potential environmental impacts, including effects on stormwater runoff, nitrogen and phosphorous loading, wetlands, woodlands, wastewater treatment, water systems, and other matters that affect the ecological sensitivity of the inland bays.

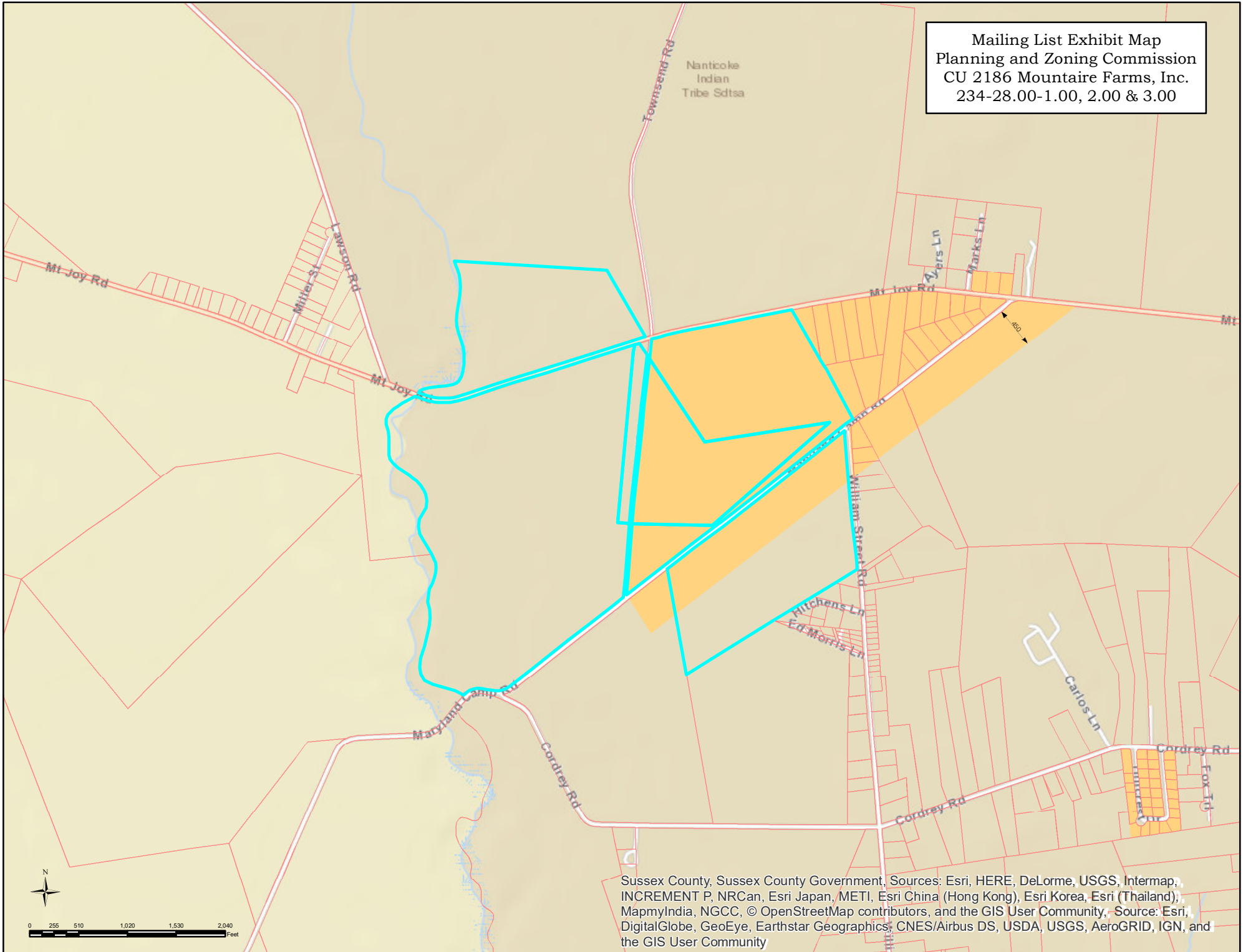
The land west of Townsend Rd is within the AR-1 Agricultural Residential Zoning District. The land to the east of Townsend Rd is within the GR General Residential Zoning District. The parcels to the north, west and south of the application site are primarily used for agriculture and forestry. The lands to the immediate north-east of the application site contain single-family dwellings.

The County's records show that there have been other Conditional Use applications for the use of bio-solids within a 5-mile radius of the application site. Conditional Use #1569 for the Mountaire Cordrey & Frame Tract (234-21.00-169.03) was approved by Sussex County Council on 11/30/2004. Also, Conditional Use #1570 for the Mountaire Colony Tract (133-7.00-7.00) for the use of biosolids from wastewater treatment was withdrawn on 11/12/2004.



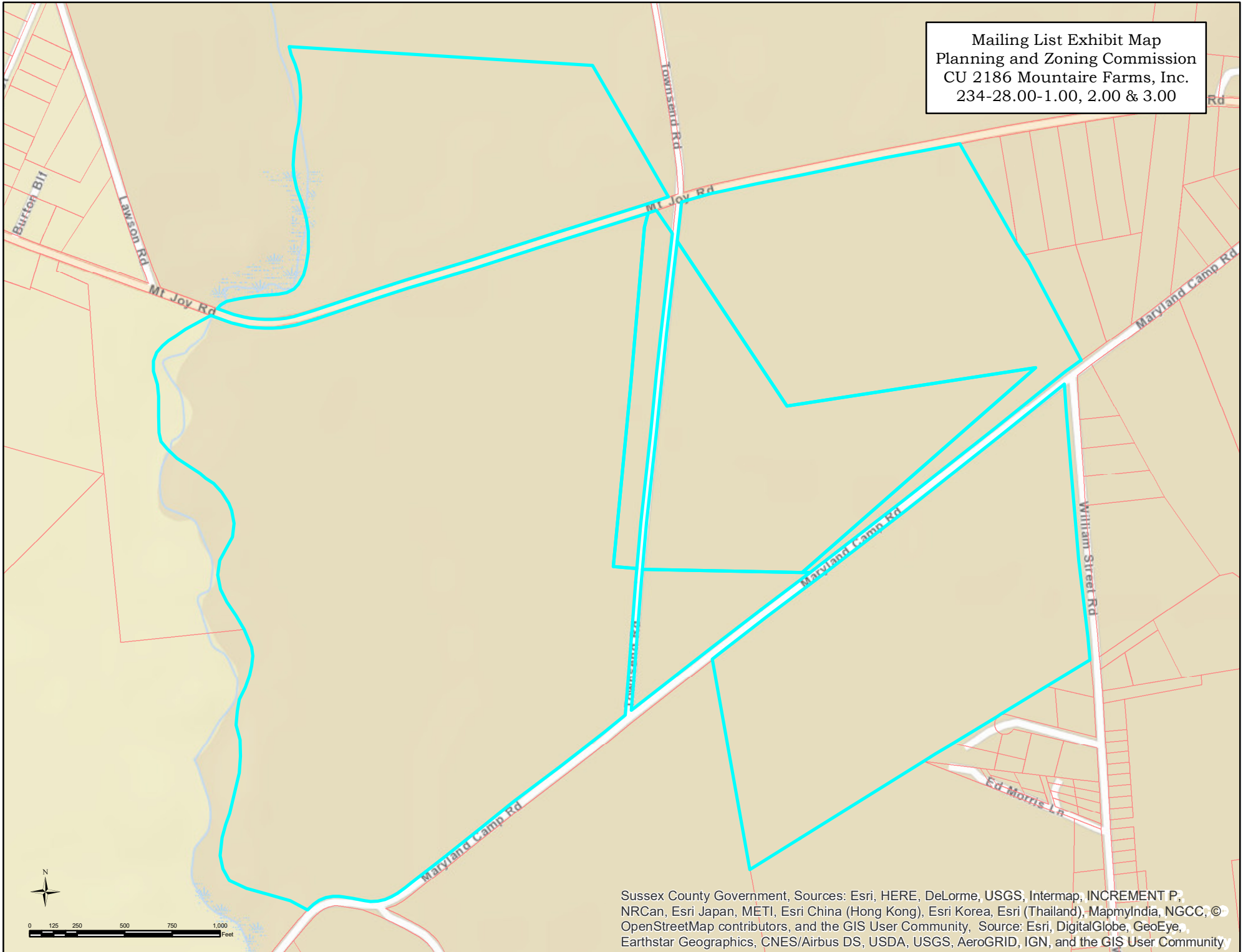
Based on the analysis of the land use, surrounding zoning and uses, the proposed Conditional Use for sludge and wastewater spray irrigation, subject to consideration of scale, impact and intensity, could be considered as consistent with the land use, area zoning and uses.

Mailing List Exhibit Map  
Planning and Zoning Commission  
CU 2186 Mountaire Farms, Inc.  
234-28.00-1.00, 2.00 & 3.00



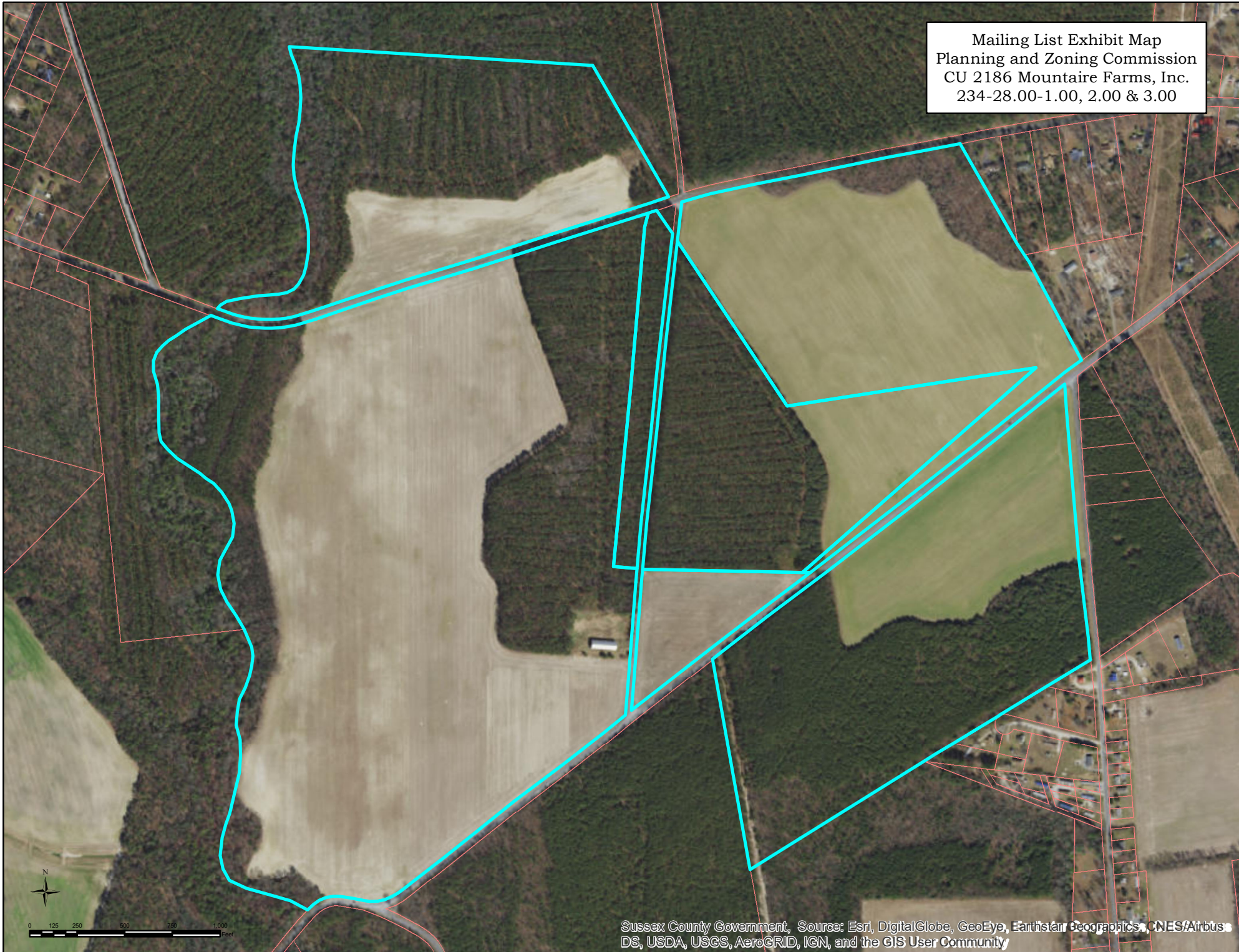
Sussex County, Sussex County Government, Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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CU 2186 Mountaire Farms, Inc.  
234-28.00-1.00, 2.00 & 3.00



Sussex County Government, Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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CU 2186 Mountaire Farms, Inc.  
234-28.00-1.00, 2.00 & 3.00



**Introduced 06/04/19**

**Council District Nos. 3 and 4 – Burton and Hudson  
Tax I.D. No. 234-28.00-1.00, 2.00, and 3.00  
911 Address: None Available**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT FOR SLUDGE AND WASTEWATER SPRAY IRRIGATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 351.86 ACRES, MORE OR LESS**

**WHEREAS, on the 13th day of May 2019, a conditional use application, denominated Conditional Use No. 2186, was filed on behalf of Mountaire Farms of Delaware, Inc.; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2186 be \_\_\_\_\_; and**

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

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Articles IV and VI, Subsections 115-22 and 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2186 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 Mount Joy Road approximately 52 feet west of Townsend Road, and being on both sides of Townsend Road approximately 157 feet south of Mount Joy Road, and being on the southeast corner of Mount Joy Road and Townsend Road, the northeast corner of Maryland Camp Road and Townsend Road, and the southwest corner of Maryland Camp Road and William Street Road, and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 351.86 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.**

PROPOSED